

French Government has announced an end to its nuclear testing program. Last Saturday's explosion, it turns out, was the "last thermonuclear tango in Paris."

First, however, France joined China as the only nation to break a nuclear testing moratorium in effect since 1992. Then it was forced to admit that radioactive chemicals from its test site in the South Pacific have leaked into the sea. When President Chirac visits Washington this week, the gentleman from Washington [Mr. McDERMOTT] and I will deliver a letter to the French Government along with several of our House colleagues praising France's decision to stop detonating nuclear test devices.

In our letter, we also urge France to permanently close its testing site in the South Pacific and to begin a complete cleanup operation. France's pledge to sign a comprehensive test ban treaty outlawing all nuclear weapons is a good position to take. But France should close its testing site as an act of good faith with the rest of the world.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

U.S. HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, DC, January 30, 1996.

Hon. NEWT GINGRICH,
The Speaker, U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on Monday, January 29, 1996 at 1:20 p.m. and said to contain a message from the President whereby he submits a semiannual report on the continued compliance with U.S. and international standards in the area of emigration policy of the Republic of Bulgaria.

With warm regards,

ROBIN H. CARLE,
Clerk, U.S. House of Representatives.

REPORT ON EMIGRATION LAWS AND POLICIES OF THE REPUBLIC OF BULGARIA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

On June 3, 1993, I determined and reported to the Congress that Bulgaria is in full compliance with the freedom of emigration criteria of sections 402 and 409 of the Trade Act of 1974. This action allowed for the continuation of most-

favored-nation (MFN) status for Bulgaria and certain other activities without the requirement of a waiver.

As required by law, I am submitting an updated report to the Congress concerning emigration laws and policies of the Republic of Bulgaria. You will find that the report indicates continued Bulgarian compliance with U.S. and international standards in the area of emigration policy.

WILLIAM J. CLINTON.

THE WHITE HOUSE, January 29, 1996.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Wednesday, January 31, 1996.

□ 1415

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT OF 1995

Mr. BLILEY. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 349) providing for the consideration of S. 534.

The Clerk read as follows:

H. RES. 349

Resolved, That upon the adoption of this resolution, the Committee on Commerce shall be discharged from further consideration of the bill S. 534 and the House shall be considered to have struck out all after the enacting clause and inserted in lieu thereof an amendment consisting of the text contained in section 2 of this resolution, the bill shall be considered to have passed the House, as amended, and the House shall be considered to have insisted on the House amendment and requested a conference with the Senate thereon.

SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act is amended by adding after section 4010 the following new section:

"SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MU- NICIPAL SOLID WASTE AND RECY- CLABLE MATERIALS.

"(a) FLOW CONTROL AUTHORITY FOR FACILITIES DESIGNATED AS OF MAY 16, 1994.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste, and recyclable materials voluntarily relinquished by the owner or generator thereof, to particular waste management facilities, or facilities for recyclable materials, designated as of May 16, 1994, if each of the following conditions are met:

"(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, determined as of May 16, 1994.

"(2) Such flow control authority is imposed through the adoption or execution of a law, ordinance, regulation, resolution, or other legally binding provision or legally binding official act of the State or political subdivision that—

"(A) was in effect on May 16, 1994,

"(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution, or

"(C) was in effect immediately prior to suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of a court order of the type described in subparagraph (B) issued by a court of the same State or Federal judicial circuit.

"(3) The State or a political subdivision thereof has, for one or more of such designated facilities, in accordance with paragraph (2), on or before May 16, 1994, either—

"(A) presented eligible bonds for sale, or

"(B) executed a legally binding contract or agreement that obligates it to deliver a minimum quantity of waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials and that obligates it to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required time-frame.

"(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—The flow control authority of subsection (a) shall only permit the exercise of flow control authority to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which flow control authority was applicable on May 16, 1994, or immediately before the effective date of an injunction or court order referred to in subsection (a)(2)(B) or an action referred to in subsection (a)(2)(C) and—

"(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of May 16, 1994, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories within 2 years prior to May 16, 1994, or the effective date of such injunction or other court order or action,

"(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of May 16, 1994, only of the classes or categories that were clearly identified by the State or political subdivision as of May 16, 1994, to be flow controlled to such facility, and

"(3) only to the extent of the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials.

If specific classes or categories of municipal solid waste or recyclable materials were not clearly identified, paragraph (2) shall apply only to municipal solid waste generated by households, including single family residences and multi-family residences of up to 4 units.

"(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section to any facility or facilities only until the later of the following:

"(1) The expiration date of the bond referred to in subsection (a)(3)(A).

"(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(B).

"(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit.

Such expiration dates shall be determined based upon the terms and provisions of the bond or contract in effect on May 16, 1994. In the case of a contract described in subsection (a)(3)(B) that has no specified expiration date, for purposes of paragraph (2) the expiration date shall be treated as the first date that the State or political subdivision that is a party to the contract can withdraw from its responsibilities under the contract without being in default thereunder and without substantial penalty or other substantial legal sanction.

(d) MANDATORY OPT-OUT FOR GENERATORS AND TRANSPORTERS.—Notwithstanding any other provision of this section, no State or political subdivision may require any generator or transporter of municipal solid waste or recyclable materials to transport such waste or materials, or deliver such waste or materials for transportation, to a facility that is listed on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such facility has adequately indemnified the generator or transporter against all liability under that Act with respect to such waste or materials.

(e) EFFECT ON EXISTING LAWS.—

(1) ENVIRONMENTAL LAWS.—Nothing in this section shall be interpreted or 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 materials.

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

(3) OWNERSHIP OF RECYCLABLE MATERIALS.—Nothing in this section shall authorize any State or political subdivision to require any generator or owner of recyclable materials to transfer any recyclable materials to such State or political subdivision, nor shall prohibit any persons from selling, purchasing, accepting, conveying, or transporting any recyclable materials, unless the generator or owner voluntarily makes such recyclable materials available to the State or political subdivision and relinquishes any rights to, or ownership of, such recyclable materials.

(f) FACILITIES NOT QUALIFIED FOR FLOW CONTROL.—No flow control authority may be exercised under the provisions of this section to direct solid waste or recyclable materials to any facility pursuant to an ordinance if—

(1) the ordinance was determined to be unconstitutional by a State or Federal court in October of 1994;

(2) the facility is located over a sole source aquifer, within 5 miles of a public beach, and within 25 miles of a city with a population of more than 5,000,000; and

(3) the facility is not fully permitted and operating in complete official compliance with all Federal, State, and local environmental regulations.

(g) LIMITATION ON REVENUE.—A State or qualified political subdivision may exercise the flow control authority granted in this section only if the State or qualified political subdivision limits the use of any of the revenues it derives from the exercise of such authority for the payment of one or more of the following:

(1) Principal and interest on any eligible bond.

(2) Principal and interest on a bond issued for a qualified environmental retrofit.

(3) Payments required by the terms of a contract referred to in subsection (a)(3)(B).

(4) Other expenses necessary for the operation and maintenance of designated facilities

and other integral facilities necessary for the operation and maintenance of such designated facilities that are identified by the same eligible bond.

(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before May 16, 1994, and for which the State or political subdivision, after periodic evaluation, beginning no later than one year after the enactment of this section, finds that there is no comparable qualified private sector service provider available. Such periodic evaluation shall be based on public notice and open competition. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

(h) INTERIM CONTRACTS.—A lawful, legally binding contract under State law that was entered into during the period—

(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of such State or political subdivision, or

(2) after such State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority and before the effective date on which it resumes enforcement of flow control authority after enactment of this section, shall be fully enforceable in accordance with State law.

(i) AREAS WITH PRE-1984 FLOW CONTROL.—

(1) GENERAL AUTHORITY.—A State that on or before January 1, 1984—

(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State, and

(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,

may exercise flow control authority over municipal solid waste in accordance with the other provisions of this section and may exercise the additional flow control authority described in paragraph (2).

(2) ADDITIONAL FLOW CONTROL AUTHORITY.—A State that meets the requirements of paragraph (1) and any political subdivision thereof may exercise flow control authority over all classes and categories of municipal solid waste that were subject to flow control by such State or political subdivision thereof on May 16, 1994, by directing it from any existing waste management facility that was designated as of May 16, 1994, or any proposed waste management facility in the State to any other such existing or proposed waste management facility in the State without regard to whether the political subdivision within which the municipal solid waste is generated had designated the particular waste management facility or had issued a bond or entered into a contract referred to in subsection (a)(3)(A) or (B), respectively.

(3) DEFINITION.—For purposes of this subsection, the term 'proposed waste management facility' means a waste management facility that was specifically identified in a waste management plan prior to May 16, 1994, and for the construction of which—

(A) revenue bonds were issued and outstanding as of May 16, 1994,

(B) additional financing with revenue bonds was required as of the date of enact-

ment of this section to complete construction, and

(C) a permit had been issued prior to December 31, 1994.

(4) LIMITATION OF AUTHORITY.—The additional flow control authority granted by paragraph (2) may be exercised to—

(A) any facility described in paragraph (2) for up to 5 years after the date of enactment of this section, and

(B) after 5 years after enactment of this section, only to those facilities and only with respect to the classes, categories, and geographic origin of waste directed to such facilities specifically identified by the State in a public notice issued within 5 years after enactment of this section.

(5) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (c).

(j) SAVINGS CLAUSE.—Nothing in this section is intended to have any effect on the authority of any State or political subdivision to franchise, license, or contract for municipal solid waste collection, processing, or disposal.

(k) APPLICATION OF FLOW CONTROL AUTHORITY.—The flow control authority granted by this section shall be exercised in a manner that ensures that it is applied to the public sector if it is applied to the private sector.

(l) PROMOTION OF RECYCLING.—The Congress finds that, in order to promote recycling, anyone engaged in recycling activities should strive to meet applicable standards for the reuse of recyclable materials.

