

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

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

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

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

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

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

With that, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

#### SIXTY VOTES NEEDED ON CONTROVERSIAL ISSUES

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

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

#### INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

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

The PRESIDING OFFICER. It is the pending business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with today explicitly prohibits a Governor from limiting or prohibiting solid waste imports to landfills or incinerators that have a host community agreement to receive out-of-State waste.

In addressing the problem of interstate waste, I, as chairman, and Senator SMITH, likewise as chairman of the subcommittee, have tried to find a solution that will reduce unwanted imports yet give exporting States some time to reduce the amount of waste generated, to increase recycling, and to site new in-State capacity.

What we are trying to do is to take into account the large exporting States' problems, but we are not going to let them export forever.

What can they do? As I say, they can reduce the amount of waste generated, they can increase recycling, and they can set up their own sites in their States to deal with the problem—incinerators, landfills, or whatever they might be.

Title II deals with what is known as flow control. Flow control refers to the legal authority of States or local governments to designate where waste must be taken for processing or treatment or disposal. Over the past 20 years, State and local governments have used flow control as a financing mechanism for the development of municipal solid waste disposal facilities.

What am I talking about? I am talking about incinerators and landfills, for example. A municipality says, "We have to have an incinerator to take care of the waste within our municipality." So they say, "Well, we'll build one. And where do we get the money? We issue bonds. All right, but how are we going to make certain that we are going to have the waste flowing in and the so-called tipping fees?" So the municipality passes an ordinance which says: Everybody in this municipality must take trash to this central facility, and there they pay a tipping fee and you are not allowed to ship it elsewhere. BFI or other commercial firms cannot come in and say, "I'll take your waste for a lower price." No.

The way it works is the locals say you can only take it here, because that is the way we can pay off our bonds.

Flow control guarantees that a projected amount of waste will be received at a designated waste facility. Thus, a predictable revenue stream is generated for the retirement of the cost of the facility, the capital cost, and the operating expenses.

Flow control, as you can see, distorts the waste market by creating State or municipally controlled waste monopolies. Obviously, it becomes a monopoly. If the city of St. Louis says that no trash can be taken elsewhere but to the city incinerator, that is a monopoly. But the city of St. Louis might say, well, we spent a lot of money to build this incinerator and the only way we can pay off our bonds is with a guarantee flow from our municipality so when the big trucks, private trucks pick up,

they can only take it to the city of St. Louis incinerator.

Communities across the country have made investments predicated on flow control, but I, and likewise Senator SMITH and Senator BAUCUS, do not believe in perpetuating that kind of system into the future. Designating where waste must go will only drive up the cost of waste disposal for our citizens.

Not unlike the interstate transport of municipal solid waste and its implications on interstate commerce, flow control has emerged as a controversial legislative issue because of several recent Federal court decisions. Over the past 5 years, Federal courts have ruled that flow control laws in no fewer than four States violate the commerce clause of the U.S. Constitution. Similar to restrictions on interstate waste, flow control undermines the commerce clause by barring States and political subdivisions by placing undue burdens on interstate commerce.

This case all came up May 16, 1994, just a year ago. It was called the Carbone case, Carbone versus Town of Clarkstown, NY, which the Supreme Court decided just a year ago. The Supreme Court's ruling in the Carbone case has made it clear that absent congressional action, the exercise of flow control by States and political subdivisions is unconstitutional; it interferes with interstate commerce. The city of St. Louis no longer can say to all its citizens, "You must bring your trash to this central facility." That is interfering with interstate commerce and is unconstitutional, unless Congress decides otherwise.

So we are here today to override the constitutional provisions on State laws that interfere with interstate commerce and so as to provide new authority to the States. We are beset with communities, such as the illustrative one I gave of St. Louis, that has invested substantial sums of money in their incinerators and are counting on paying off those bonds through the fees that come in and suddenly the whole ground rules are changed by the Supreme Court decision. So they come to us and say, "Grandfather us. We issued those bonds dependent upon this flow of trash."

The Supreme Court has said Congress can do this. We can provide new authority to the States by declaring that the impact of such laws on interstate commerce is reasonable.

Should we move in this direction? I say yes, but a qualified yes. We should tread carefully, and this bill does that.

