

not only an economically free and viable leader of the world but also that keeps us free.

In conclusion, I wish to again praise the chairman. He presented a responsible budget resolution, and I pledge to work with the Budget Committee and all my colleagues to make sure we do those things that are necessary and do away with those things, those frills at this time in our history that we cannot afford just because we like to say we have them.

So I wish to work with the chairman and this body in producing a budget that will work for all Americans.

Mr. President, I yield the floor and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

#### AMENDMENT NO. 758

Mr. CHAFEE. Mr. President, on behalf of Senators DODD and LIEBERMAN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. DODD, for himself and Mr. LIEBERMAN, proposes an amendment numbered 758.

The amendment is as follows:

On page 62, line 4, after the words "public service authority", add "or its operator".

Mr. CHAFEE. Mr. President, this is a technical amendment, obviously. It is needed to be consistent with the language on page 61, line 18 of the legislation.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So the amendment (No. 758) was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

#### FLOW CONTROL

Mr. DODD. Mr. President, I would like to engage in a colloquy with Senator CHAFEE, the chairman of the Environment and Public Works Committee and Senator BAUCUS, the committee's ranking member, regarding the intent of S. 534 with respect to flow control.

Is it the intent of this bill to allow for the refinancing of public debt for waste management facilities where only the interest rate would change, and not the amount or maturity date of the bond?

Mr. CHAFEE. Yes, that is the intent of the bill.

Mr. DODD. Is this the understanding of the Senator from Montana?

Mr. BAUCUS. Yes, that is my understanding as well.

#### FLOW CONTROL AND FREE MARKET ISSUES

Mr. SANTORUM. Mr. President, I seek recognition for the purpose of engaging in a colloquy with the distinguished Senator from New Hampshire, Senator SMITH, the manager of S. 534.

First, may I congratulate my colleague on his skillful handling of this difficult legislation.

Second, it is that very difficulty on which I would like to focus in this colloquy.

I think my colleague would agree with me in my characterization of this legislation as statutory interference with the commerce clause of the Constitution of the United States. This interference comes as a result of the Carbone versus Clarkstown decision, which has caused problems with certain public facilities financed by revenue bonds. Carbone invalidated State and local laws which create a solid waste monopoly for those facilities. And, of course, there is the continued desire to come to grips with the problem of interstate transfer of solid waste. I am especially aware of this problem because my own State of Pennsylvania has been the unwilling recipient of solid waste exported from New Jersey and New York, in particular.

Thus, we have a clash between the fundamental wisdom of the commerce clause and the practical effects of the interstate trade in solid waste. May I ask my colleague from New Hampshire the following question?

Is it fair to state that he has attempted to craft legislation which would interfere as little as possible with the commerce clause and thereby he would try to protect the free market where it has worked?

Mr. SMITH. I have stated before that I am not in favor of flow control. Flow control is anticompetitive. But it is only fair and equitable that communities that have indebted themselves—completely within the law prior to the Supreme Court decision—must not be left to suffer the consequences of financial failure. The outstanding municipal bonds that total more than \$20 billion must be honored and the communities' financial stability must be maintained. However, only those facilities with

bonded revenues are given grandfather coverage under this bill. Any municipality indebted after the Carbone decision is not and will not be protected.

The free market must prevail. Rather than assisting with the creation of yet another bloated Government bureaucracy, we should be encouraging the establishment of a healthy free market, one in which competition keeps prices low, offers consumers better services, and disposal techniques are state-of-the-art.

Mr. SANTORUM. Further, it appears to me that the interstate title of this legislation gives my Commonwealth of Pennsylvania the tools it needs to prevent abuse of our resources and environment. Could my colleague comment on that?

Mr. SMITH. Yes, the interstate title gives the Governor of Pennsylvania and the Governors of other affected States authority to ensure that their States do not continue as unabated dumping grounds for States which do not act to site their own disposal capacity.

Mr. SANTORUM. Last, with regard to title II, flow control, may I inquire of my colleague whether this legislation imposes flow control or in any way makes it mandatory and thereby suppresses the free market?

Mr. SMITH. This legislation does not impose flow control. Flow control is fundamentally incompatible with the principles of free enterprise, market competition, and the best interest of the consumer. Requiring the use of flow control would be a step backward in the handling of municipal solid waste. This bill is designed specifically to protect the bond holders and commitments previously made. The free market is not broken, and with the inclusion of a 30-year sunset provision, the free market will once again take over.

Mr. SANTORUM. Based on the response of my colleague, may I validly draw the following two conclusions?

First, this legislation allows the continuation of flow control as previously enacted under State law under certain conditions but not require or mandate flow control.

Second, it is the intention of the distinguished subcommittee chairman that this legislation not be used in and of itself as an argument to suppress the free market.

Mr. SMITH. My colleague from Pennsylvania is correct in his conclusions regarding the spirit of the legislation. Flow control will continue under certain conditions but is not required or mandated. As I have said before, the free market must be allowed to prevail.

Mr. SANTORUM. I thank my distinguished colleague and again commend him for so ably discharging this difficult responsibility.

Mr. DASCHLE. Mr. President, I am fortunate to come from a State with

sparsely populated expanses of some of the most beautiful land in this country. States like South Dakota have a special interest in the legislation before the Senate today, as it will directly affect their future.

The legislation, S. 534, amends the Solid Waste Disposal Act to provide important authority for States and local governments to better control the transportation of municipal solid waste between and within States.

The time has come to enact this legislation. States and local government are facing increasing challenges in the responsible regulation of municipal waste management. Interstate shipments of waste have been growing in recent years. Between 1990 and 1992, interstate shipments of waste grew by 4 million tons—a 25% increase. Currently, about 15 million tons of municipal waste is transported between States for treatment and disposal, much of it from densely populated regions to less populated areas.

Moreover, the U.S. Supreme Court has ruled that unless Congress acts on this issue, States and local governments can have no meaningful role in controlling the movement of waste into and within their borders.

The combination of increasing interstate shipments of municipal waste and recent Supreme Court decisions understandably has created concern among States like South Dakota, who fear that without authority to restrict unwanted imports of municipal waste, they will become the dumping ground for other, more heavily populated areas.

In addition, Congress has a responsibility to help protect the investments made by towns across America in municipal waste management facilities—investments that have been placed in jeopardy by the Supreme Court's recent Carbone decision.

The temptation can be great to ship waste to the more remote regions of our country. But some of these lands are fragile and are home to some of our country's greatest natural assets. In South Dakota alone, the geological wonderland of the Badlands, the expansive prairie, and the majestic Black Hills are examples of areas that deserve protection from the designs of anyone who would use them for waste disposal.