(m) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section, and such provisions shall also apply to the exercise by any State or political subdivision of flow control authority before such date of enactment unless the exercise of such authority has been declared unconstitutional by a final judicial decision that is no longer subject to judicial review.

(n) DEFINITIONS.—For the purposes of this section—

(1) ADJUSTED EXPIRATION DATE.—The term 'adjusted expiration date' means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final maturity date of such bond or 15 years after the date of issuance of such bonds.

(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a revenue or general obligation bond, the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A) and (B) respectively that is applicable to such facility and no later than December 31, 1999.

(3) DESIGNATE; DESIGNATION, ETC.—The terms 'designate', 'designated', 'designating', and 'designation' mean a requirement of a State or political subdivision, and the act of a State or political subdivision, individually or collectively, to require that all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or any political subdivision be delivered to one or more waste management facilities or facilities for recyclable materials identified by the State or a political subdivision thereof. The term 'designation' includes bond covenants, official

statements, or other official financing documents issued by a political subdivision issuing an eligible bond in which it identified a specific waste management facility as being the subject of such bond and the requisite facility for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that political subdivision.

“(4) ELIGIBLE BOND.—The term ‘eligible bond’ means—

“(A) a revenue bond specifically to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development or finance costs, as evidenced by the bond documents; or

“(B) a general obligation bond, the proceeds of which were used solely to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development or finance costs, as evidenced by the bond documents.

“(5) FLOW CONTROL AUTHORITY.—The term ‘flow control authority’ means the authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or voluntarily relinquished recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or within the boundaries of a political subdivision of a State, as in effect on May 16, 1994.

“(6) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means any solid waste generated by the general public or by households, including single residences and multifamily residences, and from commercial, institutional, and industrial sources, to the extent such waste is essentially the same as waste normally generated by households or was collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible materials and noncombustible materials such as metal and glass, including residue remaining after recyclable materials have been separated from waste destined for disposal, and including waste material removed from a septic tank, seepage pit, or cesspool (other than from portable toilets), except that the term does not include any of the following:

“(A) Any waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act.

“(B) Any waste, including contaminated soil and debris, resulting from—

“(i) response or remedial action taken under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

“(ii) any corrective action taken under this Act, or

“(iii) any corrective action taken under any comparable State statute.

“(C) Construction and demolition debris.

“(D) Medical waste listed in section 11002 of this Act.

“(E) Industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling.

“(F) Recyclable materials.

“(G) Sludge.

“(7) POLITICAL SUBDIVISION.—The term ‘political subdivision’ means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

“(8) RECYCLE AND RECYCLING.—The terms ‘recycle’ and ‘recycling’ mean—

“(A) any process which produces any material defined as ‘recycled’ under section 1004; and

“(B) any process by which materials are diverted, separated from, or separately managed from materials otherwise destined for disposal as solid waste, by collecting, sorting, or processing for use as raw materials or feedstocks in lieu of, or in addition to, virgin materials, including petroleum, in the manufacture of usable materials or products.

“(9) RECYCLABLE MATERIALS.—The term ‘recyclable materials’ means any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

“(10) WASTE MANAGEMENT FACILITY.—The term ‘waste management facility’ means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.”.

(b) TABLE OF CONTENTS.—The table of contents for subtitle D of the Solid Waste Disposal Act is amended by adding the following new item after the item relating to section 4010:

“Sec. 4011. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.”.

The SPEAKER pro tempore (Mr. YOUNG of Florida). Pursuant to the rule, the gentleman from Virginia [Mr. BLILEY] will be recognized for 20 minutes, and the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, I rise in support of the resolution.

Mr. Speaker, this legislation authorizes flow control authority. That is, it authorizes State and local governments, rather than the people who transport the waste, to choose where waste generated within their borders is sent.

In its May 16, 1994, Carbone opinion, the Supreme Court ruled that the exercise of flow control violated the interstate commerce clause. The Court found that flow control was simply another in a long line of mechanisms burdening interstate commerce. Only Congress or its duly authorized designee can impose such restrictions.

In my view, this legislation is a necessary evil. In an arena where the private sector is perfectly capable of doing the job, it authorizes State and local government regulation over interstate commerce. Where the waste hauler could find a cheaper disposal site, or a closer disposal site, or a more environmentally sound disposal site, this legislation says that under certain conditions, the hauler would have to send that waste to another site chosen

by the government. That is contrary to my own views.

However, State and local governments across the country, in good faith reliance on the ability to exercise such regulation, entered into contracts and made billions of dollars worth of investment in waste facilities. Much of this investment is in the hands of investors who purchased bonds that could be at risk absent some congressional action. Taxpayers also face risk if the continued stability of these facilities and investments is not ensured. Hence this bill.

The road to the floor of the House of Representatives sometimes twists and turns in an unusual fashion. We dispense today with full committee consideration of this bill some 7 months after subcommittee markup. Following subcommittee markup last May, this legislation languished while the interested parties, primarily local government organizations and the waste industry, stared at each other in resolute disagreement. Only as the situation reached a dire stage for some bondholders and certain jurisdictions, including the State of New Jersey, did the parties open the window of opportunity. The Public Securities Association, along with Browning-Ferris Industries and Waste Management, approached the Committee on Commerce about negotiating a flow control agreement. We welcome their offer and facilitated their discussions.

After input from States, local governments, the waste industry, bondholder organizations and of course the Members of this body, the result is the legislation before us today. I am proud to hold a letter supporting this legislation from the National Association of Counties, WMX Technologies, the Solid Waste Association of North America, Browning Ferris Industries, the Public Securities Association, and Ogden Projects.

The principle driving this bill is that if you have bonded indebtedness issued prior to the date of the Carbone case, or if you entered into a contract prior to Carbone obligating you to provide a minimum quantity of waste to a particular facility or pay for the contract amount, then you can exercise flow control in the future for the life of the bond or the life of the contract. If not, the recourse for your facility is to become competitive in the marketplace.

There are a lot of situations across the country that we have sought to take care of within the context of this principle. Many that simply did not meet the test will find themselves in the same situation that private sector facilities have long been in: competing for business. Others may meet the test but were not brought to the committee's attention in time for consideration in today's bill. I am willing to work with Members to make sure that situations that meet the principle are not inadvertently left out.

Another issue also bears mentioning. Flow control has long been linked to

interstate waste in both the House and the Senate. This bill deals only with flow control. I am not opposed to moving interstate waste legislation through the Committee on Commerce and have committed to bring it up for a vote on February 28. However, that legislation was simply not ready for consideration today because of outstanding issues between waste importing and waste exporting States. I hope they can be resolved soon. I appreciate the forbearance of the many Members who selflessly have agreed to let this legislation go forward despite local issues so we can solve pressing problems in other States.

Mr. Speaker, I would also like to acknowledge the contribution of the many minority members who have been very interested in this issue and whose assistance is reflected in this legislation today.

Mr. Speaker, I urge adoption of the legislation, and I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the question before this body today is whether to suspend the rules of the House in considering legislation which would grandfather flow control authority for certain local jurisdictions and waste management facilities. While I support flow control legislation, I do not believe this is an appropriate bill for consideration under procedures which circumvent the committee process.

In bringing up the flow control bill on the suspension calendar, there has been a serious breach of the normal legislative flow control. Without explanation, we have bypassed the normal full committee markup process and denied members of the Committee on Commerce their opportunity to offer amendments to this legislation.

The Subcommittee on Commerce, Trade, and Hazardous Materials reported a flow control bill, H.R. 2323, on May 18 of last year. H.R. 2323, which also contains provisions addressing the issue of allowing States and local governments to limit receipt of out-of-State municipal waste, has been languishing before the full Committee on Commerce for the last 6 months. No full committee markup of the bill has ever been scheduled.

The language before us today was only introduced as a bill this morning. In fact, the bill which we have is marked "12:20," at 12:20 this afternoon. It is now 2:20 in the afternoon. For 2 hours we have had the bill and the bill itself has been changed from the last version which we saw.

Mr. Speaker, that is wrong, just from a procedure perspective, in terms of what all Members are owed as procedural due process in the notice of important substantive changes in legislation. It contains provisions that were not agreed to by the minority, and it deletes the interstate waste language.

Reportedly, this new bill was negotiated downtown between special inter-

ests who did not favor the subcommittee-reported bill apparently lacked the votes at full committee in order to weaken it. So as a result, it has been weakened in the Committee on Rules, with no public notice, with no debate, and with all Members now expected to vote upon legislation which has not gone through the traditional legislative committee process.

In addition to the substantive changes made in the flow control language, the bill has also delinked flow control from the interstate waste legislation. This creates serious problems for many Members who are concerned that their States and localities not become the dumping grounds for out-of-State waste.

In the past, the flow control and interstate waste bills have always been linked together in the same legislation. In the 103d Congress, for example, a flow control/interstate waste bill was considered by this body under an open rule that allowed Members to offer amendments where the will of the Members could be fully expressed. The resulting product was approved by the House by unanimous consent. In this Congress, the Senate passed legislation which addresses both the flow control and interstate waste issues.

Delinking these two issues, as is being proposed today, means that we may not have any interstate waste legislation this year, despite the fact that 23 Governors have called for such legislation.

I must object, therefore, Mr. Speaker, to consideration of this bill today under suspension of the rules. The bill before us is controversial, and maybe Members have been denied their opportunity to offer amendments as a result of this procedure. I urge the Members to oppose the motion to suspend the rules of the House so we can defeat this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield myself 30 seconds, to answer the gentleman from Massachusetts.

Mr. Speaker, the bill was introduced and it is in the RECORD for Friday. Yes, it was changed today to insert two provisions for the benefit of the ranking minority member of the full committee. One deleted the so-called double-dipping language, and the other was to insert a central Wayne County fix, so I wanted to clear up that misunderstanding.

Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. MINGE].

(Mr. MINGE asked and was given permission to revise and extend his remarks.)