This Senator believes that Congress was granted the power to regulate commerce in order to ensure the free flow of goods and to protect against economic warfare among the States. We must not create a system that builds walls around our States and our communities. The economy of our country has been successful over the past 200 years because of the free flow of goods and services among our States. Let us

not go overboard today loading up this bill with discriminatory amendments. Unnecessarily restricting the interstate transport of waste and providing unlimited flow control will limit competition in the waste market. It will discourage the selection of less costly waste disposal options, and it will force duplicative infrastructure investments in our communities.

The intention of the bill before us today is to provide States and political subdivisions with flow control authority in order to meet financial obligations with respect to solid waste management facilities and to maintain their creditworthiness.

Title II provides limited flow control authority under certain conditions to States and subdivisions that have embarked on these commitments, these financial investments that, rightly or wrongly, were predicated on the expectation or implementation of flow control. They built these facilities and issued the bonds believing that what they were doing was right, was legal and was dependent upon restricting where the trash within their communities could go. It could only come to the municipal landfill or incinerator.

We are not, in grandfathering these provisions, reflecting any position on the appropriateness of flow control as a policy option. In each instance in which flow control authority is granted under this legislation, that grant is predicated on meeting debt obligations.

The final part is title III, which is called groundwater monitoring. In it, we reinstate a groundwater monitoring exemption for small landfills in the municipal solid waste landfill criteria. All of this reflects back on the Resource Conservation Recovery Act, section 4010(c). One of the most significant issues raised during the revision of the criteria was the impact on small community landfills.

As a result, the October 9, 1991, final rule for the criteria included a groundwater exemption of owners and operators of certain small landfills.

In January 1992, petitions were filed with the U.S. Court of Appeals for review of the new landfill criteria. The court, in its review, vacated the small landfill exemption as it pertained to groundwater monitoring.

The purpose of title III of the reported bill is to reinstate the exemption.

As many of us remember from the debate on interstate waste in 1992, the flow of garbage raises intense local and regional concerns. In some areas of the country, this seemingly mundane issue is politically potent. Who would have thought that so much heat could be generated by garbage disposal?

Mr. President, I believe this legislation represents a good-faith effort to bring the various parties together on the issues of interstate waste and flow

control. It provides additional authority to waste importers without overriding the needs of waste-exporting States.

It protects past community financial investments with respect to flow control; yet, it provides opportunities for the private sector. I commend the Senator from New Hampshire and look forward to working with him and other Members of the Senate to approve this legislation in an expeditious fashion.

Now, Mr. President, I would like to yield the floor, without losing the same, to Senator BAUCUS for his opening statement.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. I am pleased to be here considering legislation to give our States and communities the right to say "no" to out-of-State trash. That is basically what the major portion of this bill is all about—that is, enabling States to say, "We do not want this stuff and we have the right to say, no, we do not want the garbage." We need this legislation to allow States to do that, and that is basically because of the U.S. Constitution, commerce clause, article I, which basically states that only Congress can regulate interstate commerce, States cannot. So we are now acting in Congress.

Mr. President, we have been working on this issue for a long time—6 years. We have explored a lot of options, we have held many hearings, and we have debated this issue frequently. We passed interstate waste bills in each of the last three Congresses here in the U.S. Senate. I believe it is finally time to finish the job.

I will have more to say on that subject later. Let me say a little bit about this legislation.

Garbage is big business. Each year, the United States throws out more than 200 million tons of municipal waste. That is enough to build a 30-foot wall of trash from Los Angeles to New York. About 1 ton in 14 goes to a landfill or incinerator in another State. Nearly every State is a seller or a buyer in the municipal waste market; 47 States export some garbage, and 44 States import some garbage.

Some interstate movement of garbage makes sense. In Montana, for example, two towns have made arrangements to share landfills with western North Dakota towns. Some trash from Wyoming areas of Yellowstone Park is disposed of in Montana. These arrangements save money for the communities involved. And the establishment of shared regional landfills can be a policy that does make sense.

But it only makes sense when the communities involved agree to it. No place should become an unwilling dumping ground. Nobody should have to take garbage they do not want from another community.

The legislation before us takes us a step closer to preventing Montana and other rural States from becoming a national dump. It lets Governors freeze

imports at 1993 levels, and stop new imports if affected communities want them stopped. It is not perfect, but it is a good start.