The responsibility for disposing trash produced by large urban areas should be confronted and met by the citizens and community leaders who live there. Rural States should never be considered as a waste management option, unless they willingly choose to make their land available for that purpose. In the end, the choice must belong to the State and local governments that would bear the long-term environmental consequences of waste disposal.

This bill addresses the rights and responsibilities of States and local governments to achieve their own environ-

mental and economic objectives. It is about State and local self-determination. The interstate waste provisions of this bill represent a delicate balance between States that import and export waste. It is a step in the right direction because it encourages States to take responsibility for managing the waste they generate, rather than sending it elsewhere. Out of sight and out of mind will not work when it comes to management of municipal solid waste, particularly if it means leaving it within the sight and on the minds of those who do not want it.

Reduce, reuse, and recycle is a better solution. It represents a philosophy that more States will have to adopt as a result of this bill.

Like most legislation, this bill will not completely satisfy the objectives of every State or local government. Some States, like South Dakota, would like, and I believe deserve, even greater authority to prevent imports of waste. Other States, which with an interest in exporting municipal waste, would prefer to see fewer restrictions. Likewise, I am aware that while there are cities and towns that would prefer to have greater and more enduring authority to regulate flow control, there are Members of this body who feel that the free and unfettered competition of the marketplace should be given a greater opportunity to determine the flow of municipal waste.

This bill strikes a reasonable balance between these competing interests, one that I believe is essential if we are to move forward and enact meaningful legislation. It gives States and local governments the ability to promote their own environmental goals and meet important financial obligations. We must pilot a course of responsible stewardship of our resources. This bill gives States and cities the power to do just that, and I hope that my colleagues will join me in supporting this important and timely legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR—S. 534

Mr. BINGAMAN. Mr. President, I ask unanimous consent that Anna Garcia, a fellow in my office, be allowed floor privileges during consideration of this legislation.

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

AMENDMENT NO. 761

(Purpose: To require the Administrator of the Environmental Protection Agency to conduct a study of solid waste management issues associated with increased border use resulting from the implementation of the North American Free Trade Agreement)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 761.

Mr. BINGAMAN. Mr. President, I ask unanimous consent further reading be dispensed.

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

The amendment is as follows:

At the appropriate place insert the following:

**SEC. . BORDER STUDIES.**

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) MAQUILADORA.—The term "maquiladora" means an industry located in Mexico along the border between the United States and Mexico.

(3) SOLID WASTE.—The term "solid waste" has the meaning provided the term under section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

(b) IN GENERAL.—

(1) STUDY OF SOLID WASTE MANAGEMENT ISSUES ASSOCIATED WITH NORTH AMERICAN FREE TRADE AGREEMENT.—As soon as practicable after the date of enactment of this Act, the Administrator is authorized to conduct a study of solid waste management issues associated with increased border use resulting from the implementation of the North American Free Trade Agreement.

(2) STUDY OF SOLID WASTE MANAGEMENT ISSUES ASSOCIATED WITH UNITED STATES-CANADA FREE-TRADE AGREEMENT.—As soon as practicable after the date of enactment of this Act, the Administrator may conduct a similar study focused on border traffic of solid waste resulting from the implementation of the United States-Canada Free-Trade Agreement, with respect to the border region between the United States and Canada.

(c) CONTENTS OF STUDY.—A study conducted under this section shall provide for the following:

(1) A study of planning for solid waste treatment, storage, and disposal capacity (including additional landfill capacity) that would be necessary to accommodate the generation of additional household, commercial, and industrial wastes by an increased population along the border involved.

(2) A study of the relative impact on border communities of a regional siting of solid waste storage and disposal facilities.

(3) In the case of the study described in subsection (b)(1), research concerning methods of tracking of the transportation of—

(A) materials from the United States to maquiladoras; and

(B) waste from maquiladoras to a final destination.

(4) In the case of the study described in subsection (b)(1), a determination of the need for solid waste materials safety training for workers in Mexico and the United States within the 100-mile zone specified in the First Stage Implementation Plan Report for 1992-1994 of the Integrated Environmental

Plan for the Mexico-United States Border, issued by the Administrator in February 1992.

(5) A review of the adequacy of existing emergency response networks in the border region involved, including the adequacy of training, equipment, and personnel.

(6) An analysis of solid waste management practices in the border region involved, including an examination of methods for promoting source reduction, recycling, and other alternatives to landfills.

(d) SOURCES OF INFORMATION.—In conducting a study under this section, the Administrator shall, to the extent allowable by law, solicit, collect, and use the following information:

(1) A demographic profile of border lands based on census data prepared by the Bureau of the Census of the Department of Commerce and, in the case of the study described in subsection (b)(1), census data prepared by the Government of Mexico.

(2) In the case of the study described in subsection (b)(1), information from the United States Customs Service of the Department of the Treasury concerning solid waste transported across the border between the United States and Mexico, and the method of transportation of the waste.

(3) In the case of the study described in subsection (b)(1), information concerning the type and volume of materials used in maquiladoras.

(4)(A) Immigration data prepared by the Immigration and Naturalization Service of the Department of Justice.

(B) In the case of the study described in subsection (b)(1), immigration data prepared by the Government of Mexico.

(5) Information relating to the infrastructure of border land, including an accounting of the number of landfills, wastewater treatment systems, and solid waste treatment, storage, and disposal facilities.

(6) A listing of each site in the border region involved where solid waste is treated, stored, or disposed of.

(7) In the case of the study described in subsection (b)(1), a profile of the industries in the region of the border between the United States and Mexico.

(e) CONSULTATION AND COOPERATION.—In carrying out this section, the Administrator shall consult with the following entities in reviewing study activities:

(1) With respect to reviewing the study described in subsection (b)(1), States and political subdivisions of States (including municipalities and counties) in the region of the border between the United States and Mexico.

(2) The heads of other Federal agencies (including the Secretary of the Interior, the Secretary of Housing, the Secretary of Health and Human Services, the Secretary of Transportation, and the Secretary of Commerce) and with respect to reviewing the study described in subsection (b)(1), equivalent officials of the Government of Mexico.

(f) REPORTS TO CONGRESS.—On completion of the studies under this section, the Administrator shall, not later than 2 years after the date of enactment of this Act, submit to the appropriate committees of Congress reports that summarize the findings of the studies and propose methods by which solid waste border traffic may be tracked, from source to destination, on an annual basis.

(g) BORDER STUDY DELAY.—The conduct of the study described in subsection (b)(2) shall not delay or otherwise affect completion of the study described in subsection (b)(1).