Mr. MINGE. Mr. Speaker, the flow-control legislation we are considering this afternoon, from the perspective of many of us, ought to be written differently, but one thing that I have noticed in my short legislative career, congressional career, is that it is almost impossible to move legislation

through this body and through the Senate in a form that each of us feels is going to take care of every problem that is faced by our constituents.

In the last session of Congress, indeed, we did pass flow-control legislation in the House of Representatives. It was passed in the Senate, but due to the lateness of the hour, the legislation languished and it never was brought back to both Chambers for final approval.

Mr. Speaker, I urge that we favorably report out this proposal today so that the process may move forward, so that a conference committee can be appointed, so that the differences between the House and Senate provisions can be reconciled, and ultimate legislation which serves the needs of our country can be passed by this institution.

Mr. MARKEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Speaker, I thank my colleague for yielding time to me.

Mr. Speaker, let me just begin by saying that I think there is broad bipartisan agreement for supporting a flow-control bill. I am all for it. I regret that the coming together of sides on this issue as it relates to not only flow control but the interstate waste bill has been so late in developing as we come to the floor, because there are, frankly, folks who are not here today who have a real stake and a real interest in this legislation who I would like to have consulted with.

Mr. Speaker, I am also for a bill that gives our local governments the ability to prohibit out-of-State from being dumped into our communities. I, along with the gentleman from Michigan, FRED UPTON, and the gentleman from Ohio, MIKE OXLEY, and a whole host of other people on the other side of the aisle, the gentleman from Virginia, Mr. BOUCHER, and many others on our side of the aisle have been fighting for this now for a number of years, and we have come within a whisker of having this accomplished over the last two Congresses. We do not want the opportunity to go by without having our full say.

Mr. Speaker, we are willing to work with Members on both sides of the aisle to get this done; in fact, to get both done, the flow control as well as the out-of-State. It appears right now, Mr. Speaker, and I am still talking with folks, that the out-of-State provisions fall a little bit short here. By not addressing the out-of-State-issue, as has been mentioned by the gentleman from Massachusetts [Mr. MARKEY], on the floor of this House, or in committee, for that matter, in the House, Members on both sides of the aisle are limited in their negotiating ability once this goes to conference.

I am concerned about that, because the Senate bill that deals with out-of-State is not as environmentally strong as, frankly, some of us would like it to

be. The House provisions that we have had over the years, and which we seek to have come before the House today which would give more autonomy to local units of government, as opposed to having the say on what can come into the State in terms of out-of-State waste controlled by the Governor.

Further, the 11th-hour negotiations still going on among many parties involved in this issue I think clearly shows that this may not be the best way to handle this in terms of the suspension calendar, although there is an advantage to doing it that way, and the gentleman from Virginia [Mr. BLILEY], and I talked about that a little earlier today. I recognize parts of the procedural advantages.

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But it does shut out a lot of folks, and that is somewhat troubling to me.

I would hope that we would be able to have an honest debate on this. This is a big issue. This affects all of our districts; it is one of the key environmental votes that we will have probably this Congress. It deals with how we are going to deal with our waste in this country.

It seems to me that the proper role for local and State governments in solid waste management really hinges upon the full participation, not just the narrow participation, of the Representatives from those individual States in this body. We want to work together to open up the process and give all of the States in this debate an opportunity to be heard.

So, Mr. Speaker, let me reserve my comments at this point and say to my friends on both sides of the aisle, I hope we can continue to have some good discussions on this, although I am rather troubled by the procedure under which we are working here this afternoon.

I thank my colleague from Massachusetts for yielding me the time.

Mr. BLILEY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. OXLEY], chairman of the Subcommittee on Commerce, Trade, and Hazardous Materials, who has put endless hours in on this subject.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. I thank the gentleman for yielding me this time.

Mr. Speaker, the issues of flow control and interstate waste have vexed this Congress for the last several years. I believe that it has been proper all along to consider these issues in tandem, because they both speak to how responsibly we, as a society, manage the disposal of solid waste.

Some communities find themselves in desperate financial condition because of the Supreme Court's Carbone decision that struck down flow control. These communities sold bonds to investors in good faith, and are relying on limited flow-control power to pay them back. There is a need for Congress to act with dispatch in order to provide legitimate relief.

Not everyone will agree with the bill in front of us today. Some people wanted a broader bill, others, no bill at all. But this bill sends a clear signal that obligations will be honored.

A great controversy has arisen over the last few days over the decision to move this flow bill before the House arrived at a position on interstate waste legislation, which is equally as important to importing States like Ohio. Frankly, I was prepared to oppose the decision to divorce the two titles, especially since they were approved by my subcommittee on a voice vote.

Adding to the anxiety of importing States were recent statements that the move to split the two bills would have killed any interstate legislation this year.

I have received assurances, however, that in approving this flow-control bill that we will be able to conference interstate waste with the Senate. I had a productive discussion with Rules Chairman JERRY SOLOMON this morning. I would expect that the concerns of importing States will be adequately and forcefully represented in conference. Meantime, I have encouraged the Governors of the affected States to meet and to try to reach an agreement on the issues. We need to have direct participation by all Governors with an interest in this. The National Governors Association meeting coming up soon will allow the Governors to have face-to-face discussions on this issue.

Again, I will give support to this flow-control bill only having been assured by key players in the debate that interstate waste legislation will be addressed and that the concerns of importing States, which have fallen on deaf ears in recent years, will be resolved.

I want to pay special thanks to the full committee chairman, the gentleman from Virginia [Mr. BLILEY], for providing an opportunity for those States who are importing States to actually get to conference on this important issue. I think all of us share the goal of getting to a conference and getting to agreement on this important issue, involving the Governors and all of the Members from the affected States.

Please remember that 23 Governors have signed a letter in support of the legislation that passed out of my subcommittee on a unanimous voice vote. There is strong support out there for reasonable interstate waste provisions in the statute, coupled with flow control. I ask the Members to support this important move forward as we get into a conference committee.

Mr. MARKEY. Mr. Speaker, I yield 2½ minutes to the gentleman from Ohio [Mr. BROWN].

Mr. BROWN of Ohio. Mr. Speaker, I rise in opposition to H. Res. 349 for a couple of reasons. Part of it is that this legislation does not at all resemble what the subcommittee worked on for this bill, and the problems that the subcommittee addressed.

Even more to the point, and I have great respect for my friend from Virginia, the chairman of the Committee on Commerce, Mr. BLILEY, this legislation was introduced only 2 hours ago, as the gentleman from Massachusetts, Mr. MARKEY, said.

This legislation clearly does not deal with many of the problems that a lot of districts and a lot of taxpayers have around this country. Putting this legislation forward after being introduced only 2 hours ago, having no hearings on this bill, reminds us of the way that these committees and this Congress have dealt on issues like Medicare and Medicaid, where there might be a hearing, there might not be a hearing, the vote comes to the floor, we vote it up or down without people reading the bill, without people understanding what we are voting on.

In district after district in this country taxpayers will be left out in the cold, instead of, for example, in my district in Medina County, OH, instead of issuing bonds to construct its facilities, Medina County entered into an \$8 million cooperative loan agreement with the Ohio Water Development Authority.

Taxpayers in Medina County will lose, will be left out in the cold because of this bill, the way this bill is written.

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Speaker, let me say that I appreciate the problems of Medina County. My home county has a similar kind of situation where they actually save the money to develop a landfill and then use that to initiate flow control. They did it very responsibly. They are unfortunately not covered under this particular version, and that is why it is important for us to get to conference on this issue so that we can vent these issues and have them determined.

I am on the gentleman's side on this issue, and I understand where he is coming from, but we cannot get this problem solved unless we get to conference, and that is what this procedure is all about.

Mr. BROWN of Ohio. Mr. Speaker, my friend from Ohio is actually my mother's Congressman, but she taught me a long time ago that I should take care of a problem when it is there. I do not think that the kind of back-room deals that were made in this bill with lobbyists and special interests writing these bills, whether it is Superfund or Medicare or this legislation, that we really want to just say, trust us, we will take care of it in conference committee.

People in Medina County stand to lose \$8 million under this bill. People in Arkansas and people in Virginia and people of this country stand to lose lots of taxpayers' dollars. We should protect their investment, take the bill back to committee, have hearings, let us write a good bipartisan piece of legislation.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SOLOMON], the chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding me this time.

I do not know whether the previous speaker is worried about the taxpayers paying. I will tell the gentleman something: If this bill does not become law, the taxpayers are going to pay through the nose, and that is why I am here supporting this legislation. I have counties like Dutchess County in upstate New York that have already been obligated to bonds that have to be paid off by the taxpayers unless we are able to get this kind of legislation through.

Let us just say that we have people on both sides of this. The only way we are ever going to settle it, and the gentleman from Ohio [Mr. OXLEY] has alluded to it, is to pass this piece of legislation, then go to conference with the Senate on the interstate waste, which is a very important piece of legislation.

Once we are there, we have major Governors around this country who are concerned about this. Let us let Governor Pataki of New York, Governor Engler of Michigan, Governor Ridge of Pennsylvania, and Governor Voinovich of Ohio, let us let them sit down, work out these differences and then bring it back. I will commit, as chairman of the Committee on Rules, that when they have worked out their differences, let them come back here, and we will then bring this conference report to the floor and we will pass both the interstate waste, which is very important, as well as this flow control bill, which is extremely important, because if we do not, the taxpayers are going to pay through the nose, and we cannot let that happen.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. PICKETT].

Mr. PICKETT. I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in strong opposition to the municipal solid waste flow control legislation being offered today. It will have a dramatically adverse financial impact on the municipal governments I represent and it is a blatant repudiation of the principle of "no unfunded mandates."

Late in the 1970's in the absence of any private alternative, eight municipal governments in my region joined together to create the Southeastern Public Service Authority of Virginia to manage, in an environmentally sound way, the rising volume of solid waste. In adopting this comprehensive waste management program, the participating communities all executed contracts prior to 1985 committing to dispose of their municipal solid waste to the authority. To construct the plant to convert the solid waste to energy for sale, the authority issued bonds that now amount to \$275 million. In addition to guaranteeing the bonds, the municipalities are obligated by their contract

with the authority to dispose of their solid waste to the authority and the authority is obligated under contract to deliver energy.