Mr. President, I want to congratulate the Senators who have worked so hard over the years on this issue trying to develop a balanced bill. Senator COATS has been particularly helpful and particularly committed to enacting interstate legislation. Senators LAUTENBERG, MOYNIHAN, and our new chairman, Senator CHAFEE, and many others have worked tirelessly.

This issue has been around Congress long enough. I think it is time to stand up for the small towns and finish the job.

Senator LAUTENBERG, the ranking member of the relevant subcommittee, is now in the Budget Committee and is not able to be here. He worked hard, along with Senator SMITH, and at a later time he will want to make a statement.

Mr. CHAFEE. Mr. President, I yield to the distinguished Senator from New Hampshire.

Mr. SMITH. Mr. President, I thank Chairman CHAFEE.

Mr. President, this bill is a compromise bill. It is not going to please everyone, and maybe that is the reason why it is a good piece of legislation, I do not know. But a little more than 2 months ago, the Superfund Waste Control and Risk Assessment Subcommittee, which I chair, held a hearing to consider proposals to regulate the interstate transportation of solid waste and whether to provide local control authority to State and local governments.

The controversy here surrounding the interstate transportation of municipal solid waste is one that the Senate has been considering since 1990. Today, 47 States export approximately 14 to 15 million tons of municipal solid waste per year for disposal in other States—14 to 15 million tons.

While short-distance waste exports have been occurring for some time, the development of a long-haul waste transport market has been a more recent development. With tipping fees as high as \$140 per ton in some large cities, compared with the national average of between \$30 and \$50 a ton, there is an incentive, obviously, from municipalities to transport these wastes by truck and rail to distant States for some permanent disposal.

That is a pretty big incentive. Anywhere from \$30 to \$50 to \$140 a ton is a huge disparity.

Those States that have recently been the recipients of large amounts of long-haul waste have raised a concern that their limited capacity for solid waste is being filled and that they have become a dumping ground for somebody else's waste problems. So over the last few years, 37 States have passed laws to prohibit, limit, or severely tax waste that enters their jurisdiction. However, almost all of these laws have been struck down by the Supreme Court for

violating the commerce clause of the Constitution.

So while there has been a recent easing of disposal and the capacity to dispose nationwide, there is still significant concerns about the future consequences of this long-haul system. Congress needs to define what the future is, whether we are going to honor the interstate commerce clause or not, or whether we are going to adjust it or micromanage it, or do something with it. But there are people out there who are impacted, as we speak, by the fact that this decision is still in limbo.

So to address these concerns, Congress—specifically the Environment and Public Works Committee—has been attempting to strike a balance between importing and exporting States. Last year, the Committee on Environment and Public Works, of which I am a member, unanimously reported S. 2345 to address this problem. A number of Members, both on and off of the committee, including very prominent Members who will be involved in this debate over the next couple of days, like Senators COATS, SPECTER, LAUTENBERG, MOYNIHAN, and others, took a very active role in attempting to develop a compromise that importing and exporting States could live with. While the Senate easily passed this compromise by a voice vote on September 30, 1994, it was the end of the session and time ran out before this issue could be finally resolved.

So this legislation has been a balancing effort, a real balancing effort. In regard to the interstate transportation of municipal solid waste, we have tried to carefully balance the issues of both the importers and the exporters, and nobody is happy with the interstate language. Perhaps that indicates to me, as I said earlier, that we might be on to something.

The bill that Senator CHAFEE and I introduced incorporates the interstate waste bill that unanimously passed the Senate last year.

Let me repeat that, because I think in the debate, as the chairman, Senator CHAFEE, knows, it is getting lost. What Senator CHAFEE and I are offering in the area of interstate waste transfer unanimously passed the Senate last year. That is what we put in our bill. That is simply all we are offering this year.

Mr. CHAFEE. Mr. President, could I ask a question to make a point?

When it passed unanimously last year, that was when the other party was in charge, had the majority. So not only did all of the Democrats vote for it in a bill that was drafted by a majority of the Democrats in the committee and approved on the floor, but every Republican likewise voted for it.

So two different parties have worked on this legislation over 2 separate years and come to exactly the same result. Having passed unanimously last year, I certainly hope we can get on with the same language, get the same

approval this year of the same language.