(h) FUNDING.—If any funding needed to conduct the studies required by this section is not otherwise available, the President may transfer to the Administrator, for use in conducting the studies, any funds that have

been appropriated to the President under section 533 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3473) that are in excess of the amount needed to carry out that section. States that wish to participate in study will be asked to contribute to the costs of the study. The terms of the cost share shall be negotiated between the Environmental Protection Agency and the State."

Mr. BINGAMAN. Mr. President, this amendment addresses a problem of increasing urgency in my part of the country, my home State of New Mexico. That is, the disposition of solid waste, along the United States-Mexico border.

As the United States and Mexico move further into their trade relationship under the North American Free-Trade Agreement, increased development along the border is inevitable. With that development comes new challenges regarding the transport and disposal of solid waste.

This is not just an issue for the Governments of the United States and Mexico, it is also an issue for the four border States of California, Arizona, New Mexico, and Texas. It is one that we need to deal with in this legislation, and capitalize on the opportunity offered by NAFTA. We are going to have to plan for this increased development. This means conducting necessary research on the scope of the problem.

The amendment authorizes the Administrator of EPA to conduct a study of solid waste management issues associated with this increased use of the area along the border, in order that States and localities can properly plan for waste treatment, transportation, storage and disposal.

The study will address six key issues. First, planning for additional landfill capacity; second, related impact on border communities of a regional siting of solid waste storage and disposal facilities; third, research on methods of tracking the transportation of materials to and from industries located along the border; fourth, the need for materials safety training for workers; fifth, the adequacy of existing emergency response networks in the border region; sixth, a review of solid waste management practices in the entire border region.

It is my expectation that the Administrator, in order to fulfill the requirements of the amendment, would enter into contractual agreements with other entities such as States and universities and university consortia.

Mr. President, I am convinced in the long run NAFTA will prove to be a good movement, a good initiative for economic opportunities for my home State of New Mexico and for the entire border region.

This is only true if we manage these opportunities correctly and deal with the potential health and environment problems that the increased development will bring. This amendment helps to do that.

I urge my colleagues to support the amendment. I understand the amend-

ment has been reviewed by both the manager and the ranking member, and that this amendment is accepted.

Mr. CHAFEE. Mr. President, this is a good amendment, and I congratulate the Senator from New Mexico. It is acceptable to this side.

Mr. BAUCUS. Mr. President, I agree. The Senator from New Mexico has consulted with Senators, and I appreciate the approach he is taking. There is a problem with respect to what he raises.

I urge adoption of the amendment.

The PRESIDING OFFICER. The question is agreeing to the amendment. So the amendment (No. 761) was agreed to.

Mr. BINGAMAN. I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR—S. 534

Mr. BAUCUS. Mr. President, I ask unanimous consent that Ken Berg, a fellow from the office of Senator BOXER, have the privileges of the floor during consideration of S. 534, and that Linda Critchfield, a fellow from the office of Senator LIEBERMAN, be allowed on the floor during consideration of S. 534.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 769

Mr. KYL. Mr. President, I ask unanimous consent to lay aside the pending amendment for the purpose of offering an amendment which is at the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 769.

Mr. KYL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 57, strike line 16 and all that follows through page 58, line 22, and insert the following:

"(4) CONTINUED EFFECTIVENESS OF AUTHORITY DURING AMORTIZATION OF FINANCING.—

"(A) IN GENERAL.—With respect to each designated waste management facility or facilities, or Public Service Authority, authority may be exercised under this section only—

"(i) until the date on which payments under the schedule for payment of the capital costs of the facility concerned, as in effect on May 15, 1994, are completed; and

"(ii) so long as all revenues (except for revenues used for operation and maintenance of

the designated waste management facility or facilities, or Public Service Authority) derived from tipping fees and other fees charged for the disposal of waste at the facility concerned are used to make such payments.

“(B) REFINANCING.—Subparagraph (A) shall not be construed to preclude refinancing of the capital costs of a facility, but if, under the terms of a refinancing, completion of the schedule for payment of capital costs will occur after the date on which completion would have occurred in accordance with the schedule for payment in effect on May 15, 1994, the authority under this section shall expire on the earlier of—

“(i) the date specified in subparagraph (A)(i); or

“(ii) the date on which payments under the schedule for payment, as in effect after the refinancing, are completed.

“(C) Any political subdivision of a State exercising flow control authority pursuant to subsection (c) may exercise such authority under this section only until completion of the original schedule for payment of the capital costs of the facility for which permits and contracts were in effect, obtained or submitted prior to May 15, 1994.”

Mr. KYL. Mr. President, the amendment which I offer now will tighten the flow control provisions of title II to more accurately reflect what I believe is the committee's intent; namely, to authorize flow control for a limited period of time to ensure that States and political subdivisions are able to service the debt that they incurred for the construction of solid waste management facilities prior to the Carbone decision.

Flow control is inherently anti-competitive. It was ruled a violation of the Constitution's commerce clause by the U.S. Supreme Court in the Carbone case. The Court ruled:

State and local governments may not use their regulatory power to favor local enterprise by prohibiting patronage of out-of-State competitors of their facilities.

While Justice O'Connor in a concurring opinion noted Congress' power to authorize local imposition of flow control, I do not believe it is in the public interest to sanction these Government monopolies intrastate, and it could impede competition, particularly for any more than the minimum amount of time required for State and local governments to pay off the debt that they incurred prior to the Supreme Court decision.

So my amendment would authorize flow control authority only until the debt incurred prior to the Carbone decision is repaid. During the period for which flow control is authorized, revenues derived from tipping fees and other fees charged at the flow control designated facility—these are net of revenues used for operation and maintenance of the facility, of course—must be used to pay off the debt obligations.

This amendment would permit the refinancing of debt to allow State and local governments to take advantage of lower interest rates when they are available. However, flow control authority would end on the date on which the original debt would have been repaid or the date on which the refi-

nanced debt is repaid, whichever is earlier.

Mr. President, it appears to me that flow control has only one purpose; and, that is, to protect State or local monopolies that have developed in the disposal of municipal solid waste. That only hurts taxpayers, and there is no good reason for it.

Flow control does not offer the benefit of added protection for human health and the environment either. According to a March 1995 report by the Environmental Protection Agency:

Protection of human health and the environment is directly related to the implementation and enforcement of federal, State, and local environmental regulations. Regardless of whether State or local governments administer flow control programs, States are required to implement and enforce federally approved regulations that fully protect human health and the environment. Accordingly, there are no empirical data showing that flow control provides more or less protection.

That is the end of quoting from the EPA report. In other words, disposal facilities, whether public or private, must meet the same standards of environmental protection. Flow control does not add to the environmental protection.

Flow controls do result in substantially increased costs to communities across the country. That can have negative impacts on the environment due to the extent that it creates incentives for illegal dumping. In fact, in a column that appeared in the Washington Times on March 23 of this year, the mayor of Jersey City, Bret Schundler, noted;

All of the illegal dumping that New Jersey is now suffering from because of the soaring costs of waste disposal.