This legislation before us will destroy this established and operating environmentally sound regional waste management system, undermine the value of the bonds issued by the authority, impose additional financial burden and hardship on the participating municipalities, and create a new avenue of intrusion by the Federal Government into a purely State and local governmental activity.

This bill has been brought to the floor under a procedure that circumvents the committee process and precludes Members from offering amendments to protect their communities from financial distress. I urge Members to reject the flawed process under which we are considering this legislation and to vigorously oppose the flow control bill that is before us today.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. Mr. Speaker, Let me begin by thanking Chairman TOM BLILEY for truly going the extra mile today; for his willingness to understand and address issues that are so vital to some of our States. I especially want to thank Mr. BLILEY for the statesmanlike approach embodied in this compromise in meeting the legitimate needs of our colleagues intent on restricting the flow of waste into their States. And special thanks to Chairman MIKE OXLEY—in the House no one has worked as tenaciously as he on interstate waste legislation. And finally, special thanks to Chairman JERRY SOLOMON, who has worked hard to facilitate this bill.

After 20 months of toil and good faith compromises by all sides of the issue, we are here today with a modest, extremely narrow, rescue bill for locales throughout the country who have waste management systems predicated on flow control and tied to public debt.

Over \$20 billion of public bonds and obligations of local communities and investors are today in grave jeopardy and desperately need this solution we are proposing. Our local governments—charged with managing their waste—are in desperate situations warranting immediate action.

The festering crisis dictates that we wait no more and fast-track this emergency debt protection remedy.

For communities across the country—who saw a legislative remedy vanish in the waning hours of the 103d Congress, a casualty of a failed UC request in the Senate—this is their only hope.

Make no mistake, this legislation does not establish a broad authority for flow control. Instead it prescribes a narrow grant of authority and phases out of such activity allowing communities to make a smooth transition and ensuring that investments in public projects do not go belly up.

Under the bill flow control is permitted for the limited purpose of paying off outstanding bonds and that is it. According to the EPA, less than 20 percent—one-fifth—of the solid waste market is expected to receive some type of protection under this flow control bill. And as each day passes, and municipalities pay off their bonds, this small share of the market will continue to diminish until it reaches zero.

No one likes it when rules of the game change in midstream.

The Carbone decision vitiated waste flow authority after States and local governments had devised comprehensive waste management plans—at the behest of the Federal Government—which relied on that authority to make the plan economically viable. In other words, decisions were made and funds expended or obligated based on assumptions that disappeared on May 16, 1994—the date the Carbone opinion was handed down.

In the post-Carbone world, communities still have the responsibility to manage garbage—that is: collect, treat, and dispose of it—but some may no longer have the tools to carry it out efficiently.

Flow control has been a difficult issue for the past 2 years because local governments and private industry have different opinions on how much of flow control is a good thing. State and local government organizations have historically supported the continuation of flow control authority as an important prerogative of State and local government and the best tool for safe and environmentally sound disposal of garbage. Members of the private waste industry believe there should be no constraints on the movement of waste.

The bill before us today has opted for the private enterprise position—prohibiting any future flow control. The bill is drafted as an extremely narrow grandfather—allowing flow control only in jurisdictions that exercised it, designated the waste facility to receive the waste, and sold bonds—or executed put-or-pay contracts—to finance the facility—all prior to the Carbone decision. And once the bonds are paid off, with the narrow exception of retrofits mandated under the Clean Air Act, flow control ends forever.

Importantly, because these flow control provisions are so narrow, they have achieved support from significant stakeholders on this issue: the national organizations representing State and local government interests, such as the National Association of Counties and the Solid Waste Association of North America; major companies from the waste industry, such as Waste Management Technologies, Inc. and Browning Ferris Industries; and the Public Securities Association, representing the concerns of bond holders and issuers. While all of them have a different bill of perfection in mind, they have reached a compromise that they can live with.

The situation in my home county of Mercer illustrates how urgent the situation is.

At present, Mercer has incurred debt obligations of over \$189 million to finance the project, with approximately \$100 million more needed for completion of the project.

Carbone has put the entire undertaking on the shelf and costs to build the waste-to-energy facility have increased by over \$4 million. Accordingly to Mercer County executive, Bob Prunetti, each day of irresolution of this issue costs an additional \$20,000 per day.

In the 20 months that we have been debating the perfect flow control and interstate provisions, Mercer County's bonds have been downgraded and, last week on January 25, permits for the construction of our facility expired. The authority has petitioned the New Jersey State Department of Environmental Protection for an extension of this permit. It is unclear, at this time, whether or not there is precedence for such an extension.

My State with our landfills nearing full capacity and with more than 2.1 million tons exported per year to other States has attempted to act responsibly and earnestly to resolve our waste disposal problems and become self-sufficient. My county of Mercer exports 300,000 tons to Bucks County, PA, just across the river.

If we are able to proceed with our waste-to-energy project at least 220,000 tons of municipal solid waste will stay in Mercer County to be incinerated. That, it seems to me, nips the problem at the source.

And let me remind Members that self-sufficiency has been our goal for 20 years and flow control was—is—the requisite to achieving that goal. Nearly two decades ago, the State of New Jersey took the initiative to limit its exports on its own. The State's comprehensive solid waste management plan is meant to achieve self-sufficiency by the year 2000. But the plan hinges on the use of limited flow control—without it, it just ain't gonna' happen. And worse, our 2.1 million tons of cross-State waste will only increase.

Mercer's bond downgrading has not been unique. Other communities around the Nation especially Pennsylvania, Florida, California, New York, New Hampshire, and Illinois have had their credit ratings downgraded or have been put on credit watch because they have lost the ability to flow control.

Mr. Speaker, Members of Congress anxious to pass tough interstate restrictions on the transport of garbage, take note: I respectfully submit this is your opportunity to advance that prospect since you will get your day in conference with this legislation. Yet, I am here to tell you that passage of flow control authority by this Congress—temporarily delinked from interstate—will only help alleviate the need to export garbage.

The Environmental Protection Agency's [EPA] study on flow control, re-

leased last year unequivocally states that: "Flow control is one mechanism that State and local governments can use to foster development of in-State capacity to manage municipal solid waste."

To my friends who are disappointed that the interstate provisions will be considered on a day other than today let me say that I have no qualms with limiting interstate waste. There is a symbolic relationship, however that should not be overlooked. If the goal of my friends in the Midwest and Pennsylvania is to ban the interstate transport of waste, then by all means you should support efforts to allow States to flow control waste within their own borders. This, of course, will diminish the urgency to transport garbage outside of the State.

In closing, Mr. Speaker, I remind our colleagues that the clock is ticking. I am hopeful that like the Senate, this body will now move on a proposal that offers real relief to communities in debt.

□ 1445

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Arkansas [Mrs. LINCOLN].

Mrs. LINCOLN. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in strong opposition to this process as well as to the final product that has come before the floor. With all due respect to Chairman OXLEY, this is not the package we passed out of subcommittee, that we debated and we came to a compromise and conclusion on. The fact is that it is our responsibility in this House to do a good job on behalf of our constituents, to take to a conference a position that is good for them.

With all due respect to the gentleman from New Jersey [Mr. SMITH] and the gentleman from New York [Mr. SOLOMON], who speak of their communities who are in such danger, who have leveraged bonds, we have communities just like that. I have communities just like that. However, mine does not get a special fix in this bill, and it is very important for us to go to the drawing board and look at what is fair to everyone.

I am absolutely amazed and disturbed that a bill such as the one we are considering today is being considered on the Suspension Calendar. This bill is not the product of Member negotiations, it is not the product of committee consideration, and it is not the product of the administration. However, it is a product of many interests downtown who have drafted a bill without Member input.

As a Member who is supportive of flow control legislation and supportive of our communities in their efforts to effectively manage their solid waste, I urge a "no" vote on the bill we are considering today. While this legislation does help some of the communities out there, it does not protect legitimate fi-

nancial obligations incurred by many of our communities.

I also urge a "no" vote on this bill because the whole legislative process has been circumvented. The Subcommittee on Commerce, Trade and Hazardous Materials held a markup in May where amendments were adopted. The subcommittee-passed bill is now probably in one of those landfills out in the Midwest. What we are working on now is a piece of legislation that no Member has voted on, let alone seen or examined.

The Suspension Calendar is a mechanism by which the House can consider relatively noncontroversial issues that have broad bipartisan support. This flow control legislation is not a worthwhile candidate for such consideration.

This bill is controversial, not so much for what it contains but rather for what it does not contain. It does not contain relief for many communities holding legitimate debt, and it does not contain interstate waste provisions.

It is our responsibility in this House to take care of those issues and then move it to conference. I urge a "no" vote on this bill.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. I thank the gentleman for yielding me the time.

Mr. Speaker, I would ask the gentlewoman if she would just respond. Again, I am a proponent of prospective flow control. We did not win that one. We tried hard. There are a sufficient number of Members who disagree with that that we were unable to get that in there.

The compromise that is struck here says that anybody who obligated funds, expended funds, or sold bonds prior to the Carbone decision on May 16, 1994, they are included, they are grandfathered. It is my understanding that those in your locale did so after the fact, after Carbone had been handed down.

Mr. MARKEY. Mr. Speaker, I yield 30 seconds to the gentlewoman from Arkansas [Mrs. LINCOLN].

Mrs. LINCOLN. I thank the gentleman for yielding me the time.

Mr. Speaker, for those communities that did extend those bonds, they did so under the understanding that Congress was taking up that issue last year and the year before with the idea that these communities could be protected. They have extended their livelihood in those communities, their tax dollars and their resources, and many of the other communities, some of which have already been considered in this bill, did make those decisions after Carbone.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. WALSH].

