U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING APRIL 4

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending April 4, the United States imported 8,330,000 barrels of oil each day, 1,534,000 barrels more than the 6,796,000 imported during the same week a year ago.

Americans relied on foreign oil for 56.5 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 8,330,000 barrels a day.

Mr. President, I yield the floor at this time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NUCLEAR WASTE POLICY ACT AMENDMENTS

The Senate continued with consideration of the bill.

Mr. MURKOWSKI. Mr. President, in the course of resolving the status of Senate bill 104 and recognizing that we have just concluded a vote and the vote was 72 to 24, and it was a tabling motion which would have, had it passed, invited every State Governor to prohibit the transfer and transportation of nuclear waste through those States, I will discuss a few States at random, Mr. President. I hope the Members in their offices will reflect on these charts because there are just a few States where the problem exists today. The point of this examination is to simply state that the alternative is to leave the waste in these States or provide an alternative.

Now, again, I want to refer to the major chart which shows where the waste lay currently. There are 80 sites in 41 States. The commercial reactors, shut down reactors, spent fuel on site, commercial spent fuel, nuclear storage facilities, it is non-DOE reactors, it is Navy reactor fuel, it is Department of Energy—all in spent nuclear fuel and high-level radioactive waste. That is where it is, Mr. President.

The question is, Do we want to leave it there or do we want to move it? Now, the next chart again will attempt to show our experience in moving waste through the country because we have done it for an extended period of time. We have had 2,400 movements all over the country. As soon as the chart comes, it will show that it has moved through all States with the exception of South Dakota and Florida.

Now, again the choice that we have relative to an alternative is leave it where it is. We have here the chart which shows the transportation routes of the waste moving across the United States, and it has not been a big deal. The reason is because there have not been any incidents. It has moved safely. It has been moving in containers subject to State and Federal law from 1979 to 1995. So to suggest that it cannot be moved safely or to suggest that we are suddenly thrust upon some kind of a crisis because we are about to move the waste to a temporary repository in Nevada—facts dictate otherwise. It is moved by rail, indicated by the red, it is moved by highway, as indicated by the blue network. Every State but Florida and South Dakota have escaped. That is the reality.

As we look at the argument here, to a large degree, the transportation argument has little validity. This would be the same type of waste that we would be moving from our reactors. Where do we propose to move it? From all the sites I showed on the previous chart, to one site out in the Nevada test site used for over 50 years for more than 800 nuclear weapons tests. I have yet to have anybody come to the floor and suggest there is a better place.

I recognize the reality that nobody wants it but we will look how this dilemma affects a few States. Take Connecticut, for example—and it is significant in Connecticut because nuclear energy makes up 70 percent of the energy that is produced in Connecticut—those ratepayers have paid $521 million over the last 12 years, or thereabouts, into a fund which the Federal Government has taken and put into a general fund for the specific purpose of taking Connecticut's waste. That was a contractual commitment. It is due next year. Connecticut should, under a contractual agreement, be relieved of its waste. The ratepayers have paid, as I said, $521 million. In Connecticut, there are four units, the Connecticut Yankee and the Millstone 1, 2 and 3. Those reactors have stored 1,505 metric tons of waste. It is stored in Connecticut. If this bill does not pass, it will stay in Connecticut. A portion of it is Department of Energy defense waste.

Now, the significant thing here, Mr. President, is that Millstone 1 would be full by 1998. Now what does that mean? It means their storage, the pools adjacent to the reactors, will be full. What will they do? Either build more storage and get new permits, because the Federal Government is not going to be able to take it, or the other alternative is to shut down the reactor. Millstone 2 and 3 will be filled up by the year 2000. What will they do then? Shut down the reactor? Haddam Neck will be filled up in the year 2001. These are factual circumstances surrounding the state of the industry in Connecticut.

Now, if I was representing Connecticut, I would want to get the waste out of there, because two things will happen. One is if this bill passes, the waste will get out. If it does not, the waste is not going to get out, and when these reactors shut down because storage is at capacity the waste is still going to be there. It will be sitting there until somebody does something with it. And to do something with it, you have to move it. Otherwise, it will stay there.

Again, we have a location. I am sure my friend is getting tired of me showing the desert of Nevada where for 50 years we have had testing.

Now, looking to another State, moving south a little bit, the State of Georgia. Now, Georgia is dependent 30 percent on nuclear power. The residents of Georgia paid $304 million into the waste fund. They paid that basically to the Government to take the waste. The Government cannot do it. We have four units, Hatch 1 and 2 and Vogtle 1 and 2. The waste stored in Georgia is 1,182 metric tons at the Savannah River site. The waste stored is 206 metric tons over on the South Carolina-Georgia border. Hatch 1 and 2 reactors will be filled by 1999, and Vogtle 1 and 2 will be filled by the year 2008. Again, we have a case where State ratepayers have paid it, and what have they gotten from the Federal Government? Nothing, other than a chance to continue to store their waste. How long? It is indefinite if this bill does not pass, because nobody can agree on where to put it. The alternative is to leave it where it is, and it will stay there after the reactors have shut down because we do not have anyplace to put it.

Moving on, Mr. President, to Illinois. This is even a bigger set of realities. The State of Illinois is 54 percent dependent on nuclear power. You say ''dependent''—what does that mean? It means 54 percent of the energy comes from nuclear power. There are alternatives, sure, coal-fired, oil-fired plants. They all cost money, all take permitting time. Illinois has paid into the waste fund, the residents have paid $1.36 billion, paid to the Federal Government to take the waste next year. The Federal Government will not do it, and they have 13 units in Illinois: Braidwood 1 and 2, Byron 1 and 2, Clinton, Dresden 2 and 3, LaSalle 1 and 2, Quad Cities 1 and 2, and Zion 1 and 2. They have 5,215 metric tons of waste in Illinois. A DOE research reactor is fueled there, with an additional 40 metric tons. A State that is 54 percent dependent.