In New Jersey, where flow control is in place, the price of disposal is approaching \$100 per ton. That compares to an average of about \$35 per ton in areas without flow control.

Although flow controls do not typically add as much as that to the cost of disposal in other parts of the country, the increased costs can still be substantial. A study just released by National Economic Research Associates found that flow controls increase disposal costs on average \$14 a ton, or 40 percent. That is 40 percent, Mr. President, that flow controls add to the cost of disposal. That is an additional cost that individuals and businesses must ultimately bear.

For example, again, Mayor Schundler notes that flow control prevents his community from reducing property taxes or taking advantage of lower cost alternatives.

That is wrong and it is unnecessary.

Some might say that flow control is needed to ensure sufficient waste management capacity or to help State and local governments achieve goals for source reduction, reuse and recycling. Again EPA's answer is no. In its March report, EPA stated, and I am quoting:

There are no data showing that flow controls are essential either for the develop-

ment of new solid waste capacity or the long-term achievement of State and local goals for source reduction, reuse and recycling.

What about the necessity of flow control to finance new landfills or landfill expansions? Again EPA's answer is no. Again quoting:

Flow controls do not appear to have played a significant role in financing new landfills.

In fact, Mr. President, EPA goes on to note that private landfill firms have demonstrated their ability to raise substantial capital from publicly issued equity offerings, indicating that investors are willing to provide capital for the expansion of landfills without flow control guarantees. In other words, the private sector is willing and able to accommodate the demand for landfill capacity.

In some instances, flow control laws have not merely been used to generate revenues to finance construction and O&M costs but also for the purpose of funding other activities, like recycling, composting, and hazardous waste collection, to name a few. That would be fine if State and local governments were not using the force of law to compel the use of specified facilities at specified rates, if they competed in the free market. But they are using statutory authority to compel certain sites. Users are therefore required, by law, to subsidize other activities.

To the extent that we are considering limited flow control relief to help protect State and local investments, the revenues derived should be used solely for that purpose and not other things. My amendment will limit the use of revenues to that purpose.

Mr. President, our goal here should not be to preserve anticompetitive practices but to establish a framework for orderly transition, to allow limited relief for State and local governments that had in good faith made commitments based on the law as they understood it prior to the Carbone decision.

I hope my colleagues will join me in supporting this amendment and resist efforts to carve out exceptions to protect or extend local monopoly power. And, Mr. President, for the benefit of my colleagues, I ask that the full text of Mayor Schundler's column be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington (DC) Times, Mar. 23, 1995]

THE SMELLY TRUTH ABOUT GARBAGE DISPOSAL

(By Bret Schundler)

Last May, in a case called Carbone vs. Town of Clarkstown the United States Supreme Court held that state-imposed waste-flow regulations violate the commerce clause of the Constitution.

This was an important and proper decision. But today, the Republican-controlled House Commerce Committee will hold hearings on anti-free-market legislation that would re-establish the authority of states to set up government monopolies in garbage disposal. The flow-control legislation that

will be considered is bad public policy, and it should be rejected.

To understand how this issue affects you, let's look at the experience of New Jersey.

Prior to the Carbone decision, New Jersey used the guise of solid-waste-flow regulation to establish county government monopolies called "improvement authorities" that are given the power to dictate to mayors where—and at what price—they must dispose of their municipal garbage. Experience teaches us that anytime a public or private monopoly controls the quantity and price of a service, that monopoly will have no incentive to control costs or improve services. And this is precisely what has occurred in New Jersey.

Let's look at the issue of cost. The average price for the disposal of solid waste in America is only \$35 per ton. But in New Jersey, thanks to the establishment of governmental disposal monopolies, the price is fast approaching \$100 per ton.

Now let's look at the quality of services delivered. The defenders of the status quo argue that allowing private disposal sites to compete on the basis of cost is environmentally unsound. But, in fact, it is easy to regulate private disposal sites to ensure that proper environmental standards are maintained. What is not easy to regulate is all of the illegal dumping that New Jersey is now suffering from because of the soaring costs of waste disposal.

Apologists for the former Soviet Union used to contend that government-run industries are more environmentally sensitive than industries under private control. But we now know that the reverse is true. Government-controlled industry tends to be less responsible than private industry, because when industry and regulator are one in the same, the inherent conflict of interest is invariably resolved in favor of lax enforcement of environmental safeguards.

Instead of building and protecting government monopolies, we should be encouraging the creation of a healthy free market of properly regulated private disposal firms. These firms should compete not only on the basis of price, but also in terms on the basis of price, but also in terms of environmentally sound disposal techniques. Protected government monopolies, in contrast, will never have any incentive to innovate.

The New Jersey Environmental Federation, representing all of the state's lending environmental organizations, has joined me and other New Jersey mayors in opposing waste-flow-control legislation. According to the Federation, New Jersey's governmental monopoly in waste disposal stifles "technical innovation, private investment, and market development for lower cost, environmentally preferable material recovery and composting technologies." The Federation is right on target.

New Jersey Gov. Christine Todd, Whitman supports the maintenance of country waste disposal monopolies. This is because the governor believes that a competitive market would cause financial chaos. She worries that without having a guaranteed source of revenue, county improvement authorities, which have borrowed large sums of money to build incinerators, could possibly default on their bonds. But there is a solution to this problem that is much preferable to the current flawed policy.

Stated simply, New Jersey could issue bonds to pay off the existing debt that county governments have incurred to build government disposal facilities. Next the state could establish a \$10-per-ton surcharge on solid waste disposal fees, which could be used to fully amortize the new bonds in just 10 years. County disposal facilities, freed of debt service costs, could immediately drop

their rates by a like \$10-per-ton—or more. Municipalities, able to find less expensive disposal alternatives, could take advantage of the opportunity, and thereby provide their residents with much-needed property-tax relief.

In many New Jersey counties, the property-tax relief that could be realized is substantial. In some counties, market prices for disposal are than \$50-per-ton less than the governmental monopoly price. After the \$10-per-ton surcharge that would have to be paid to the state, local taxpayers could still save \$40-per-ton of waste generated.

The current system makes no sense. In Jersey City, because of government monopoly pricing we pay almost 50 percent more to dispose of our solid waste than does neighboring New York City, which pays free-market rates to dump at a disposal facility located just outside Newark, NJ. This is ridiculous!

As a mayor, I'm the one who must collect from property owners the taxes they pay for garbage disposal. But New Jersey's waste-flow-control regulations prevent me from taking advantage of lower priced, more environmentally sound disposal alternatives.