Mr. WALSH. Mr. Speaker, I thank the chairman for his leadership on this. I would also like to thank the gentleman from Ohio, Chairman OXLEY,

for his allowing this bill to get to the floor.

Mr. Speaker, this afternoon the House of Representatives works toward passage of flow control legislation with bipartisan support. The legislation is a fair compromise that would grandfather facilities designated prior to the 1994 Supreme Court decision, but phases out flow control as financial obligations expire.

For example, this bill will protect the local government in Onondaga County to have the right to control the flow of municipal solid waste for financing their waste-to-energy plant and integrated waste program. Without such control, which had been put at risk by the Supreme Court ruling, the county would have been without sufficient cash flow to repay \$180 million in bonds which provided funding for the plant.

It is also very good news for taxpayers in central New York. Without the legislation, the county's credit rating could have been negatively affected for future bonding and all future public works projects put at risk.

In addition, flow control is pro-environment—despite rhetoric to the contrary. If every municipality adopted a comprehensive solid waste program, they could handle their waste locally and not ship their garbage to other States. Our county's recycling program has received national recognition and awards for recycling over one-third of our waste stream. The community also benefits from the sale of electricity produced by the waste-to-energy facility.

Working closely with Onondaga County officials, my colleagues in the New York delegation and the Commerce Committee, we were able to develop an excellent bill. This is the kind of cooperation between local and Federal Government that helps communities solve problems, and I urge my colleagues to support passage.

Mr. MARKEY. Mr. Speaker, I yield 1½ minutes to the gentleman from Virginia [Mr. SISISKY].

(Mr. SISISKY asked and was given permission to revise and extend his remarks.)

Mr. SISISKY. I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today in opposition to this bill, and to the procedure under which the bill is being considered.

The measure we are considering today, while well intentioned, is incomplete.

This bill grandfathers the previous flow control arrangements of many communities.

Unfortunately, the Hampton Roads communities of southeast Virginia were not grandfathered in this bill.

That's not fair.

These eight communities came together in the 1970's to create the Southeastern Public Service Authority of Virginia or SPSA.

Now, like so many other localities, they are burdened with long-term bond debt.

In SPSA's case, there is \$275 million in bond debt due by 2018.

The cities and towns who are served by SPSA need to be grandfathered in this bill so they can pay their debt.

If you vote to pass this bill, you are legislating against some communities while you help others.

Like all of you, I have a responsibility to the people I represent, and the communities in which they live.

Under this procedure, I cannot do that.

Mr. Speaker, I urge my colleagues to vote against this measure so we can make sure that all of our people can receive the same consideration. I do not think that is too much to ask. Under the procedures that this bill came under, it seems to me the plausible thing to do.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. BOEHLERT].

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Speaker, I rise in strong support of this bill, and I want to thank Chairman BLILEY for the outstanding work that he has overseen as we have come to develop a bill that has earned strong bipartisan support.

This bill is very important to me for a whole lot of reasons, but basic among those is that it will save taxpayers in my district an untold amount of money. Without this measure, three solid waste authorities in my district would be unable to pay off the bonds that they have issued without unsustainable tax increases. The people and their representatives from Oneida, Herkimer, Otsego, Montgomery, Schoharie and Madison Counties acted in good faith when they sold bonds in that manner. Now they will be able to have the waste stream they need to guarantee the operation of their facilities and to be able to pay off those bonds.

I want to thank the solid waste authorities in my district for doing such a good job of educating me and my colleagues so that we would know how important it is to pass this very important flow control legislation. I urge my colleagues to support the measure.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume, and it is most likely with the intention of closing debate at this particular point in time.

Mr. Speaker, this is a very simple issue at this point. It is not really substantive. It is a question of whether or not we are going to have a proper use of the procedures of the House in order to deal with a very important piece of legislation which for the past 3½ years has been considered in the Committee on Commerce. Again, in the last session of Congress we dealt with this issue, we dealt with it on a bipartisan basis and we dealt with it in a comprehensive fashion.

This bill is being dealt with on a piecemeal basis and in a partisan fashion.

That is not necessary. We are being promised here on the floor that if we foreswear our concern legislatively for the interstate aspects of this bill, and, by the way, what could be more important to the States in the Midwest than how much waste is going to come into their States from other States? The States of New York and New Jersey, they are basically adopting Horace Greeley's philosophy, which is, "Go west, trash deliverer, go west." That is the philosophy.

Mr. Speaker, the bottom line here is that we have no guarantees, none at all. If we do not deal with this interstate issue and if the Senate acts on it, which we hope that it does—we are not sure that it does—we are ceding our legislative responsibility to the Senate—something which I find to be highly undesirable generally given their overall conduct—that we should in fact deal with these issues ourselves. However, if in fact they deal with this interstate issue and they send it back, we are going to be dependent upon the Rules Committee to determine whether or not this issue is within the scope of the bill, given the fact that the House never in fact acted upon it.

If the gentleman from New York, the chairman of the Rules Committee, would get up and promise us that that bill will come out on the floor, no matter what, it will be out here on the floor, dealing with interstate waste, then that will give us all a lot more comfort. However, if that is not the case, we are going to be like Lucy holding the football for Charlie Brown. They are holding the ball for us right now, run up to the football, but at the end of the day, and I mean April or May when the bill comes back, we are not sure that the Rules Committee will ever allow an interstate bill to come out here.

This is our opportunity to act. Vote "no." Force this process, this House of Representatives, to produce a bill that deals with both aspects of this problem, and then we can go to the conference committee with the Senate with all of the cards on the table and a guarantee that the issues of the Midwest, the issues of all those States that might ultimately become the home to this waste, are dealt with properly.

That is my message to the House today, that a vote "no" on this issue guarantees that we will get a good and comprehensive bill dealing with all aspects of this legislation.

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Speaker, I thank my friend for yielding.

Please remember on the separate issue we have a letter from 23 Governors supporting interstate language. There is no way in the world that a conference committee will come back with anything less than a bill that will deal with interstate commerce.

Mr. MARKEY. I respect the work the gentleman has done. The gentleman

did good work at the subcommittee. I supported the gentleman's work. It should have come through the full committee and out here on the floor in a comprehensive way. We should not cede our responsibilities to the Senate.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. UPTON].

(Mr. UPTON asked and was given permission to revise and extend his remarks.)

Mr. UPTON. Mr. Speaker, I thank very much the diligent work of our chairman of the full committee and subcommittee, the gentleman from Virginia [Mr. BLILEY], and the gentleman from Ohio [Mr. OXLEY]. This is a very tough and complex issue, flow control and interstate waste.

There has always been a fear, particularly from those of us in the Midwest, that one might pass without the other. Frankly, I was prepared to vote against this bill under suspension, in fact signed a bipartisan "Dear Colleague" letter with a number of my colleagues asking us all to do so. But today's assurance that the Governors of the impacted States will in fact help forge an agreement that is acceptable to all of us helps resolve my goal of making sure that we will not see unfair control of interstate waste legislation move forward unless they in fact are dealt with together.

□ 1500

I accept Rules Committee Chairman SOLOMON's pledge of cooperation in working this out. In fact, I am going to go back to all of my colleagues to make sure that when this conference report comes out that it will be an acceptable bill.

Out-of-State waste is a very important issue.

Our landfills will fill up years ahead of schedule because cities like Chicago, New York, and Boston churn out garbage faster than they can deal with it.

Interstate waste is an important tool. It allows States the ability to limit garbage that crosses my borders. My State should not be forced to accept other people's garbage. Michigan isn't a dumping ground for other States' mistakes.

Michigan has had the foresight to develop a plan to dispose of our waste. We are now being forced to deal with garbage from States who haven't.

I make no apologies—frankly, New York City, Boston, Chicago, your garbage isn't our problem.

"We Recycle"—it says so right on the blue trash cans in my office. I've got to separate white paper from wet trash, glass from cardboard. But the Federal Government doesn't afford my communities with this luxury.

Michigan communities shouldn't be forced to clog up their landfills with trash from cities hundreds of miles away. When it comes to dumping in landfills, it all gets thrown into the mix—Kalamazoo's, New York City's, Benton Harbor's, and Boston's—Michigan couldn't bar any State from dumping trash on us—until now.

In a recent letter sent to Speaker GINGRICH, Michigan Governor John Engler and several

other Midwest Governors wrote "Citizens constantly ask us why they should recycle in order to conserve space for other States' trash. We need assurances that we can conserve landfill space for our own State's disposal needs."

Governor, you got your assurance today.

Mr. Speaker, I include for the RECORD the following letter:

STATE OF OHIO, STATE OF MICHIGAN,
STATE OF INDIANA, COMMON-
WEALTH OF PENNSYLVANIA,

January 25, 1996.

Hon. NEWT GINGRICH,

Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: We are writing to express our opposition to considering a flow control bill on the House floor under suspension of the rules without the inclusion of interstate waste provisions. As governors of states that have been receiving considerable amounts of out-of-state waste, we feel it is essential that the House move interstate waste and flow control together as one bill.

As you know, 23 governors wrote you in June to express strong support for the interstate waste provisions in H.R. 2323, the State and Local Government Interstate Waste Control Act of 1995, introduced by Congressman Mike Oxley and passed by the Subcommittee on Commerce, Trade and Hazardous Materials in May.

For too long, states have had only limited ability to place restrictions on shipments of municipal waste across state lines. Although mandated by federal law to develop comprehensive waste management plans, states' efforts to enforce their own planning rules have been overturned repeatedly by the federal courts. Lacking specific delegation of authority from Congress, states that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-state trash.

We are not asking for outright authority to prohibit all out-of-state waste. We are asking Congress to provide state and local governments with the tools they need to manage their own waste and limit waste from other states. Any proposal to grant specific flow control authorities, therefore, should not be considered without also including these essential interstate waste provisions.