Looking at their reactors when they have to shut down, because the storage pools are filled: Dresden 3, the year 2000. Dresden 2, the year 2002. Clinton,

the year 2003. Quad Cities 1 and 2, the year 2006. Zion 1 and 2, 2006. LaSalle, 1 and 2, 2013. Byron 1 and 2, 2015. Braidwood 1 and 2, 2019. That is a reality. What will Illinois do? Perhaps they will try and buy energy from other States, but that will deplete, if you will, the availability of supply. This is a crisis.

This is the reality, that somebody else before this body had another plan to relieve, if you will, these States of the storage that is licensed. They cannot just store beyond their capacity. They store to their designing capacity. They are prepared to do that but they exceed that capacity in those years. And their ability to increase, that is going to be very, very difficult because for one thing the environmental community is opposed to any nuclear power generation and is going to object. They do not give any credit for the contribution that nuclear energy brings to air quality, including lessening emissions and reducing the greenhouse effect. It is one thing to criticize, but the environmental community has an obligation to come up with alternative and, their alternative is ''no nuclear.'' They like alternative energies, which I do, too, except they are not ready and they are not economic and are not here.

In the meantime, the residents of Illinois are entitled to and will demand energy. What will happen in Illinois is they will have to shut reactors and maybe they will not have air conditioning. Maybe they will have brownouts. This is an obligation that we have in this body to address now because if you do not move it out of there it will stay, the reactors are shut down, and they are stuck with storing high-level energy that is not producing anything, not producing power anymore, and the dilemma is, well, that is a problem for Illinois.

We have an opportunity to correct that today. That is what Senate bill 104 is all about—taking that waste. Remember, when you talk about transportation, to take it, you have to move it. We have moved it safely, and we can.

Now, in the State of Louisiana, my good friend, Senator Bennett Johnston, whom I worked with so closely over the years on the Energy and Natural Resources Committee—and I might add Senator Johnston supported this legislation the last time around because he is a realist and he recognizes we have a crisis. We have to address it. We cannot simply ignore it. The difficulty is we have to put it somewhere. That somewhere, unfortunately, is the desert in Nevada.

In the case of Louisiana, the ratepayers have paid $135 million over 12 to 13 years. There are two units, River Bend 1 and Waterford 3. How much waste? Mr. President, 567 metric tons. When do they run out of capacity? Waterford 3, in the year 2002. River Bend 1, the year 2007. The State is 24 percent dependent on nuclear energy. You can say, well, why the hurry? Remember, we have been 15 years in this process now. Yucca Mountain, when completed, will not be ready until the year 2015, so if we do not address this today, there is no answer. We are just putting it off.

Now, looking at Michigan, Mr. President. Ratepayers in Michigan have paid $510 million into the fund. There are five units: Big Rock Point, Cook 1 and 2, Fermi; 1,500 metric tons of high-level waste are stored there. This State, 26 percent, a quarter of the power, is generated from nuclear energy. Palisades goes down in 1992; Big Rock Point in 1997; Fermi 2 in 2001; Cook 1 and 2 in 2014.

If I was from Michigan, I would be very concerned about the reality of two points. One, continuing to have a source of power within my State, which means my reactors have to continue to operate, which means I have to relieve my storage capacity. I would be very concerned. I would be very concerned about losing that power base and what I am going to do without it. I would be even more concerned if I didn't get some relief and I could not move it and it just sat there after my reactors shut down. That is what is going to happen in Michigan, and in every other State that is in a crisis relative to storage. As I have indicated, there are several.

Let's look at New Jersey. The ratepayers in New Jersey have paid $382 million into the waste fund. What have they gotten for it? Absolutely nothing. The Federal Government promised in 15 years to have a sufficient repository ready by next year to take the waste. The citizens of New Jersey have acted in good faith. They paid the price. The Federal Government has not honored its commitment. They paid $382 million. They have four units: Hope Creek, Oyster Creek and Salem 1 and 2. They have 1,369 metric tons of waste sitting in New Jersey. Their only hope to get it out is to have a designated repository, designated in time to address reality. Reality is that Oyster Creek is in crisis now. That is full now. What are they going to do? Hope Creek will be full in the year 2007, Salem 1 in the year 2013, Salem 2 in 2018. New Jersey is 62 percent dependent on nuclear power. If I was from New Jersey, I would be pretty concerned about that. I would be pretty concerned about reality, pretty concerned about the Federal Government committing to its contractual agreement so that I could relieve my dependence before I have to shut down, and pretty concerned that, if I don't get it, I am going to be stuck with the waste in my reactor pools with no relief in sight and no generating capacity. I would say New Jersey is in a crisis.

Well, let's go out West, to Oregon. It is a little less out there. Ratepayers in Oregon have paid $76 million. They have one unit, Trojan. Waste stored is 424 metric tons. Across the Columbia River from Oregon, which divides the two States, we have the Hanford site. Waste stored there is 2,133 metric tons. Trojan is closed for decommissioning. What does that mean? It means the waste is still there. I don't know whether the delegation from Oregon is satisfied to just leave it there. But unless we have a place to put it, it is going to stay there. We have proved that we can transport it throughout the country. I am sure that the State of Washington would not be anxious to take it. Hanford already has over 2,000 metric tons. So here, again, is a case of another State that acted in good faith. The ratepayers have paid in. The reactor is closed for decommissioning. There is no place, Mr. President, to take the waste.

The last exhibit—and I could go on and on, but this gives you an idea of the crisis proportion we are in—the State of Wisconsin, the dairy State. Nearly a quarter dependent on nuclear power—22 percent to be exact. The residents paid $219 million into the waste fund. What do they have to show for it? Nothing. The Federal Government, when it takes this money, doesn't put it in escrow to have it ready to meet its obligation. It goes into the general fund. So what we would have to do now is appropriate funds to meet our obligation. Nevertheless, it has been paid in. There are three units: Kewaunee and Point Beach 1 and 2. About 967 metric tons are stored in Wisconsin. The status of the Point Beach 1 and 2 plants, I gather, is that they are full now. They have a crisis there right now. Kewaunee will be full in the year 2001.