Mr. SMITH. I thank Senator CHAFEE for making that point. He is correct. This is not a partisan issue. It is a carefully crafted compromise to try to accommodate some genuine concerns out there among many individuals.

Again, in the Senate, controlled by the Democratic Party last session, it was passed unanimously. The Republicans are now under control, and we are offering the same language again on interstate transfer. There is not any reason why we should have a huge fight here, unless people, for whatever reason, are trying to capitalize on something or take unfair advantage.

We felt it was fair and we continue to feel that now. Senator CHAFEE and I are in agreement on that, and I know there will be Senators from both the importing and exporting States that will try to weaken or strengthen, depending on their position, the interstate portions of this bill. The bill is in two sections—both interstate as well as flow control. There are two sections to the bill.

My response is, we struck this compromise last year, all parties agreed, and there have been no significant changes. What would be the fight?

Let me move to the issue of flow control, because we have heard statements from a variety of individuals before our committee, very prominent individuals. Senator BILL COHEN, Governor Christine Whitman of New Jersey and others, Congressman CHRIS SMITH of New Jersey, who asked Members to move quickly to address the issue of flow control. And we did. We moved very quickly at the behest of those individuals.

Frankly, ever since we moved quickly at their behest, we have been getting beat about the head and shoulders by some who asked Members to move at their behest. A number of witnesses expressed a strong concern that without prompt congressional action to provide for continued authority in this area, many communities would be in danger of having their bond ratings lowered. That is true.

For those of my colleagues who may not have heard me speak to this issue on the subject of flow control, let me be clear. This bill is in my subcommittee, the Superfund Committee, which I chair. It is in my jurisdiction.

I tried to craft a compromise, which I think we did successfully, to get the bill to the floor and help those people who did have a problem. I oppose flow control. I think it is wrong. I do not support walking away from the interstate commerce clause of the Constitution. I believe that we ought to stand firm on that.

There is a situation that has developed, as Senator CHAFEE has already outlined, where individuals—municipalities—have let bonds, and there are people who stand to lose on this. So we tried to craft a compromise. In that compromise, we basically grand-

fathered, with reasonable grandfathering provisions, those communities.

I do not believe that flow control is necessary to deal with the problem of solid waste. We do not—I think the private sector can do it just fine. I do not believe the free market is broken. There is no evidence that the free market is broken in this area.

There are many people who are involved in the transport of this material, and I refuse to believe that recycling cannot be accomplished without flow control. I simply do not believe it. I do not think there is any evidence to say that. But some States and some communities got themselves in a bind, and we are trying to help them out of that bind.

Instead, we are being attacked for trying to help them, in many ways by those who wanted it and now have dramatically changed or moved their position. That is the reason why nothing has happened, because everybody wants their position.

This is a compromise. That is the point. I am sympathetic to the communities that feel they need congressional assistance on this matter. There are some. If we are starting from ground zero and there were no bonds let, no contracts signed, Mr. President, I would be here on the floor saying no flow control, period.

However, it was because of this plea, that Senator CHAFEE and I moved forward to introduce this legislation, S. 534, that would provide the flow control authorities to those municipalities that imposed flow control and either constructed or began construction of facilities prior to May 15, 1994, the Carbone decision.

While our bill provides limited grandfather protection for flow control, it also—and this is the key issue—it gives finality. This is final. At the end of 30 years it is over. There is no flow control anymore. We now have the free market kick in. We have help during this 30-year period which I think is more than ample. There are not any bonds I am aware of beyond the 30-year period. So precisely 30 years after the legislation is adopted, no further flow control measures will be allowed—none, zero, zilch.

Both my subcommittee as well as the full committee moved very quickly to mark up this legislation. We did so primarily to help those communities whose bond ratings are endangered as a result of the Supreme Court's recent action. They are. We agree they are. They should not have gotten themselves in that position, but they did. Rather than get into whether or not they should not have gotten into that decision, we did not use that as a criteria. We simply said for whatever reason, they made some decisions that maybe they should not have made, but they are in that position so we will help them out.

Speaking for myself, I am very uncomfortable with providing flow con-

trol authority. I do not want flow control authority. I felt that the bill of Senator CHAFEE and myself struck a fair balance in accommodating those who are strong proponents of States rights and those who are strong proponents of the free market. It is a compromise for both of those positions.