We strongly believe that Congressman Oxley's interstate waste provisions address many of our concerns. Twenty-three governors and the Western Governors' Association have supported the interstate waste provisions in this bill and seek two strengthening amendments. One would allow states to place a percentage limit on the amount of out-of-state waste that can be received at new facilities or major modifications of existing facilities. The other would allow states to authorize the collection of a \$1-per-ton surcharge on waste from other states.

H.R. 2323 would give large exporting states sufficient time to plan for the disposal of their own waste. It also would give those states that have acted responsibly to implement environmentally sound waste disposal and recycling plans assurance that they can save space within their borders for their own disposal needs.

In addition, we oppose any provisions that would prohibit interstate waste restrictions at facilities that are subject to flow control authorities. Such a provision would prohibit state and local governments that exercise flow control authorities from having the opportunity to accept or reject out-of-state waste shipments, and they could be forced to receive it unwillingly. We strongly believe

that one community should not be forced to accept other states' waste while another community has the opportunity to turn it away.

Again, we respectfully urge that interstate waste and flow control move together as one bill. By considering flow control separately, Congress would only address one side of the equation and would not give importing states the tools they need to limit the large amounts of waste crossing their borders.

Sincerely,

GEORGE V. VOINOVICH,
Governor of Ohio.

EVAN BAYH,
Governor of Indiana.

JOHN ENGLER,
Governor of Michigan.

TOM RIDGE,
Governor of Penn-
sylvania.

Mr. BLILEY. Mr. Speaker, I yield 30 seconds to the gentleman from Florida [Mr. DEUTSCH].

(Mr. DEUTSCH asked and was given permission to revise and extend his remarks.)

Mr. DEUTSCH. Mr. Speaker, I rise in support of the flow control legislation before us today.

This compromise bill is now limited in scope and duration, a culmination of several months of negotiation between public and private stakeholders. Most importantly, this compromise bill protects local communities and preserves our commitment to free-market competition in the solid waste industry.

Like many States, my State of Florida enacted a law requiring communities to manage their own waste, including a goal that 30 percent be recycled. My district, Dade County, invested nearly \$200 million so they could meet this challenge.

Mr. Speaker, Congress should not break up monopolies, but this legislation will not do that.

Mr. BLILEY. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. FRANKS].

(Mr. FRANKS of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. FRANKS of New Jersey. Mr. Speaker, I rise in support of this vitally important measure and ask my statement become a part of the RECORD.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. CLINGER], chairman of the Committee on Government Reform and Oversight.

Mr. CLINGER. Mr. Speaker, this is an issue that I have been involved with for 4 years as have most of the Members speaking on this issue today.

Frankly, I came to the floor prepared to vote against this measure, because of the real concern by dividing flow control from interstate garbage provisions, we were going to lose any consideration of interstate garbage. I am now told we have an extraordinary procedure involved here which will ensure that we will have a marriage of these two items before this thing comes back to the floor before it is ultimately resolved.

It is not as good as I would hope. I can assure you, given the concerns Pennsylvania has as the largest importer of interstate garbage in the country, that we could not possibly go for anything that does not include those provisions.

I am persuaded, however, we are probably not going to see either flow control or interstate garbage provisions unless some procedure such as this is adopted. I still have some skepticism. I can assure you I will be fighting very hard if this thing comes back without adequate provisions for interstate garbage. But given that fact, unless a concern we not get either, this moves the process forward.

Mr. BLILEY. Mr. Speaker, to close debate on our side, I yield the balance of my time, 1 minute, to the gentleman from Ohio [Mr. GILLMOR], a member of the committee.

Mr. GILLMOR. Mr. Speaker, I thank the gentleman for yielding time to me.

I rise in support of this legislation. Although it is not the legislation I would have preferred to see out here, I would have preferred to see something closer to what we are dealing with in the Committee on Commerce. But I do so in part because of the assurances that interstate waste is going to be considered as a part of this conference committee.

I supported both flow control legislation and interstate waste legislation, because they are, in fact, part and parcel of the same principle, and that principle is giving State and local government officials both the authority and the responsibility over waste management.

The coupling of these two issues is supported by Governors from liberal Democrats to conservative Republicans, and I rise in support of this with the hope that this will give us the opportunity to come back with a conference committee report that deals with both of these important issues in a satisfactory way.

Mr. MARTINI. Mr. Speaker, I would like to take this opportunity as a Member of the New Jersey delegation to speak on behalf of S. 534, the Flow Control Act. Mr. Speaker, I am going to support this bill with the understanding that it is going to address certain problematic situations that exist in my congressional district—namely, in Passaic and Essex Counties. This legislation is necessary for the protection of government entities who have operated in good faith under a State mandate for waste disposal. It would be unjust to both the taxpayers and the local entities if deregulation were to allow such law abiding local governments to default on their payment of debt.

Following the Clarkstown versus Carbone decision of 1994, in which the Supreme Court struck down a local ordinance directing the shipment of waste to a local waste facility, local governments throughout New Jersey have been greatly affected by this decision. New Jersey, in an attempt to responsibly deal with the disposal of waste, has invested in facilities with the expectation that their cost could be financed with revenues accumulated by directing local waste to those facilities. The

repayment of bonds depends on the practice of flow control. While I respect any decision passed down by the Supreme Court of the United States, I also respect the integrity of local governments that have in good faith supplied facilities to handle municipal solid waste.

The idea of grandfathering certain facilities that were in process when the Carbone decision was rendered should not even be in question. I feel that it is our duty to protect the taxpayers' investments in such facilities. The Public Securities Association recognizes that this is our duty and has voiced their support for the legislation.

It is also important to note the unique situation in the Garden State. 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. We must provide for preexisting arrangements of fiscally responsible local governments. The local entities in the eighth district of New Jersey should not be abandoned to default on several millions of dollars of outstanding bonds that support their waste program.

For example, Passaic County in my congressional district has in excess of \$80 million in outstanding bonds for transfer stations which deal with their waste. It is my understanding through my discussions with the Commerce Committee, as well as with Governor Whitman's office and Members of the New Jersey congressional delegation, transfer stations will be included among the in-state facilities whose debt will be protected. It is important to me that this legislation addresses the ability to pay all outstanding debt that is waste related, regardless of the particular nature of the waste facility.

Furthermore, it is my understanding through such discussions that localities that send municipal solid waste through in-state transfer stations prior to sending that waste out-of-state are clearly covered under this legislation. With that in mind, I will support this bill.

It is about time that we address the effect of the Carbone decision on local governments throughout the United States and protect the monetary commitments of those localities.

Mr. BLILEY. Mr. Speaker, through its constitutional authority to regulate interstate commerce and in response to the U.S. Supreme Court's Carbone decision, Congress sets forth in this legislation the limits and conditions on flow control authority. The impact on interstate commerce of the flow control authority exercised in conformance with the provisions of this legislation has been sanctioned by Congress and may not be challenged on commerce clause grounds.

The legislation further sanctions flow control authority exercised by a particular State or local government before enactment of this legislation, to the extent the exercise of that flow control authority is in conformance with the provisions of this legislation. Congressman NETHERCUTT and others have asked for clarification on this point. The intent of this sanctioning by Congress of previously exercised flow control authority is to end pending litigation in which such exercise of flow control authority has been challenged as unconstitutional on commerce clause grounds. However, the legislation makes clear that this congressional sanction does not apply in cases where a final judicial decision no longer subject to judicial review has declared, before enactment of this legislation, the specific exercise of flow

control authority by the State or local government to be unconstitutional. Of course, that same State or local government may exercise the flow control authority granted by this legislation after enactment of this legislation, if the State or local government meets the grandfather criteria set forth in the legislation.

STATEMENT ON USE OF FLOW CONTROL REVENUES

This compromise legislation limits the use of revenues derived from the exercise of flow control. Such revenues may only be used to repay the principal and interest on eligible bonds issued by a grandfathered community, to repay the principal and interest on bonds issued for qualified environmental retrofits of designated facilities, or to repay the financial obligations incurred by a community pursuant to certain contracts specified in the bill. However, to protect the viability of a community's investment in a designated facility financed by a bond, the legislation provides that all expenses necessary for its intended operation and proper maintenance, such as operation and maintenance expense of the other integral facilities, may also be paid with revenues derived from the exercise of the flow control authority.

STATEMENT ON SHAM RECYCLING

The legislation prohibits a community from exercising flow control authority over recycled materials unless such materials are voluntarily relinquished to the community by the generator or owner of the materials. The definition of recyclable materials in the legislation makes clear our intent that this prohibition is only to apply to materials that will be recycled, reclaimed, composted, or reused, and have been separated for these purposes from waste which is to be disposed. Our intent is to prevent sham recycling. Sham recycling occurs when an entity seeks to avoid a grandfathered community's exercise of flow control authority over a particular waste material by claiming that it intends to recycle the material but does not actually recycle, or recycles only very minimally, with the intent to dispose of the material at a non-flow controlled facility.

Mrs. KELLY. Mr. Speaker, I rise in strong support of S. 534, legislation to reestablish a modest degree of local flow control for the disposal of municipal solid waste. The bill seeks to preserve local flow control authority for communities which had such rules in effect prior to the Supreme Court's Carbone decision in 1994.

Mr. Speaker, Dutchess County, New York offers a good example of the desperate need to pass flow control legislation. The Dutchess County Resource Recovery Agency runs a waste-to-energy and recycling facility that was constructed with the belief that a steady stream of waste—and revenue—would be available to meet the financial obligations incurred by the county.

However, the Supreme Court's Carbone decision invalidated local flow control ordinances under the view that they violate the interstate commerce clause of the Constitution. Since that time, revenue streams and the bond ratings for waste facilities have fallen off.

In New York State alone, over \$1.2 billion in public debt for solid waste management facilities and programs is threatened unless this can be resolved—\$43 million of that debt was incurred by the Dutchess County Resources Recovery Agency. The loss of flow control authority resulted in a \$3 million shortfall to the facility last year, and a similar shortfall is expected this year unless corrective action is

taken. Of course, in the end, Dutchess County taxpayers must make up the difference for any shortfall to the facility.