I don't know what the residents of Wisconsin know or whether they understand or whether they care. But Point Beach 1 and 2 is at capacity. They had to initiate some relief by dry cask storage adjacent to the reactors. This is something new and innovative that takes licensing. Well, you could say, ''let's leave it there.'' If you want it left in Wisconsin, then don't vote for S. 104. Kewaunee, in the year 2001. If I were from Wisconsin, I would want to move this stuff out. I would want the Federal Government to respond to the $219 million from the ratepayers. I would not want to run the risk of leaving it there. Now we are taking it out of the pools and putting it in areas adjacent to the reactor, dry cask storage. The State's electricity relative to its dependence is 22 percent.

So, there you have it, Mr. President. Those are a few reasons why it is critical that we act now, a few reasons why it is critical that these States and the Members of this body from those States recognize that this offers relief from leaving it where it is and putting it out in the desert where we have a trained work force, we have security, we have the very real likelihood that the permanent repository is going to be determined to be there. But it is not going to be ready until the year 2015. So this provides the relief that is needed now, and it provides a responsible consideration relative to the necessity of a decision being made now.

I think it is fair to say, finally, Mr. President, that to not act on this matter now is to not only disregard the responsibility we have here to minimize the risk to the taxpayers relative to the liability that is going to pile up next year when we can't take the waste, but I think it is also very important to recognize that we are doing a disservice to these States by not providing them with an alternative other than leaving the waste where it is, in 41 States at 80 locations.

I wish there were some other way that we could put it in some other area that would not raise opposition. But I can tell you, Mr. President—and you have observed the debate—the reality is that whatever State we put it in, we are going to get a similar reaction—an extended objection from representatives of that State. Let's recognize the problem for what it is.

Where, of all the places, is the best place to site a temporary repository? I will conclude by referring again to the area that has been polluted for 50 years with 800 nuclear weapons tests, an area that meets as many of the geological applications that are preferred relative to storage, both permanent and interim, of any that have been identified. So let's not wait any longer, Mr. President. I know there are a few more amendments that are pending on this legislation.

I will conclude my remarks by thanking the Chair, and I will indicate that it is my intention to proceed through the remaining amendments with the cooperation of my good friends from Nevada.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Nevada.

Mr. REID. Mr. President, I want to briefly respond to my friend, the manager of this legislation. I say that it appears that, if we continue to work the way we have today and yesterday, we should be able to work something out on a final disposition of this at a time when the leaders wish that to be done.

The one thing I want to make very clear, Mr. President, is that we have to respond to a statement of my friend from Alaska that this is a crisis that we are dealing with. The only crisis we are dealing with is the pocketbook of the utilities—not that they are going to be burdened with huge costs, but it may cut down some of their profit margin. These companies are making huge profits, as was indicated in the chart yesterday, which is now spread across the record of this Senate. The utilities are making huge amounts of money to generate electricity by virtue of nuclear power.

There is no crisis, as far as needing to undercut or circumvent the present law. The present law says that at Yucca Mountain in Nevada—they are characterizing a mountain, Yucca Mountain. In that mountain, we have a huge tunnel that is being bored by a big boring machine. The cost of that hole in the ground is $60,000 a foot. That has now gone almost 5 miles through that mountain. When I say ''through the mountain,'' it is in a horseshoe shape almost 5 miles long.

This Government appropriated almost $200 million last year for the purposes of continuing the characterization of that mountain. The work at Yucca Mountain has been going on now for more than a decade. It seems to me rather strange that we would waste all the money, billions of dollars, to determine if in fact that site is suitable.

What this legislation does is simply say that we are going to pour a cement pad in the middle of the desert and dump this stuff on top of the ground, not protect it from the weather, the elements, or anything else.

Mr. President, I say to my colleagues, who would you rather trust, the hundreds of organizations that oppose this legislation, including the Baptist Ministry and the United Transportation Workers, who have to deal with products on a daily basis traveling across this country, and the Missouri Alliance, which I read from this morning, organizations like that, or nuclear utilities? Nuclear utilities are the only organizations pushing this legislation.

I have mentioned a number of times that one of the most important elements of policy is public confidence that the Government knows what it is doing and their interests are being accommodated. Nuclear waste disposal efforts have, time and time again, demonstrated that we, the Government, don't know what we are doing. We have rewritten policy any number of times. We have abandoned the notion of characterizing more than one site because it was too difficult to decide which sites to study. We have changed the acceptance criteria in midstream because it was too difficult to prove that Yucca Mountain would be acceptable.

I just think that this policy is bad. To think that we are now going to transport this stuff over 3,000 miles because utilities want us to do it is ridiculous. We can't transport nuclear waste. We don't have the containers to do it safely. We don't have the transportation routes to do it safely. Why are we doing this mad rush to satisfy the gluttonous utilities? I don't think there is a good reason in public policy to do so.

So I hope that my colleagues will understand that there is no emergency. There is no crisis to transport nuclear waste. As indicated by one of the sponsors of this legislation, the senior Senator from Idaho, it is safer—I am not paraphrasing it—it is safer to transport nuclear waste than it is to buy a carton of milk at the store and take it to your home. It is safer to transport nuclear waste. Well, if that is the case, then I think we should go one step further in safety and leave it where it is. If the cooling ponds are filled and there is no more room for spent fuel rods, then do what they are doing at a number of sites in this country. Reuse the dry cask storage—use the containment policy. It is cheap and extremely efficient while we await the determination as to whether or not Yucca Mountain is a suitable site.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I thank the Chair. I know this all gets pretty arcane and esoteric. But I think the presentation made by the Senator from Alaska would maybe give the impression that somehow ratepayers would be victimized under the present system. I think some clarification needs to be made. I think it is important to understand that each of the reactors that he referenced will have a period of time in which they shut down. That is because each reactor is licensed for a fixed period of time. So if one looks at all of the reactors across the country, the last reactor to shut down is in the year 2033. And between now and the year 2033 all of the reactors which have been referenced in the charts which the Senator from Alaska has called to our attention will shut down depending upon the period of their license.