The effect of these flow-control regulations is to prohibit me from reducing property taxes for my residents. And when I have to raise property taxes to pay for skyrocketing disposal costs, residents do not get angry with the state. Neither do they direct their ire at the executive director of the county improvement authority for running a costly, inefficient government bureaucracy, bursting at the seams with unnecessary patronage workers. Instead, property owners get mad at me, because I am the one who must send out the bills to pay for all of this foolishness.

I know very well why some county governments in New Jersey support flow-control legislation. It's nice to have a relatively anonymous place where you can place patronage hires and generate huge contracts for law firms and consultants, who subsequently get tapped for political campaign contributions. This arrangement is especially nice, in the view of some county officials, since it is the mayors, and not county executives, who will get the blame for soaring property taxes.

But we should realize by now that government never works well when power is insulated from accountability. Good government requires that power be kept as close to the people as possible. Good government also requires that a clear demarcation of responsibility exist between different levels of government, so that the people know whom to throw out of office for unnecessarily inflating service costs or degrading the environment. Flow control legislation flies in the face of these principles. It is not good government.

America was built on the principles of the free market, where there are natural incentives for the providers of goods and services to be efficient and to keep prices down. There isn't any legitimate reason not to allow these same market forces to ensure that municipalities have the freedom to dispose of garbage by taking advantage of the least expensive, most environmentally sound alternatives.

With Congress now looking at school choice and other forms of empowerment as the way to reform our education system and enhance the provision of essential government services, it would be a travesty to allow states to move away from free-market solutions in the area of garbage disposal.

Mr. KYL. Mr. President, let me conclude by summarizing in this fashion.

What we are dealing with here is municipalities coming to Congress and

asking for relief from a Supreme Court decision which said that what certain States had done in the past, limiting the free flow of interstate commerce, in this case in treating garbage, solid waste, was an unconstitutional infringement on the commerce clause, and so unless the Congress acts, these arrangements that have been entered into by the States will not be able to proceed in a monopoly fashion. They will have to compete with the private market. As the EPA report notes, the private market is quite capable of working in this area.

And so some municipalities have said, well, since we made our decision on good faith, based upon the law as we knew it, we should at least be protected to the extent that it takes us to pay off the investment, to pay off the bonds, and my amendment would grant that grandfathering authority. We would say to these municipalities, whatever the length of your bond period is to pay off those bonds, we will grant you the authority to create a monopoly so you have no competition, if that is what you want, and you can pay off those bonds. But you should not be entitled to have a monopoly beyond that point.

What this amendment boils down to, Mr. President, is which side you are on. Are you for saying that for the period of time that it takes a municipality to pay off the bonds we should grant this grandfathering exception, or should we grant even further extensions, and here are the two that are most frequently cited.

In some cases it is said that a municipality has a contract to accept waste and dispose of it lasting longer than the period of the bond repayment. So let us hypothetically assume you have a 20-year bond and a 30-year contract. They would argue that the length of time for the monopoly protection should be 30 years, not 20 years. There is absolutely no logic to that whatsoever.

Once the 20 years has elapsed, the bonds have been paid, the facility now exists debt free, it ought to be able to compete, for the last 10 years of its contract, with anybody in the private market who comes along with the necessity of raising the capital to construct a facility to compete with that municipal facility and then to treat this garbage at a lesser rate.

In any event, the city has the contract for the remaining 10 years, and the other contracting party is required to comply with the terms of the contract. So there are two reasons why there is no reason to extend the grandfathering protection, monopoly protection, of this legislation beyond the term that it takes to repay the debt.

No. 1, the party providing the garbage has to fulfill its end of the contract regardless of what we do, so the municipality is protected in that regard. And No. 2, the municipality has a free facility, in effect, a facility that is

now totally paid up. If it cannot compete with the private market under those circumstances, then there is something drastically wrong and the Congress should not be creating a monopoly to permit that to occur.

As I noted, EPA has noted there is neither a problem with environmental laws nor a problem with generating fees for other purposes here.

So that is the first argument that is raised, that we should extend it to the contract period. The other is more amorphous, and that is that we should extend this to the useful life of the plant. That is in effect selling the entire concept of the free market down the drain. We may as well say let us have socialized garbage. If we are saying that the municipality can have the monopoly protection for the entire life of the plant, then we are providing no opportunity for competition whatsoever.

Is it not enough that we allow them the monopoly protection until they have repaid all of their debts? Is it not enough that a contracting party would still have to abide by the terms of the contract and sell its garbage to the city under the terms of that contract? Are we now being asked to also extend this monopoly power to the useful life of the plant, whatever they may define that to be? It is a very unclear definition as to what that is. And there are not very many plants that are that well planned whose life can be extended without modernizing the plant. So we want municipalities to do this. That is fine. So municipalities are asking for virtually unlimited power.

With that in mind, the committee has wisely said "enough." At 30 years, enough is enough. We will not extend this protection beyond 30 years. That was a wise thing for the committee to do. But I submit the committee should not have gone that far; that it ought to be sufficient that the municipality is granted the monopoly protection until all of its obligations for repayment of the bonds have been satisfied. At that point, it ought to have to compete along with anybody else. And for us to grant an exemption beyond that is to do something which the U.S. Supreme Court has said is violative of the commerce clause of the Constitution. And our oath requires us not to do that.

That is why, despite the fact that I have no interest in this—my State is not involved. I have no municipality or county government in the State of Arizona contacting me on this because we are not a State that does this. So I have no personal interest in this, or political interest. But it does seem to me that as Senators we have an obligation to do what is right as a country. The legislation which the committee has crafted has very carefully taken care of very severe problems in very specific situations.

Those States—and I would mention one, New Jersey—have been accommodated under the committee legislation. It is not necessary to broaden this ex-

emption any beyond what my amendment would provide for.

So, Mr. President, I would be happy to engage in a colloquy with anyone who would like to inquire further as to the effect or intent of my amendment. I intend eventually to call for a vote. I will be very happy to debate this under a time agreement, starting with whenever anyone would wish to enter into such an agreement.

But I certainly hope that my colleagues will realize that the municipalities that need this relief are not in a position to hold leverage over our head. The U.S. Senate does not have to succumb to what municipalities would desire or like to have in this regard, but only that which they need. And that is all that we ought to be granting them if we are talking about monopoly power in an area where the free market should work just fine, again, according to the Environmental Protection Agency.

I yield the floor at this point. If no one wishes to examine my views on this at this point, 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. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CHAFEE. Mr. President, is there a pending amendment and, if so, I ask unanimous consent that it be set aside.