Mr. Speaker, similar legislation passed the House of Representatives during the last session by an overwhelming margin. It was recognized then, as in the case today, that once the bond obligations have been met, flow control authority ceases and the free market takes over.

I recognize that legitimate concerns remain with respect to the regulation of waste streams between States, but we cannot let this issue further delay the passage of this fair and commonsense legislation. Dutchess County, and many others around the country, can no longer afford to see the resolution of this issue delayed.

I urge my colleagues to join me in support of this legislation.

Mr. VENTO. Mr. Speaker, I support this legislation which restores limited local control over municipal solid waste.

Local governments across this country would be burdened with enormous financial debts unless this Congress acts and approves legislation such as is before us today. Whether Members favor flow control or not, the fact of the matter is that local governments have been legitimately using this planning tool for over a decade, and have outstanding contractual agreements and obligations they are responsible to meet. This bill is a fair compromise that allows our local governments to basically keep their promises to investors and citizens on a good faith basis.

This bill is not perfect. From my stand point, I support stronger flow control authority granted to the States, counties, and municipalities. I believe flow control provides State and local governments with the tools to manage waste disposal responsibility and effectively. A framework for solid waste recycling and disposal has been established in Minnesota and other States that is truly working with the underpinning of flow control. Solid waste disposal is certainly an issue that is inherently local, and State and local governments should have the authority to address the policy without being whipsawed between jurisdictions. The rationalization of sound solid waste policy responding to the environmental limits and reality is a key role of local government, surely we should permit them to do their job.

This, of course, is the broader debate that Congress should be shaping. But until we face up to the total task, let us make certain that we do not let default and harm befall our States and local governments. They need certainty and predictability, not philosophic platitudes on the magic of the marketplace. Our local governments are facing an \$18 billion debt. Local governments need flow control relief today that responds to their legal obligations, and this bill provides modest and necessary relief.

I urge my colleagues to support this legislation. We cannot continue to leave our local and State governments swinging in the wind. Cooperation and responsible action should be our response to the circumstance; a commonsense pragmatic policy to the problem before us—I urge positive support for this measure.

Mr. BILIRAKIS. Mr. Speaker, I rise in support of this legislation, but also to express the concerns of Hillsborough County, FL, in my district, concerns that I understand are held by other entities in other States regarding this legislation, as well.

As is well known, the measure we consider today is intended to exempt from constitutional challenge State and municipal flow-control laws in effect on or before May 16, 1994. The necessity of this stems from the fact that the Supreme Court ruled in 1994 that solid waste flow-control was an unconstitutional interference in interstate commerce.

Nevertheless, the States and municipalities in question depend upon a steady stream of waste material to their disposal facilities in order to repay bonds issued to finance construction of these facilities.

Clearly, this matter needs to be addressed and this legislation seeks to do so. However, if we are to address it, we must ensure that our meaning is certain.

This measure also grants flow-control authority to State and local government facilities if, among other requirements, eligible bonds were presented for sale on or before May 16, 1994. Such was the case with Hillsborough County, FL, but the county refinanced these bonds in July 1994, with an expiration date on the new bond identical to that in place on May 16.

This refinancing should in no way jeopardize the flow-control authority in this case.

No changes in conditions were made other than the county's valid and, indeed, commendable desire to secure more favorable interest rates and a better financial deal for the rate-payers. Through discussions with members and staff of the Commerce Committee, it is my understanding that under this legislation this is, in fact, the case: the authority is not jeopardized.

In view of this, I support this limited flow-control-authority legislation and urge its adoption by the House. I will continue to work with the committee and its members to assure the enactment of the soundest possible solid waste flow control legislation.

Mrs. KENNELLY. Mr. Speaker, I rise in support of legislation to allow for limited flow control. As a representative of a State whose communities rely upon flow control for their solid waste disposal systems, I know firsthand the urgent need for this legislation.

It has been almost 2 years since the Supreme Court ruled that State and local flow-control ordinances violate the Interstate Commerce clause without congressional authorization. Since then, thousands of communities in my State and across the Nation have had trouble meeting their legal obligations to provide for solid waste disposal. Many resource recovery facilities, which depend upon flow control to receive enough waste to pay back municipal bonds, are being denied a steady stream of revenue. Connecticut's resource recovery authorities alone have issued over half a billion dollars in bonds to finance construction of their facilities. Without flow control, those debts might not be repaid.

In addition, the lack of flow-control authority may lead to increased taxes on millions of people if towns that entered into put-or-pay contracts with waste facilities before 1994 cannot deliver agreed-upon levels of waste. Worse, many States' solid waste disposal plans, adopted in accordance with Federal law, will be virtually unenforceable because communities will not be able to direct solid waste to resource recovery plants rather than landfills or other less environmentally preferred systems.

Those of us who represent States with flow-control ordinances understand the concerns

raised about this kind of policy. However, this legislation represents a reasonable middle ground which will grandfather in flow-control laws that were on the books prior to the Court ruling and would limit their duration. This makes sure that communities that entered into obligations to dispose of waste have the ability to fulfill those obligations until their conclusion.

If we do not take this action today, the more likely it is that our country's waste disposal systems will be undermined, our environmental policies will be harmed, and our constituents will be forced to pay more taxes. I urge a "yes" vote on this desperately needed legislation.

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today in support of H.R. 349 and in strong support of flow control.

New Jersey is facing a crisis situation that can only be averted by swift passage of this legislation. A recent court decision—the Carbone decision of May 1994—has placed New Jersey's waste management system in chaos.

Currently, 17 of 21 New Jersey counties have public debt tied directly to flow control and more than \$2 billion in outstanding debt backed by flow-control bonds. This debt was incurred in compliance with a State mandate for each waste region to become self-sufficient in managing its waste.

While the Supreme Court has ruled that flow control is an undue interference with interstate commerce, the legislation that the House is voting on today allows flow control only in jurisdictions that exercised it, designated the waste facility to receive the waste, and actually sold bonds to finance the facility prior to the May 1994 Carbone decision. This is expected to apply to less than 20 percent of the solid waste market. And, once the bonds are paid off, flow control ends. This gives densely populated States like New Jersey the opportunity to regroup and plan for the redirection of their municipal waste streams.

Concern over the omission of coverage for construction and demolition debris language has been expressed by the Morris County Municipal Utilities Authority, and I will continue to work for the inclusion of these provisions which are important to Morris County and other New Jersey counties. However, in the meantime, I strongly support passage of this legislation.

Mr. TAUZIN. Mr. Speaker, I'd like to commend the gentleman from Ohio [Mr. OXLEY] and the gentlewoman from Arkansas [Mrs. LINCOLN] for their bipartisan cooperation on this bill.

To paraphrase Mark Twain, regulatory reform is a lot like the weather. Everybody talks about it, but nobody ever does anything about it.

We've had a lot of passionate debate on both sides of the aisle this year saying we all want regulatory reform, that we need to put a stop particularly to the old style of regulation that costs a lot but does very little to actually improve the environment. Well, this is our chance to prove we mean it.

Unless we act, EPA will be forced to issue another one-size-fits-all regulation that will cost, by EPA's own estimate, \$800 million per year to implement.

EPA is asking for our help, because they know that little, if any, real risk reduction would occur if these rules are promulgated.

What this means for me is that one chemical plant in my district could be forced to

spend about \$34 million to replace a well-operated wastewater treatment system.

Risk assessments performed by the company show that its surface impoundments already protect human health and the environment to RCRA risk standards. In fact, the emissions of highest risk hazardous constituents from all plant sources, including wastewater treatment, has been determined to have a lifetime cancer risk to the nearest receptor of less than one in a million.

This plant has been growing and could put the resources to greater economic and environmental benefit.

This bill represents a bipartisan agreement between Congress and the administration, and is the kind of targeted regulatory reform that many have been advocating. Chairman OXLEY should be commended for recognizing the need to correct this court-imposed conflict between our environmental statutes. The administration also deserves credit for including this correction in its RCRA rifle-shot proposals.

Mr. MINGE. Mr. Speaker, I rise in support of the Flow Control Act of 1996. Since 1990, the United States has generated 195 million tons of municipal solid waste—more than any other country in the world for which data are available and almost double the amount generated by Japan and the European Union. The challenge before us today is to manage the flow of all this solid waste in a manner that strikes a balance which is both environmentally sound and protects free-market principles.

The legislation we have before us on the floor attempts to strike this balance by partially restoring flow-control authority to some local governments so that they can pay off their debts without having to raise taxes. Some will argue that flow control is an unfunded mandate on taxpayers. Yet, the real unfunded mandate is the mandate the Federal Government leveled on State and local governments under the Resource Conservation and Recovery Act [RCRA] in 1976. Under this law, the Federal Government required the States to dispose of solid waste in an environmentally sensible fashion. To meet this unfunded Federal mandate, local governments in the State of Minnesota sold 400 million dollars' worth of municipal bonds—\$48 million in my district—to build environmentally sound waste facilities, charged for their use, and directed the flow of waste to those facilities in order to pay for them. Despite the RCRA mandate, Congress never explicitly provided States and local governments the authority to control the flow of municipal solid waste.

I'd like to illustrate the problem facing local governments by highlighting two counties in my district. Responding to Federal and State mandates, the counties of Wright and Martin built state-of-the-art composting facilities in the early 1990's. Instead of landfilling, the waste is turned into composting material, which can be sold on the market and into refuse-derived fuel, which provides electricity needs for some Minnesota cities. As a result, the amount of solid waste headed for overcrowded landfills has been reduced by 80 percent, which benefits the environment.

These facilities were built with public bond financing based on the premise that flow control would guarantee an adequate flow to the facilities to keep them financially stable. This stability was put in jeopardy in 1994 when the Supreme Court struck down local flow-control laws. The Court said that only Congress has

the power to grant flow-control authority. Since the 1994 decision, much of the waste is now going out of State, making it extremely difficult for counties to pay off their bonds.