So the point I seek to make is that over the next 40 years, or 36 years, each of the reactors will be licensed.

I mention that because the responsibility of the nuclear waste fund exists long after the last reactor shuts down. That is to say there will continually be a responsibility until it is estimated the year 2071 to deal with the issue of nuclear waste because as reactors close down fuel will be moved into the ponds or the pools. Then ultimately in theory they will be transported to a permanent repository.

So you can see it here. This is the mill fee presently under the law. Each utility is paying one mill for each kilowatt-hour generated by a nuclear reactor. That is the current payment schedule. That mill fee payment will decline. As you can see here, here is 1995, but you can see going out to the year 2033, or thereabouts, it will be zero. The reason for that is that the mill fees being paid into the nuclear waste trust fund are only generated by kilowatt-hours generated by nuclear reactors. So you can see here that the balance of the nuclear waste trust fund peaks up here sometime around the year 2010. So in all of this buildup referenced in the fund, that buildup is going to be necessary because of the outyears, after 2033 when not 1 cent will go into the nuclear waste trust fund because there will be no reactors generating electrical energy. You will need the money to take care of it in the outyears.

So what is occurring now was contemplated in 1982 when the Congress passed the Nuclear Waste Policy Act; namely, that there would be a mill fee payment system in which the mill fees would go into the nuclear waste trust

fund, that it would build up to a substantial surplus, and that surplus would be needed in the outyears when the responsibility to handle the waste continues even though no money is going into the nuclear waste trust fund.

A ratepayer can make a legitimate complaint or a grievance in 1998, as we have all agreed on the floor. There is no permanent repository open. There is no type of storage that will be available under any scenario. Whatever ill-conceived form S. 104 could possibly be enacted in, there is no way that there will be any storage space available at any kind of an interim facility in the year 1998.

Having recognized that, this Senator has offered legislation over the years that says in effect that after 1998, when utilities may incur additional costs because they had expected that a nuclear waste repository would be opened, a nuclear utility could incur additional expense. I concede that. The additional expense may be that they have to provide some dry cask storage, and they may have to reconfigure the space where they currently have the fuel assemblies racked. There could be some additional costs. And that would be unfair to the ratepayer because the system of mill fee payments did contemplate that in 1998 there would be storage facilities open.

So the solution to any contention of inequity is to simply say that, if the legislation which I have introduced on a number of occasions is to the extent that a utility incurs any additional expense after 1998 because the permanent storage is not available, that utility should be able to offset its additional costs by reducing its payments into the nuclear waste trust fund. That is fair, Mr. President. But the notion that somehow the utilities have paid all of this money in and they are not getting what they bargained for is simply not the case. It is true that there is no permanent storage in 1998. We recognize that in the legislation which I have introduced, and we simply provide the utilities an offset.

I urge my colleagues, those who may have an interest in this, to look at the ''Nuclear Waste Fund Fee Adequacy and Assessment.'' This is a document prepared by the U.S. Department of Energy, Office of Civilian Radioactive Waste Management. That has the full schedule of what is contemplated by way of receipts into the fund as well as the expenses that would be incurred after 2033.

Finally, let me make a point. If we are truly talking about being financially responsible, this fund, according to the General Accounting Office, is underfunded by as much as $4 billion to $8 billion. That is to say every bit of this buildup, plus an additional $4 billion to $8 billion, will be necessary in order to handle the waste out to the year 2071 when there will still be responsibilities under the time schedule.

So I think it is misleading to suggest that in some way the utility ratepayers are being dealt with unfairly. They certainly would be dealt with unfairly if they are not able to offset the expense.

I must say I am rather surprised that this legislation, S. 104, does nothing to deal with the fact that there will be additional costs incurred by the utilities after 1998. That is the legislation that has been pending before the Congress for a number of years.

I would also point out to my colleagues that as recently as this past month the newly confirmed Secretary of Energy has indicated he is willing to sit down and talk to the utilities about compensation in the form of additional expenses that they may incur. So when you look at it in that context, this has nothing to do with unfairness to the ratepayers. It has nothing to do with double payments. We can and should responsibly deal with that issue. This is again the siren's call that the industry has invoked now for two decades. ''We just want to get this stuff moved. Let's get it on a train. Let's get it on a truck. Let's get it out of town today, tomorrow, and we could care less what may occur.''

I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I will be very brief. There are a couple of points I want to make relative to the continued debate. One is the reference to the profits of the utilities. Most utilities are heavily regulated, and as a consequence the States have a considerable influence on determining the return on investment. I am not going to argue the merits of just what that return is. I think it varies within the industry, and it varies by the producer of power, their power lot, and it has to do with incurred debt and the ability to amortize that debt. But one thing that wasn't mentioned is that these utilities have provided reliable power to the residents of the individual States since they came online— reliable power from a source that emitted no emissions, contributed nothing to greenhouse gases, and basically the cleanest source of power that we know today on a significant magnitude to maintaining air quality. So the environmental contribution by nuclear power from the standpoint of its emissions is really beyond compare.

So let's acknowledge, indeed, that the utilities have done a job. They have provided power which is reliable and clean. Without them there is no considered replacement that has been identified.

The issue of containers continues to come up. If we can ship high-level waste from Europe to the United States, military waste from Europe to the United States and to Russia—we watch the British, we watch the French, we watch the Japanese move waste from Japan to France for reprocessing and back—to suggest that we are not going to build safe containers is simply unrealistic.