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

#### UNANIMOUS-CONSENT AGREEMENT

Mr. CHAFEE. Mr. President, I ask unanimous consent that a tabling vote occur in relation to the pending Kyl amendment at 2:30 p.m. today and that no second-degree amendments be in order to the Kyl amendment prior to the tabling vote.

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

Mr. CHAFEE. Mr. President, that vote will occur at 2:30 p.m. on the tabling motion unless it is vitiated. As it is now, it appears we will be having that tabling vote at 2:30.

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

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the pending amendments be set aside at this time.

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

#### AMENDMENT NO. 773

Mr. CHAFEE. Mr. President, I send to the desk an amendment on behalf of Senator FAIRCLOTH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. FAIRCLOTH, proposes an amendment numbered 773.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 59, after line 20, insert the following:

(6) FLOW CONTROL ORDINANCE.—Notwithstanding anything to the contrary in this section, but subject to subsection (j), any political subdivision which adopted a flow control ordinance in November 1991, and designated facilities to receive municipal solid waste prior to April 1, 1992, may exercise flow control authority until the end of the remaining life of all contracts between the political subdivision and any other persons regarding the movement or delivery of municipal solid waste or voluntarily relinquished recyclable material to a designated facility (as in effect May 15, 1994). Such authority shall extend only to the specific classes or categories of municipal solid waste to which flow control authority was actually applied on or before May 15, 1994. The authority under this subsection shall be exercised in accordance with section 4012(b)(4).

Mr. CHAFEE. Mr. President, this deals with flow control and it pertains to a community in North Carolina which had a very specialized situation. In effect, it is a technical amendment. I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. CHAFEE. Mr. President, this has been cleared on both sides.

The PRESIDING OFFICER. If not, the question is on agreeing to the amendment.

The amendment (No. 773) was agreed to.

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

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

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the pending amendment before the Senate be set aside for such length of time as it takes me to offer an amendment which has been accepted by the other side.

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

#### AMENDMENT NO. 775

(Purpose: To revise the provision providing additional flow control authority)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 775.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 58, strike line 23 and all that follows through page 59, line 20, and insert the following:

“(5) ADDITIONAL AUTHORITY.—

“(A) APPLICATION OF PARAGRAPH.—This paragraph applies to a State or political subdivision of a State that, on or before January 1, 1984—

“(i) adopted regulations under State law that required the transportation to, and management or disposal at, waste management facilities in the State, of—

“(I) all solid waste from residential, commercial, institutional, or industrial sources (as defined under State law); and

“(II) recyclable material voluntarily relinquished by the owner or generator of the recyclable material; and

“(ii) as of Jan 1, 1984, had implemented those regulations in the case of every political subdivision of the State.

“(B) AUTHORITY.—Notwithstanding anything to the contrary in this section (including subsection (j)), a State or political subdivision of a State described in subparagraph (A) may continue to exercise flow control authority (including designation of waste management facilities in the State that meet the requirements of subsection (c)) for all classes and categories of solid waste that were subject to flow control on Jan 1, 1984.”

Mr. LAUTENBERG. Mr. President, this amendment follows the construct of this bill by protecting flow control authority that was in effect before May 15, 1994. Its provisions will sunset in 30 years.

With these limitations or restrictions, the amendment is narrowly crafted to respond to a very special situation in New Jersey, about which I spoke on the floor yesterday. I appreciate the willingness of the committee chairman, Senator CHAFEE, and the subcommittee chairman, Senator SMITH, to accept this narrowly crafted amendment, which will avoid the need for New Jersey to export increasing volumes of waste and will permit the State to meet its self-sufficiency goals by the year 2000.

While I cannot say that I share the enthusiasm that some have for the structure created by this bill, I, nevertheless, accept it. At present, I intend to support the bill and vote for it. I say at present, obviously, because if there are any amendments that are new and adopted, I reserve the right at that point to reexamine my decision.

At present, as I say, I intend to support the bill. I hope and trust that the bill itself will quickly be adopted in the Senate, in conference, and sent to the President to be signed into law. Otherwise, New Jersey and many other States face a potential waste disposal crisis and serious financial disruption of the plans and the indebtedness that exists out there.

As I earlier said, it has been my understanding that the chairman of the

subcommittee, who I worked very closely with on several environmental matters, Senator SMITH, has accepted this amendment. I ask him for any comments he wants to make.

Mr. SMITH. Mr. President, we have accepted the amendment. The Senator from New Jersey has mentioned his amendment is a special situation in New Jersey. We are aware of this. It was the spirit and intent of the compromise language in the bill to deal with those special circumstances that New Jersey has, being an entire system for flow control.

Even though we have some philosophical disagreements on the subject of flow control, part of the very carefully crafted compromise was that we would do our best to deal with those folks who had made certain commitments in this rather unique situation in New Jersey.

This side has no objection to the amendment.

Mr. LAUTENBERG. Mr. President, I thank the subcommittee chairman.

Mr. President, this amendment recognizes the unique situation in New Jersey. New Jersey is the only State in our Nation in which all municipal solid waste is now flow controlled and has been flow controlled for over a decade. This extensive use of flow control was necessary in order to reduce our exports of garbage to other States. And it has worked.

New Jersey has decreased exports by 50 percent since 1988 and we are on target to be self-sufficient by the year 2000.

However, we do face some problems in terms of our existing facilities. Although New Jersey already recycles 53 percent of its waste stream, New Jersey exports 2 million tons of waste. There is not sufficient capacity in my State today to handle that volume. Facilities will be needed if we are to further reduce exports and become self-sufficient.

Therefore, New Jersey will need to build new facilities. Without flow control, however, it will be impossible to provide the needed capacity.

Lenders will not finance new facilities when it appears waste can easily and cheaply be exported. Without this amendment, therefore, it will be impossible to handle the waste volumes that we do export and we will continue to export more waste. That is not what Senators from other neighboring States want. And it is not what New Jersey wants.

New Jersey has attempted, probably more than any other State, to limit its exports. Title I, to restrict exports of solid waste, and further restrictions discussed by Mr. COATS, will make it harder to send waste across State lines.

Under my amendment, New Jersey will be able to live with some interstate restrictions because the amendment will protect the system New Jersey has worked so hard to develop. Under this amendment, title I restrictions on interstate shipments will not be a problem to my State.

And the title II flow control provisions will allow facilities to be built so that New Jersey can control and dispose of its waste.

This amendment follows the construct of the bill in that it protects flow control authority that was in effect before May 15, 1994. It will sunset in 30 years.

With these limitations and restrictions, this amendment is narrowly crafted to respond to the very special situation in New Jersey that I spoke of yesterday on the floor.

I appreciate the willingness of Chairman CHAFEE and Subcommittee Chairman SMITH to accept this narrowly crafted amendment which will avoid the need for New Jersey to export increasing volumes of waste and will allow the State to meet its self-sufficiency goals by 2000.