If Congress does not act to allow those counties to pay off their debts through flow control, the taxpayers will ultimately and unfairly be forced to pay higher property taxes to meet debt obligations. Certainly, this is not an outcome this Congress should condone. This is a result that no one wants, yet it is already happening in my district. For example, in Wright County, the county commissioners were forced to raise property taxes by \$1.25 million in 1995 to make up for the shortfall of revenues caused by the diversion of waste out-of-state rather than to the county's compost facility. This is patently unfair, as it penalizes those who generate the least amount of waste by forcing them to pay higher taxes. With flow control in place, on the other hand, those who generate the most waste pay the highest fees, which is a fairer way to proceed. And in Martin County, commissioners are deciding whether to shut down their facility and just pass on the remaining \$7 million in debt to the taxpayers absent congressional action.

The legislation before the House is narrowly drafted. It is apparently intended to allow those facilities currently in operation to meet their debt obligations. Flow-control authority will expire after the bonds are paid off. Under the bill, an estimated 80 percent of the waste stream will be immediately available to the private sector. As grandfathered communities pay off their debt, the private sector will gradually assume responsibility for the remaining 20 percent of the waste stream. This compromise language was drafted after months of intense negotiations and is supported by local governments, the public securities community, and the waste industry. It should assure communities which have accumulated debt predicated on flow-control authority that they will have that important tool. At the same time, it ensures free-market competition in the solid waste industry.

Unfortunately, there may be some drafting glitches in this bill that may handicap some communities. If these glitches unintentionally exclude some communities from being covered by this important legislation, then those glitches must be fixed in the conference committee. I expect the Chair shares my commitment to pressing for any corrections that are necessary to carry out the full intent of this bill.

It is important that any legislation passed, balance the need to protect the environment with the need to promote free-market principles. I am confident that this legislation meets both of those tests. I do not believe this legislation goes far enough to protect taxpayer liability. However, it is a good basis to move forward on this issue and provide the beginning of relief to our local governments.

Mr. GEJDENSON. Mr. Speaker, I rise in support of S. 534. I urge my colleagues to support it.

The Supreme Court decision in the case of C&A Carbone, Inc. versus Town of Clarkstown has significant implications for municipalities and taxpayers across the country. The case invalidated the use of flow control to manage solid waste generated within the borders of a community. The implications are far reaching because according to the Congressional Research Service [CRS], 41 States exercise flow control either through statute or other means.

Many States have used flow control to ensure that municipal solid waste [MSW] is disposed of in accordance with several Federal laws and regulations.

Flow control authority is especially important to communities across my State of Connecticut. Many small towns in eastern Connecticut have contracts with solid waste disposal facilities which require them to deliver a minimum amount of waste or face financial penalties, also known as put-or-pay requirements. Towns entered into these agreements because they believed that flow control ordinances, authorized under State law, would allow them to meet their contractual obligations. Without flow control, residents in communities such as Norwich, Vernon, Groton, Tolland, Westbrook, and many others will be forced to pay higher taxes to pay penalties for failing to deliver the minimum volume of waste.

To make matters worse, the majority of solid waste disposal facilities in my State have been financed with State revenue bonds. Disposal authorities require a minimum amount of waste to operate at levels sufficient to generate revenue to repay these bonds. If facilities cannot make these payments, the bondholders could be forced to make the payments. According to Connecticut's attorney general, the State and its taxpayers could ultimately be responsible for 520 million dollars' worth of bonds. This would be fully disastrous for our State which is only beginning to fully recover from the recession.

S. 534 will provide relief to these communities. It grandfathers existing flow control ordinances, statutes, and agreements. It also allows communities to flow control certain recyclable material provided that the material is voluntarily relinquished. This is especially important because flow controlling common household recyclables in urban areas helps to subsidize recycling efforts in rural communities. The bill makes it clear that such authority does not place an undue burden on interstate commerce.

Contrary to what some opponents of the bill argue, this is a limited approach. Communities must have applied flow control through formal, legally binding methods on, or before, the date of the Supreme Court decision to qualify under the bill. In addition, flow control can only be exercised during the bond repayment period or life of a contract. As a result, flow control authority will expire when bonds are repaid and put-or-pay contracts have expired.

Mr. Speaker, I want to take a moment to comment on the charge flow control damages the environment. I am not aware of a single case where this argument has been proven conclusively. In fact, the vast majority of communities use flow control to direct waste to state-of-the-art disposal facilities. In my State, waste goes to transfer stations, landfills, and other facilities which meet strict State, Federal, and local standards designed to protect the air, water, and public health. Claims that flow control damages the environment are a red-herring designed to prevent Congress from providing important relief to small communities across the country.

Mr. Speaker, it is essential that the House pass this legislation today. If we fail to act, taxpayers across the country could face much higher tax bills as their communities are penalized for failing to meet their contractual obligations. This is a balanced bill which provides

needed relief while placing reasonable limits on future flow control authority. I urge my colleagues to support this important bill.

Mrs. ROUKEMA. Mr. Speaker, I rise in support of the Flow Control Act of 1996. Prompt House action on this legislation is essential for people and counties of New Jersey, and their continued ability to dispose of solid waste.

Although this is not the exact bill that I would have written by myself, the time has come for the House to take action on this very serious issue nevertheless.

Essentially, this legislation will restore to towns and cities the ability to enact flow-control ordinances, which dictate the terms and conditions of how solid waste, or garbage as most people call it, is disposed of in New Jersey.

In May 1994, the Supreme Court, in its *Carbone* versus Town of Clarkstown ruling, held that without congressional authorization, it was an unconstitutional restriction on interstate commerce for towns and cities to dictate the disposal of solid waste.

At that point in time, 17 of the 21 counties in New Jersey had issued more than \$2 billion in debt to finance the construction of solid waste disposal facilities. Thus, the Supreme Court's rulings immediately put all of these bonds—as well as the counties that issued them—in dire jeopardy, because the bonds had been floated based on the assumption that the ability to flow control waste would remain intact.

The bill before us today grandfathers State and local flow-control arrangements made prior to the *Carbone* decision, as well as any existing lawful contracts entered into between May 16, 1994, and November 10, 1995. The grandfathering is in effect for the life of a county's bonded debt or an existing solid waste disposal contract, whichever is longer.

In the 36 months since the Supreme Court's ruling, I have worked diligently with all of my House colleagues from New Jersey, most notably Congressman CHRIS SMITH, to have the Congress pass legislation that restores to our State the authority to flow control solid waste.

In fact, during the 103d Congress, a bipartisan effort to approve flow-control legislation as part of a larger solid waste bill was passed by the House, only to die in the Senate in the waning hours of the session. Although the need for flow-control legislation was urgent then, it is even more serious today, almost 15 months later.

Last summer, the Senate passed its own version of solid waste legislation. The House cannot afford to delay anymore. With this in mind, I urge my colleagues in the House to join me in supporting passage of this bill.

I recognize the fact that some of my colleagues are urging the House to defeat this bill. However, their opposition to this bill is not centered so much on the provisions of the bill before us today, as much as the process by which it has been brought to the floor.

In the public arena, there is the old cliché "Don't let the good be the enemy of the perfect." Clearly, today, the legislation before us today meets this test—it isn't perfect, but we know that it is good and worthy of our support. I urge my colleagues in the House to vote in support of its passage.

The SPEAKER pro tempore (Mr. YOUNG of Florida). The question is on the motion offered by the gentleman from Virginia [Mr. BLILEY] that the

House suspend the rules and agree to the resolution, House Resolution 349.

The question was taken.

Mr. MARKEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

GENERAL LEAVE

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 349, the resolution just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

LAND DISPOSAL PROGRAM FLEXIBILITY ACT OF 1995

Mr. BLILEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2036) to amend the Solid Waste Disposal Act to make certain adjustments in the land disposal program to provide needed flexibility, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2036

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Land Disposal Program Flexibility Act of 1995".

SEC. 2. LAND DISPOSAL BAN.

Section 3004(g) of the Solid Waste Disposal Act (42 U.S.C. 6924(g)) is amended by adding the following after paragraph (6):

"(7) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement (other than any applicable specific method of treatment) promulgated under subsection (m) if such waste—

"(A)(i) is managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342); (ii) treated for the purposes of the pretreatment requirements of section 307 of the Clean Water Act (33 U.S.C. 1317); (iii) or managed in a zero discharge system that, prior to any permanent land disposal, engages in Clean Water Act-equivalent treatment as determined by the Administrator;

"(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit;

"(C) has met any applicable specific method of treatment promulgated by the Administrator under section 3004(m) (42 U.S.C. 6924(m)); and

"(D) would not generate toxic gases, vapors, or fumes due to the presence of cyanide at the point of generation when exposed to pH conditions between 2 and 12.5.

"(8) Not later than 5 years after the date of enactment of this paragraph, the Adminis-

trator shall complete a study of hazardous wastes managed pursuant to paragraph (7) to characterize the risks of human health or the environment associated with such management. In conducting the study, the Administrator shall evaluate the extent to which the risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such Federal laws or programs. Upon completion of such study or upon receipt of additional information, and as necessary to protect human health and the environment, the Administrator may, after notice and opportunity for comment, impose additional requirements, including requirements under section 3004(m)(1) or defer management of such wastes to other State or Federal programs or authorities. Compliance with any treatment standards promulgated pursuant to section 3004(m)(1) may be determined either prior to management in, or after discharge from, a land-based unit as part of a treatment system specified in subparagraph (A) of paragraph (7). Nothing in this paragraph shall be construed to modify, supplement, or otherwise affect the application or authority of any other Federal law or the standards applicable under any other Federal law.

"(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibition under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well regulated under section 1422 of title XIV of the Public Health Service Act (42 U.S.C. 300h-1)."

SEC. 3. 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 as follows:

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

"(1) IN GENERAL.—Not later".

(2) By adding at the end the following new paragraphs:

"(2) ADDITIONAL REVISIONS.—Subject to paragraph (3), 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 prevent 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