The point has been made that we are in some of these reactors storing our waste on site in casks on the surface suggests just one thing. We are preparing to basically leave it where it is, leave it with 41 States at the 80 sites, and that is the answer that the other side has for relief. Leave it all over the place. If it is safe enough to leave at a reactor in a cask on the surface, certainly it is safe enough to leave it out in the desert in an area where we have had 50 years of nuclear explosions, where we have a work force that is trained, security force, and so forth.

So I just do not buy that argument. That is just an argument for leaving it where it is, and that is just not good enough. It is not good enough for the Senator from Alaska, it is not good enough for the States that are affected.

If you look at the schedule, the viability assessment is anticipated to be completed by the end of next year. I am told the odds of that being favorable are about 90 percent. This is relative to a permanent repository at Yucca being completed.

So when that viability assessment is done next year, we will begin to initiate the process of developing the EIS on the temporary repository. Then the President has to determine the viability. That is going to take place in 1999. If the Nevada test site is determined it will be determined at that date, approximately March 1999, and by April 1999 the license application will be presented to the NRC and we anticipate the EIS to be completed on the temporary repository by the year 2000. Construction can begin when the EIS is done. Construction would begin, we anticipate, when we get the license from the NRC, in roughly 2001, and we could accept the casks coming from the nuclear reactors into the temporary repository out in the Nevada desert no later than the year 2000.

So there is the schedule relative to the timeframe under which we can begin to accept spent fuel into the Nevada desert temporary repository. The alternative to that—and that is what the other side would have you suggest—is to wait until Yucca Mountain is done, and that is the year 2015.

We have a theme here that has been around for a long time and we continue, and it is here today and it is a legacy of broken promises. I think it is time that the Government start keeping its promises. It was 15 years ago that Congress passed a law that made a deal with America's electric consumers, and here was the deal. People who bought electricity from nuclear power plants would pay a small additional charge on their electric bills. In return, the Department of Energy would build storage and disposal facilities for used nuclear fuel from the nuclear power plants that supply 22 percent of our Nation's electricity—22 percent—second only to fossil fuels, coal. These facilities, as I have indicated, would be

ready in 1998, at which time the Department of Energy would begin removing used fuel from the nuclear power sites.

The consumers paid their money, but as it now stands the DOE is not going to hold up its end of the bargain.

I think it is a travesty that we still are here today trying to get the Department of Energy to fulfill its responsibility to build a facility to manage this radioactive waste. In 15 years and nearly $13 billion in consumer funding for this program, it is pretty hard to see the progress that we have made. All consumers have in exchange for the billions of dollars so far is a legacy of broken promises from the Federal Government. Worse yet, the Energy Department says it cannot begin accepting fuel in the permanent repository until the year 2015, and that is if everything goes as planned.

If you will bear with me, I would like to wander through the legacy of broken promises. Let us go back to 1984. This was a clear promise. Don Hodel, then Secretary of Energy, affirmed that the Energy Department is obligated to begin accepting spent nuclear fuel from nuclear power plants in 1998 whether or not a permanent disposal facility is ready.

Nineteen eighty-seven, 3 years from 1984. Congress then designates Yucca Mountain, NV, as the only site to be evaluated—the only site to be evaluated. Congress, that is us, Mr. President. The Energy Department announces a 5-year delay in the opening date for a disposal facility, from 1998 to the year 2003. We went on from 1987 to 1989, another delay, another promise. The Department of Energy announces another major delay in the opening date for a permanent disposal facility until the year 2010 this time.

Well, moving on; 1991 comes. We have mounting concerns. And the first sign of concerns appear over the Energy Department's ability to meet its obligation under the Nuclear Waste Policy Act. So the State of Minnesota tells Energy Secretary James Watkins that it is highly probable that the Department of Energy will experience significant delay in meeting its obligation to begin taking high-level radioactive waste in 1998.

May 1992. What do we have? More promises. Secretary of Energy Watkins tells Minnesota that the DOE is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act. The Department has sound, integrated program plans that should enable them to begin to receive spent fuel at an MRS—monitored retrievable storage—facility in 1998.

December 1992, yet another promise. Energy Secretary Watkins acknowledges that attempts to find a volunteer host for an MRS facility have not succeeded. Another disappointment. He promises whatever is necessary to ensure that the Energy Department is able to start removing spent fuel from nuclear power plant sites in 1998.

Well, moving on to May 1993, we get an affirmation from Secretary of Energy O'Leary that there is a moral obligation that the Department of Energy has to the electric utilities and their customers. And I quote: ''If it does not have a legal obligation, then it has a moral obligation.''

Well, I do not know whether you can make soup out of that. In May 1994, notice of inquiry. The Department of Energy publishes a notice of inquiry to address the concerns of affected parties regarding the continued storage of spent nuclear fuel at reactor sites beyond 1998. The energy agency says in its preliminary view it does not have the statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or suitable storage facility.

In May 1994, 14 utilities and 20 States sue the Department of Energy. A coalition of 14 utilities and public agencies in 20 States file separate but similar lawsuits seeking clarification of the Department of Energy's responsibility to accept spent nuclear fuel beginning in 1998.

April 1995. Here we go. Here is the Government's first acknowledgement of their policy. In April 1995, after starting this in 1984, 11 years, it comes out and says they have no obligation to take the fuel. Talk about a copout. They state that the Federal Government has no legal obligation to begin accepting high-level waste in 1998 if a repository is not open—according to the Department of Energy's interpretation of the Nuclear Waste Policy Act and its contracts with utilities.

Fortunately, the court took another view. In July 1996, the U.S. Court of Appeals ruled that the Department of Energy is obliged to take fuel in 1998, and it is a legal as well as a moral obligation. So we finally got some action. That came out in July.

In December 1996, the Department of Energy decides not to challenge the court ruling and admits failure and admits liability. The DOE acknowledges that it will not be able to meet its commitment to take waste in 1998.

January 1997, the DOE's liability. Well, 46 State regulatory agencies and 33 electric utilities file new action for escrow of nuclear waste fees. That means they did not want them to go into the general fund anymore. They want this to go into an escrow fund so they will be available for the Federal Government to meet its obligation and order the DOE to take spent fuel in 1998.