While I cannot say that I share the enthusiasm that some have for the structure created by this bill, I do accept it. I intend to support the bill and vote for it. And I hope and trust it will quickly be adopted in the Senate, conferred, and sent to the President to be signed into law.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (No. 775) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. SMITH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SMITH. Mr. President, it is a unique situation when the Senator who has an amendment on the floor is presiding, because he is in the unfortunate situation of not being able to respond at this particular time. I apologize to the Senator for that, because I have another commitment. I have to chair a subcommittee meeting at 1:30.

I do want to make some remarks, but at some point later, if the Senator wishes to engage in any type of colloquy, I would be more than happy to do that with him.

Mr. President, I want to clarify that the current business before the Senate is the Kyl amendment; is that correct?

The PRESIDING OFFICER. The Hatch amendment to the Specter amendment to the substitute.

AMENDMENT NO. 769

Mr. SMITH. I will make some remarks in response to the amendment offered by the Senator from Arizona, Senator KYL, in regard to shortening the grandfather to the length of the bonds.

This is a difficult situation for this Senator, because in concept and in philosophy I totally agree with what the Senator from Arizona is trying to do.

I have made my statement here on the floor regarding this issue in the opening debate on the bill that I oppose

flow control. I think that the interstate commerce clause should be safeguarded. I do not want Congress to interfere.

The reason why we have had a difficult time with this issue, I say to my colleagues, is that there are special circumstances where people have incurred a tremendous amount of expense. As the Senator from Arizona, Senator KYL, said in his very eloquent remarks regarding his amendment, the free enterprise system should be allowed to work.

We might say, why did those people go ahead and make these financial obligations, knowing full well that they did not have the protection of the law? I think that is a very valuable argument and an argument that we certainly considered as we crafted this bill.

The problem was, and we had a hearing on this matter, and as we heard from so many witnesses, there truly are some real national hardships out there that, in terms of the investors, in some cases through no fault of their own, perhaps, although not deliberately misled, some of the bondholders probably did not get the full explanation of the impact of the Carbone decision and what it meant for all of their investments in these bonds.

It was something that we really struggled with, those members on the committee, Senator CHAFEE and myself and others on the committee, who really oppose flow control and did not want to interfere with the free market on this issue.

On the other side there are two sections of the bill. The interstate waste transfer is part of this legislation as well. So we have flow control and interstate waste. The two parts of this bill, together, is a very carefully crafted compromise to move both things forward at the same time.

I guess with some amusement we think of how when laws and sausages are made, we would be sick if we knew it. Maybe this is an example of that.

Again, I will with great reluctance oppose the amendment of the Senator from Arizona because of the fact it interferes with the compromise. I will be specific, again, on the basis of the compromise, not on the basis of philosophy.

We heard testimony from the Public Securities Association that \$20 billion in bonds were used for flow control facilities. So, nationwide there is some \$20 billion in bonds out there.

These people have a liability. There is some question, we would say, well, we went in knowing full well—maybe they did, maybe they did not. This Senator is not convinced that all investors knew this. I could be wrong.

I think it is pretty obvious, based on the testimony, all investors were not fully aware of the impact of this, and I think people invested in these facilities believing that they were going to have the protection of flow control. Right or wrong, they believed, in some cases,

that they did. I am sure on the other side there are many people who knew full well that they did not and took the risk. Again, every investor bondholder, I do not believe, was fully aware of the ramifications.

When Carbone invalidated flow control, this whole situation was left in limbo. Nothing is happening, no one knows what to do. No one knows whether there will be flow control or no flow control. So here it is before the Congress.

Now, most members on the EPW Committee did not want to have the Congress speak to overturning the interstate commerce clause of the Constitution.

There are dozens of incinerators and landfills in immediate danger if flow control is not reauthorized immediately. What we have here is not only a delicately crafted compromise, but an urgency in the sense that every bond based upon flow control authority at this point is threatened.

So I think there is an emergency. Senator CHAFEE asked me to hold hearings on this quickly and to try to move this out of committee and to the floor, and it has been on the calendar for quite some time. We were looking for an opening to get it here.

The purpose, again, looking at the negatives of this which the Senator from Arizona pointed out, the purpose, though, is to try to give relief to these people. It is not to permanently interfere with the free market, which is why the 30-year grandfather was placed there.

The reason for the 30 year was we did not want to go back and review every single bond, whether it was a 10-year bond, a 5-year bond, 20-year bond, or 25-year bond. There were not any bonds beyond 30 years, which is why we selected that date. Could we have selected 15 years and been more in line with what the Senator from Arizona favors? Yes, we could have. Could we have selected the life of the bond as the Senator's amendment addresses? Yes, we could have.

The problem is, though, we also added through language in the bill the opportunity to upgrade facilities. And I think that is where we get into a problem with the amendment of the Senator. If, after the expiration of a bond, someone wants to upgrade these facilities—not really expand but upgrade, keep them maintained—then they have no protection under the Kyl amendment. The underlying bill provides a very narrow flow control authority to protect these bonds. It may not be a perfect compromise, it certainly is not. But I think it is a fair compromise. It serves notice on everyone.

I hope 20 years from now, 25 years from now, Congress will not go back and extend this. It is our intent it be ended. Everybody, all 50 States, all the entities in those 50 States, all the haulers and the Governors and the systems, everyone who is involved with flow control in any way should be on notice

that, effective with the passage of this bill, it is over in 30 years and they ought to plan accordingly. That is the goal. The Kyl amendment disrupts that slightly and provides more uncertainty, although it is well intended. Again, the Kyl amendment does limit flow control. There is no question about it. It limits it further than the underlying bill. Philosophically I agree with that but, again, it is the compromise we are concerned about.

The amendment would provide grandfathered authority only until the time the bonds are paid off. So if you have a 15-year bond and a contract that extends beyond those 15 years, or the need to upgrade your facility beyond the 15-year length of the bond, then you cannot do it under the Kyl amendment. You cannot do it with the protection of the flow control legislation.

This amendment also does not cover contracts. It will create havoc in a number of cities and towns that made financial commitments based on the mistaken impression—true, mistaken impression—that they had this authority. I think the phrase “mistaken impression” really goes to the heart of why I came down on the side I did on the amendment, on the Kyl amendment, as well as the underlying bill. There are innocent people here who have been impacted. I could not in good conscience allow that to continue without the protection they thought they had when they entered into this agreement.

Maybe it is an interesting conclusion here that it is a compromise, and if to you wanted to put it in direct statements, those who love flow control do not like the Smith-Chafee bill. Those who oppose flow-control do not like the bill. I think that probably means the compromise is about right. It is in the middle.