During the course of the last 2 months, I have continued to work to accommodate Senators who had concerns about various proceedings in the bill. Everyone wants a fix. We are now hearing from the sublime to the ridiculous. "Well, we might have a contract in 5 years, we are thinking about it. Could we be exempted?" No, absolutely not. We are not going to exempt them, if I have anything to say about it. That is wrong. It defeats the spirit and intent of what we are trying to do.

We cannot satisfy everyone. We have tried. We tried hard to address the legitimate concerns, and we will address those concerns. Some of the amendments we will accept. Some we will not.

As a result of our efforts, the EPW Committee ordered this reported as amended on March 23 by a rollcall vote of 16-0. Again, the whole sequence of events here: Last year it was unanimous, no objection by Republicans or Democrats in the Senate in a Democrat Congress. We have a Republican Congress, it passes the committee 16-0.

That says something about this bill. It says that those people out there who are trying to dramatically alter the bill are simply on a course that is not going to be in the best interest of those people who are sitting out there right now waiting for help, which is why we mark this bill up.

I have to say if we ask Senator SMITH, "What are your priorities in the subcommittee of the Superfund?" It is Superfund reform. That is what we are working on. We have had six hearings on it. We have another hearing tomorrow. We had one yesterday. We will try to draft a bill in the next 6 weeks to 2 months, and that is a high priority.

Because people came to me, including the ranking member of the subcommittee, Senator LAUTENBERG, and outlined these problems, we agreed—Senator CHAFEE and I and others—that we would bring this bill to the floor as quickly as possible. We have done that and, frankly, with great difficulty, simply because we have been focused on the Superfund issues. I did not anticipate the amount of amendments and the amount of opposition that would be generated on this bill.

But let me just make this very clear to my colleagues. I believe this is an emergency bill for those communities or individuals or entities that have let those bonds. There are communities in a number of States that need quick passage of this legislation to provide them with the financial relief for their previously flow-controlled facilities. If this bill gets bogged down because of amendments, everyone trying to get

their way—they want total flow control or no flow control or no grandfathering or we move into the interstate waste transfer and they want no exporting or total exporting or the Governor having the total right to make decisions and communities having no rights or whatever—whatever the position may be, if they insist on that, this bill will get bogged down. It will not get passed by the end of this week, this legislative week, on Friday. And the budget will be up next week.

After that, I cannot imagine where there will be a window of time to deal with this again. So I appeal to my colleagues who desperately want this bill to help them and their communities in their States with this flow control to not hold this bill up by adding amendments or trying to add amendments that may in fact derail it. Because once it is derailed, in my opinion, it is going to be a long time until it gets back here.

It is the leader's decision, of course, when it comes up. But the point is there is so much on the table after Monday when the budget comes up, any discussion of flow control, with all due respect, is going to be way down here when the budget and the numbers in that get out and the American people begin to interact with their Senators and Congressmen on that.

So I think there is going to be a lot of discussion. If Members choose to oppose this or dilute it or whatever they choose to do, or even—maybe they would like to strengthen it—they will do it at their own peril. This issue, which has been simmering for the last 6 or 7 years, will continue to remain on the back burner during the 104th Congress.

I hope that does not happen, but the choice is clear. Either vote to pass this bill which has the overwhelming majority support, maybe unanimous support, in the Senate and protect those facilities that come within the scope of this bill, or risk it all to protect a small handful of communities that do not fit within this legislation, who are trying desperately to create a situation where, if they want to have flow control at some point in the future, they can have it, or if they have let a little bit of money out there somewhere, a relatively insignificant amount, and they are not sure what they are going to do—that violates the spirit and intent of this bill and I hope it does not happen.

We will be down here as long as it takes to deal with the amendments. I appeal to colleagues, if they have amendments, let us try to work them out. We will try to work out the ones we agree with, and if we can agree with them, we will accept them. If they violate the spirit and intent of what we tried to do in drafting this bill, we will oppose them forcefully on the floor of the Senate.