In March 1997 the court rejects the Department of Energy motion to dismiss before it is filed. The court tells the Department of Energy that a motion to dismiss would be inappropriate in this case and sets the case for damages and hearing of the merits.

The Energy Department must have clear direction to develop an integrated system that will fulfill its obligation to manage the Nation's commercial and defense nuclear waste. S. 104 provides that by requiring construction of a central storage facility for used nuclear fuel and continued scientific investigation of a proposed repository at Yucca Mountain. The legislation also includes appropriate safeguards for the public and the environment at every step and provides consumers with a solution for the billions of dollars they have already paid into the program.

Mr. President, I urge my colleagues to support this comprehensive solution to one of the Nation's most pressing environmental issues and end the string of broken promises.

AMENDMENT NO. 36 TO AMENDMENT NO. 26

Mr. MURKOWSKI. I send an amendment to the desk. It is an amendment to the Murkowski substitute beginning on page 49.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 36 to amendment No. 26.

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

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

The amendment is as follows:

Beginning on p. 49, strike line 11 and all that follows through line 21 on p. 52 and insert the following:

''(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

''(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annual level of appropriations of expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

''(i) any unobligated balance collected pursuant to this paragraph during the previous fiscal year; and

''(ii) the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

''(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

''(C) For purposes of this paragraph, the term 'offsetting collection period' means—

''(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

''(ii) the period on and after October 1, 2003

''(3) NUCLEAR WASTE MANDATORY FEE.—

''(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

''(i) 1.0 mill per kilowattt-hour generated and sold, minus

''(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

''Provided, that if the amount under clause (ii) is greater than the amount under clause (1) the fee under this paragraph shall be equal to zero.

''(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are

specified in subsection (c)(2). In making this determination the Secretary shall—

''(i) rely on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

''(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

''(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

''(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

''(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

''(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Chair recognizes the junior Senator from Nevada.

Mr. BRYAN. Mr. President, the amendment being offered by the Senator from Alaska is designed to address a point of order that would lie with this bill with respect to the budget process. We have heard almost endlessly on the floor that the poor ratepayers are not getting this, they are not getting that. We have tried to respond by saying we think the ratepayers have a legitimate issue to raise after 1998, and that there should be a reduction in the payments into the fund because some additional costs are going to be incurred before a permanent repository can be made available under any scenario that one would choose to fantasize.

This is kind of another budget gimmick, and it is technical, but let me just say very briefly that what this does is it deals with nuclear waste that was accumulated prior to 1982, in which the utilities would incur an obligation to pay for that. There were several options available. A number of utilities elected not to make that payment until nuclear waste was actually being received by the permanent repository. So we are not talking about an inconsequential sum, and ratepayers may be interested to know that their utilities, or at least some of them, are going to be paying $2.7 billion before they would otherwise have been required to do so under the previous agreement to deal with the budget. This is designed, it is a budget gimmick, so it does not result in being vulnerable to a budget point of order.

It does, apparently—we are going to have this reviewed—it does, apparently, deal with the budget point of order the senior Senator from Nevada and I were about to make. But I think the point needs to be made, anybody who has this compassion and concern for ratepayers, what this does is trigger the obligation to pay that $2.7 billion before any interim repository could possibly be opened anywhere, under any scenario, before any permanent repository.

Somehow I do not see how this is a better deal for the ratepayers who originally were led to believe that they would have until after nuclear waste was initially received before this $2.7 billion obligation.

So, it looks to me like the ratepayers are on the short end of this one.

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Nevada.

Mr. REID. Mr. President, if there is anyone in this body who is concerned about dollars and budgetary numbers, they should be concerned about what is taking place here. They should run from this bill. This is another reason that we should be so thankful we have a constitutional form of government and we have a President who is willing to veto bad legislation. This is bad legislation, getting worse every hour we spend on this floor.

Now the numbers are changing. We are not talking about a few dollars here and a few dollars there; we are talking about $2.7 billion that the ratepayers are going to have to cough up early. This is another example of the gluttonous nuclear utilities taking advantage of the general public. We know we do not have the numbers, as has been proven, because the utilities seem to have a lock on this bill. They are the ones marching it through this Congress. But 16 blocks away, on Pennsylvania Avenue, we have someone who is going to veto this legislation. That is all we have left, because it is very clear that the nuclear utilities have a lock on this legislation that is getting worse by the hour.

Mr. MURKOWSKI addressed the Chair.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, I am going to call for a voice vote, but let me very briefly explain our position with regard to the action that is pending before the Senate.

This provision requires the payment of a one-time fee due to be paid in fiscal year 2001. The one-time fee is the fee paid for fuel used before the Nuclear Waste Policy Act was enacted. Most have already paid this fee. The timing of the payment was optional: Immediately or when the fuel was taken. If paid when the fuel was taken, then interest must be paid by the utilities. Most utilities that have not paid the fee put it in escrow, and this simply requires that the fee be turned over to the Federal Government so it can be used as an offset to the user fee implemented by S. 104.

So the amendment simply corrects a technical issue with regard to the fee provision of the substitute. We had been previously advised by CBO that the provision had no Budget Act impact and, as a consequence, this action basically makes us in conformance with the Budget Act.

Mr. BRYAN. Mr. President, I certainly am not going to object to a voice vote on this, but might I ask the chairman a question on this?

I do not intend to offer an objection, but I think it would be helpful for those who have been listening to the debate, am I not correct this one-time fee, which I am told is $2.7 billion, was not due until the time at which the utilities actually had the waste removed, which would have been 10 or 15 years, whatever the case may be? This does require an accelerated payment by them in order to comply with the Budget Act; is that not correct?

Mr. MURKOWSKI. If I may, I am told that was the deadline for paying the

fee. But if you paid earlier, you do not have to pay the interest.