I know there are those who are going to, from a philosophical perspective, support the Kyl amendment. My fear, and I think it is a legitimate fear, is that at the time the Kyl amendment is agreed to and becomes part of the underlying bill I think it could possibly, conceivably, kill the bill or at least kill the compromise. I think if that happens and the bill gets pulled back from the floor because of the budget legislation which will be coming up next week, the budget resolution that will be coming up next week, then I do not know when we would get back to it as we get into the pressures of time with more legislation. Again, those people who need immediate relief will not have it.

I might just say in conclusion, we have tried to work with a number of States that have had concerns: Florida, Maine, Minnesota—the Senator from Minnesota, Senator WELLSTONE, and I agreed on an amendment yesterday. Senator LAUTENBERG and I disagreed on another amendment in New Jersey. States do have special considerations and special problems. But, again, the intention here—and I want to make



this point, because it is important—the intention here was to strike this balance and not to move too far. Not to allow open-ended flow control authority on the left, if you will, on the one side; and at the same time not to allow it to go back so far over to the free market side on this particular bill that we would lose the balance.

I might say for the benefit of the Senator from Arizona, we have rejected a number of amendments that would allow for open-ended action. If this community says, “We would like to think about having flow control at some point within the 30-year period, will you exempt us?” The answer is, “No, we will not.” In other words, there had to be some financial commitment, preferably a bond or contract, some amount of money had to be committed, usually in the form of a contract or a bond. So we were very, very tough on those people who came to us. We did not agree to allow that far-reaching aspect of the bill.

Again, it might not be exactly what everybody wanted but it is a compromise and I urge my colleagues, no matter whether you are moving further to the free market side as I am, or whether you are moving further toward flow control where Senator LAUTENBERG and others are, whichever one of those positions you favor, I urge my colleagues to stay here in the center, in the compromise, and reject the Kyl amendment and reject any amendments on the other side that may come up to expand flow control authority. So, on the one hand let us not expand it. On the other hand, let us not restrict it.

I again encourage my colleagues, when the vote does come on this amendment, to defeat it for the reasons given.

Mr. President, I yield the floor. If no other Senators are seeking recognition, 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. DEWINE. Mr. President, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DEWINE. Mr. President, I further ask unanimous consent to speak as in morning business.

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

#### SCHOOL BUS SAFETY

Mr. DEWINE. Mr. President, a few weeks ago on this Senate floor I discussed the problem of school bus safety. In February of this year a young girl by the name of Brandie Browder, an eighth grader in Beaver Creek, OH, was killed when the drawstring around the waist of her coat got caught in the handrail of her school bus.

Just 4 days later, in Cincinnati, a seventh grader suffered a broken foot in a very similar accident.

As I pointed out when I spoke previously about this matter, while school buses are certainly among the very safest modes of transportation, the sad fact remains that an average of 30 schoolchildren are killed every single year in America either getting off or getting back on their own school buses—30 children.

Each child, Mr. President, with parents, grandparents, brothers, and sisters, and because of that child's death their life will never be the same; 30 children who will never have the opportunity to grow up, 30 children who will never have the opportunity to live out their potential. The sad fact is, Mr. President, that almost without exception these are preventable deaths.

When I last spoke on this issue, I discussed three specific safety issues, three problems that cause these deaths. One was a handrail problem. The second was the problem of the child getting on and off the bus and how we can make that area safer so the school bus driver will know what is going on in that area. And finally, I talked about the possibility of better training for school bus drivers.

Today, I would like to concentrate on the issue of handrails on these school buses because between the time that I last spoke to the Senate about this issue myself and my staff have spent a great deal of time looking at this issue and finding out additional facts. And the sad fact is that we lose many children because of this handrail problem.

This is a problem, Members of the Senate, that can be corrected very easily for less than \$20 per school bus. So it is not something that is going to cost a great deal of money. It is something though that will not be fixed unless parents, teachers, administrators, and members of the public demand that this problem be fixed in each school bus in the country.

As I previously mentioned, an alarming number of these accidents are occurring when a strap from a backpack on a child or the drawstring of a little girl's or little boy's coat gets snagged in the handrail while that child is exiting the bus. We all know I think from our own experience from our own children how many kids today have backpacks or have a poncho or something that has a string that can in fact get caught as that child is getting off the bus.

Mr. President, with many of these handrails there is a small space between the handrail and the wall of the bus where something like the drawstring around the waist of a coat can get snagged. The child is getting off the bus. The child begins to get off that bus but the child's clothing is stuck and is still attached when the bus driver mistakenly begins to pull away thinking the child has exited the school bus. As I pointed out, a number of children have been killed in this exact manner since 1991.

Let me give a little background on the analysis of this problem. Beginning

in early 1993, the National Highway Traffic Safety Administration [NHTSA] initiated a series of investigations to find out if the handrails on school buses were actually designed in an unsafe manner. As a result of these investigations, nine distinct models of school buses were recalled because of potentially unsafe handrails. However, tens of thousands of these unsafe buses were not recalled. They are still on the road. The bus that killed little Brandie was not recalled, not because the bus was safe—just the contrary—but it was not recalled because the company that made the bus had already gone out of business.

Mr. President, we clearly must track down these buses. We must make sure that every single bus in this country is inspected. We have to fix them or get them off the road.

Let me again repeat. We are not talking about a very expensive repair. It is not a cost question. It is a question of locating the buses. It is a question of public awareness, which is why I am on the floor today.

We as parents need to make sure our children are not getting on an unsafe bus this afternoon, tomorrow morning, or ever. We can all look for ourselves. When our child gets on the bus tomorrow morning, or gets off the bus this afternoon, look at the handrail to see if that gap does in fact exist. We must not rest until every one of these buses is identified and fixed.

Let me advise my colleagues what we are doing in the State of Ohio with regard to this. I had the opportunity this morning to talk to highway patrol officials who are in charge in the State of Ohio of school bus inspections.

As I have indicated, there really is a simple solution to this particular handrail problem. Every year the Ohio State Highway Patrol during the summer months when school is not in session conduct inspections of every single school bus in the State of Ohio. I suspect that there are other law enforcement agencies that perform the same function in all the other States of the Union as well.

The Ohio State Highway Patrol, when they begin these inspections in the next several weeks, are going to in addition to what they normally do look for this specific problem. When they find the problem, if they do, they are going to take the bus off the road until the problem is corrected because as I indicated it is a very relatively simple problem to solve at a cost of probably no more than \$20.

They use an inspection device, a tool. If I describe it, I think it will give our listeners and Members of the Senate a good idea how simple it is. It is a tool made with a long string with a nut attached to the end. From outside the school bus door, you drop the nut end of the device into the crevice where