Let me conclude with a brief summary as follows. Communities out there, as far as flow control is con-

cerned, are in a tough situation. According to the public securities situation, \$20 billion in bonds have been issued to pay for flow-controlled facilities. That is not the fault of the U.S. Senate. The interstate commerce clause, I believe, was in effect when that happened. But somehow it got ignored and they got into this bind and they have \$20 billion in let bonds.

We are going to try to help them and we do help them with this legislation. We grandfather them, we protect them. We protect the investors, the bondholders, the taxpayers, the individuals out there who have in whatever way participated in these bonds.

As a result of the Carbone decision, the Supreme Court invalidated flow control, so it is in limbo. Here we are in limbo. Nobody knows what to do. They do not know whether to proceed or not to proceed, because they do not know what Congress is going to do in regard to the interpretation of that decision.

Six incinerators in New Jersey have had their bond ratings lowered, and I am sure that is the case in other States, because flow control was invalidated. Again, we are trying to help those communities. That is the goal. Dozens of incinerators and landfills are in immediate danger if flow control is not reauthorized immediately, and every bond based on flow control authority is threatened, every one. Every single bond out there is threatened unless we do something soon. The longer it goes on the worse the threat gets.

So the bill provides a narrow flow control authority to protect those bonds. Again, it is a compromise. It is a fair compromise. It is not my position totally. I would be for no flow control. That is not my position. But it is a compromise position to help those individuals.

With that, Mr. President, I yield the floor and indicate I hope we could get some time agreements and some reasonable information regarding these amendments. If Members who have amendments could come to the floor and offer them in a timely manner so we do not get bogged down and not pass this bill by the end of the week.

Mr. CHAFEE. I thank the distinguished Senator from New Hampshire.

#### PRIVILEGE OF THE FLOOR—S. 534

Mr. CHAFEE. Mr. President, I ask unanimous consent James McCarthy, of the Congressional Research Service, be granted the privilege of the floor for the pendency of S. 534.

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

Mr. SMITH. Mr. President, I ask unanimous consent Mr. Paul Longworth, a U.S. Department of Energy employee assigned to my staff for a period of 1 year, be granted the privilege of the floor for the duration of the consideration of S. 534.

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

The Senator from Oregon.

#### ENDANGERED SPECIES ACT REFORM AMENDMENTS

Mr. PACKWOOD. Mr. President, I am pleased to join with my colleagues as an original cosponsor of the Endangered Species Act Reform Amendments of 1995. This bill is the result of several years' work. The bill represents the culmination of a broad, grassroots effort to bring balance to the Endangered Species Act. This coalition consists of miners, ranchers, loggers, refiners, manufacturers, the fisheries industry, and organized labor.

There are problems with the current Endangered Species Act. The Endangered Species Act is an act that has gone awry. It is wreaking havoc on our communities and economies, particularly in the Pacific Northwest, but increasingly nationwide. It is devastating entire regions and industries. In the Pacific Northwest alone, since the spotted owl was listed as threatened in 1990, millions of acres of Federal timberland and thousands of private acres have been set aside. It takes about 1,300 acres for a pair of owls to breed, so we are told. We have set aside thousands and thousands and thousands of acres in hopes of the owl being saved. No guarantee it will, no guarantee it will not, but a tremendous dampener on legitimate economic activity.

It has impacted tens of thousands of human beings and hundreds of rural communities. The estimates on job losses range from a low of 35,000 to a high of 150,000 in the Pacific Northwest.

I was here when the act was originally passed, and I remember what our intention was. We were thinking "a" project: a dam, a road, a canal versus a species. When you read the debate, when the original Endangered Species Act was passed, I do not recall the word "ecosystem" being mentioned in the debate. None of us was thinking of an entire section of the country being affected by one species. Yet this act is now being used as a tool by environmental groups to further their agenda of locking up not only all public land but much private land as well.

I want to emphasize again, this act applies to private land. For a long time I think people thought this was a public land issue in the West, that while it might limit the activities of the U.S. Forest Service or the Bureau of Land Management or the U.S. Park Service, it did not affect private land. It does. It affects your right in ownership. It can diminish the value of your land in every sense. The Government can take your property under the current Endangered Species Act and not pay you. Private property owners are increasingly losing the right to use their property as they intended.

Let us look at the economic cost of the Endangered Species Act. Edward O. Wilson, a renowned entomologist, has observed that there may be something