Mr. BRYAN. But the option was whether the utilities—if I am correctly informed, and I certainly stand to be corrected—can take the option not to pay, which would mean that it would be years before that payment would be due.

Mr. MURKOWSKI. That is true, but they would have to pay the penalty of the interest.

Mr. BRYAN. They would have to pay the interest.

Mr. MURKOWSKI. So it is beneficial, since in most cases they have it in escrow, to simply pay it.

Mr. BRYAN. I simply say, not to be argumentative with the chairman, but if the utilities had elected not to make that payment—one would assume they are acting in their own self-interest—this will now compel them to make the payment before they have the benefit of the interim or permanent storage. That is the only point I sought to make.

Mr. MURKOWSKI. My understanding is, if the utilities agree to pay it, it seems to be in their own best interest to pay it and be relieved of the interest. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 36 offered by the Senator from Alaska.

The amendment (No. 36) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. For the benefit of all Senators, I should advise them it is our intention to try to work toward a time agreement with some finality relative to the pending amendments.

It is my understanding that there are two Wellstone amendments that are left, one Bingaman amendment——

Mr. REID. Would the Senator yield?

Mr. MURKOWSKI. I will be happy to.

AMENDMENTS NOS. 29 AND 30, EN BLOC

Mr. REID. I, Mr. President, pursuant to a request from Senator WELLSTONE, who is unable to be here today because of floods in his State, offer at this time, with unanimous-consent, two amendments. It is my understanding that it is part of the unanimous consent agreement these amendments will be debated on Monday.

I send these two amendments to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. WELLSTONE, proposes, en bloc, amendments numbered 29 and 30.

Mr. REID. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

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

The amendments (Nos. 29 and 30), en bloc, are as follows:

AMENDMENT NO. 29

(Purpose: To ensure that emergency response personnel in all jurisdictions on primary and alternative shipping routes have received training and have been determined to meets standards set by the Secretary before shipments of spent nuclear fuel and high-level nuclear waste)

On page 22 of the substitute, line 5, after ''(3)(B)'' insert ''until the Secretary has made a determination that personnel in all state, local, and tribal jurisdictions on primary and alternative shipping routes have met acceptable standards of training for emergency responses to accidents involving spent nuclear fuel and high-level nuclear waste, as established by the Secretary, and''.

AMENDMENT NO. 30

(Purpose: To express the Sense of the Senate regarding Federal assistance for elderly and disabled legal immigrants)

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE REGARDING FEDERAL ASSISTANCE FOR ELDERLY AND DISABLED LEGAL IMMIGRANTS.

It is the sense of the Senate that Congress should take steps to ensure that elderly and disabled legal immigrants who are unable to work, will not be left without Federal assistance essential to their well-being.

Mr. MURKOWSKI. I wonder if we could get a short explanation.

Mr. REID. I also ask unanimous consent that the amendments be laid aside.

The amendments—one of them deals with immigration and the other deals with setting standards for training of people who deal with nuclear waste.

Mr. MURKOWSKI. I thank my friend for the explanation. I have no objection.

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

Mr. REID. I would also say to my friend, the manager of the bill, that it appears that we are trying to work to get a finite number of these amendments, and, hopefully, after the next vote, maybe we can have an agreement—although I guess we are not going to have any votes today, so I withdraw that—maybe after completing the debate on the Thompson amendment.

Mr. MURKOWSKI. If I may interrupt to complete my understanding, for the benefit of other Senators, we have the two Wellstone amendments pending at a time to be determined by the leadership, which is intended to be debated on Monday. Is that correct?

Mr. REID. Yes. Will the Senator yield?

Mr. MURKOWSKI. Yes.

Mr. REID. The Senator from Minnesota has indicated he would be willing to accept a time agreement of 1 hour on each amendment, equally divided.

Mr. MURKOWSKI. I am sure we would accept that. And then there is the disposition of the Bingaman amendment.

Mr. REID. It is my understanding, I say to my friend from Alaska, there are two Bingaman amendments. He may not offer both of them. But he would like to reserve two. He also indicated that he would be willing on those amendments to agree to 1 hour evenly divided.

Mr. MURKOWSKI. On the two amendments?

Mr. REID. That is right.

Mr. MURKOWSKI. That would also take place Monday.

Mr. BRYAN. If the Senator would yield, I am informed that Senator BUMPERS has an amendment, the nature of which I do not know. And Senator DOMENICI has two amendments that I have just been made aware of. I did not know that until a few moments ago. This is just to inform the chairman. There are some things we are going to have to work through.

Mr. MURKOWSKI. I was distracted. Did the Senator from Nevada say Senator BUMPERS?

Mr. BRYAN. Senator BUMPERS has an amendment, and there are two amendments that may—I underscore the word ''may''—be offered by the Senator from New Mexico, Mr. DOMENICI. I do not know what his intent may be with respect to them. But apparently those are among the amendments that have been filed, I would advise the chairman.

Mr. MURKOWSKI. I thank my friend.

It is my understanding, then, there will be an attempt to get a time agreement so we can conclude disposition of all amendments at a time Monday that would be determined in a time agreement and that the leadership would affix a vote on those amendments which require it; is that correct?

Mr. BRYAN. Yes.

Mr. MURKOWSKI. With that understanding, it gives the Members an idea of what we might anticipate for the balance of the day.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

AMENDMENT NO. 37 TO AMENDMENT NO. 26

(Purpose: To provide that the President shall not designate the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON], for Mr. FRIST, for himself, and Mr. THOMPSON, proposes an amendment numbered 37 to amendment No. 26.

On page 28, line 16, after ''Washington'' insert ''or the Oak Ridge Reservation in the State of Tennessee''.

Mr. THOMPSON. Mr. President, I rise to offer this amendment today because I am concerned about that section of the bill dealing with what happens if Yucca Mountain is not deemed to be a suitable permanent repository to store spent nuclear fuel. In that event, under this bill, all work on an interim storage site in Nevada would cease and the President would have 18 months to name an alternate site for an interim storage facility.

What I am concerned about is that the bill goes on to say:

The President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for the construction of an interim storage facility.

So the President will have one less option when he is looking for alternate sites under that scenario. My colleagues from South Carolina have offered an amendment which has subsequently been adopted that would exempt two sites in their State from consideration as well.

Our concern is that Tennessee has been selected before as a site for an interim storage facility. However, it was later soundly rejected as a storage site both by the Congress and the courts. We may be facing the possibility that Tennessee again will be selected as an interim storage site under the scenario I just outlined.

In 1986, the Department of Energy recommended three sites for the location of interim storage facility for spent fuel. All three of those sites were in Tennessee. Given that history, we may be at the top or near the top of the list again, especially if Hanford and Savannah River are taken off the table. Removing Hanford and Savannah River from consideration makes it more likely that Oak Ridge would be selected as an interim storage site.

We should make it clear again today that Tennessee is not an appropriate site to store this waste, just as Congress did in 1987. I assume we will do the same thing today. Oak Ridge itself is a population center. The city of Oak Ridge has 28,000 residents. Oak Ridge sits directly between two major population centers in our State—Knoxville, with a population of 175,000, and Chattanooga, with a metropolitan area population of approximately 424,000—and it is just 175 miles from the capital of Tennessee, Nashville.

Oak Ridge also sits at the center of three major interstate highways—I–40, I–70, and I–81. Thus, it is an extremely heavily trafficked area.

In addition, Oak Ridge is just 5 miles from the Melton Hill Dam and just 15 miles from Norris Dam. In other words, it sits in close proximity to major waterways and dam facilities.

I would like to think that my concern is not well placed, and it may not be well placed, but as this deliberation has proceeded, it has become more and more a matter of relevant concern. So out of abundance of caution, I think this Congress should make clear what a past Congress made clear—that Oak Ridge is not a suitable place as a storage facility. For this reason, I urge the adoption of the amendment. I yield the floor.

Mr. MURKOWSKI. Let me advise the Senator from Tennessee, we are prepared on this side to accept his amendment. And I am not sure what the disposition is on the other side.

Mr. BRYAN. The Senator from Nevada would not be prepared to accept it and will be asking for a rollcall vote. I would like an opportunity to respond to some of the comments the Senator from Tennessee made. If he needs a little more time, I am happy to allow him to go first, but I want to respond to some of his comments that he made on behalf of his amendment.

Mr. THOMPSON. No. I am finished at this time.

If the Senator has comments to make, please do so.

Mr. BRYAN. I thank the Senator.

Mr. President, I understand the concern that my friend from Tennessee has. It is a concern that Nevadans have had for many years. Let me say where I respectfully disagree with him is that if he is concerned about the movement of nuclear waste to an interim storage facility, the most effective protection that the State of Tennessee and all States have is the existing law—is the existing law.

There are two provisions in the existing law. One of them is specifically in reference to the Senator's concern from the State of Tennessee and, indeed, is a product of the Tennessee State delegation's actions on the floor a decade ago.

Under the present law, no interim storage anywhere in any State can be located until an application for license of a permanent repository. So his State under the current law is absolutely protected, as is every other State. And the reason why that was inserted in the legislation at that time was a policy consideration.

Our colleagues then recognized the great temptation that an interim or temporary facility might become a permanent repository de facto, a concern which the Senators from Nevada are very gravely concerned about. So every State that is concerned about it being a potential target for interim storage under the present law has no need to worry at all. That is the ultimate protection.

The law right now precludes the location of interim storage until the application for licensure for the permit. You cannot have a better protection than that. So if that is the Senator's concern from the State of Tennessee, as I know it is the Senators' from many States, that is the best protection that the State of Tennessee and others have.

Let me just explain to my colleagues what the Senator from Tennessee is asking. The Senator from Tennessee, in the amendment, is asking that his State be exempted from any consideration.

Under the provisions of S. 104, if the President finds there is a reason to reject the permanent storage at the Yucca Mountain facility, then the President is given a time to choose an alternative location for interim storage. And if he does so, that decision has to be approved by the Congress at a subsequent time.

So, in effect, the President would be required to make a choice as to another location around the country, and that decision would have to be ratified by an act of Congress, signed into law by the President.

We believe that S. 104 is unnecessary and unwise, so that our view is that we ought not to be in that position in terms of the legislation, that we ought to reject that because it is unnecessary and unwise and we ought to proceed on the present course, which is to continue the site characterization process that is occurring at Yucca Mountain.

But let me just say, again, with great respect to my friend, who I admire greatly, from Tennessee, he is asking his State to be exempted, even though in 1987 when the Department of Energy—one can assume based upon scientific considerations—had made a determination that three sites in Tennessee would be the best sites in the country for interim storage. If you look at the history of this act, that is the essence of what has gone wrong, why this act, which was originally conceived with some sense of balance and fairness, has gone so far astray.

The original law in 1982, signed into law by the President in 1983, was that we would search the entire country and look for the best site for a permanent repository.

That is pretty hard to argue in principle—nobody exempt, everybody on the board. And we look for the best site. It was also contemplated there would be some regional balance, that we would look into different types of geology—granite, salt domes, welded tuff, perhaps others as well—and that then three sites would be studied, and the President of the United States, from those three sites, would make the decision that has at least some pretension of being rational and fair and scientific.

Here is what happened: Not science, but politics. The 1984 election illuminates the year after the Nuclear Waste Policy Act is enacted into law. Immediately, the incumbent President and his supporters assured people in the Southeast, ''Don't worry. We'll never choose the salt domes.'' It had nothing to do with science. That is all politics. That was one of the first corrupting acts that in effect destroyed any pretense of science, balance, fairness, objectivity.

And then fast forwarding, the Department of Energy began to gather data, and their internal memorandum said, look, the folks in the Northeast are going to object to this, there will be strong political opposition, and the Department of Energy unilaterally

abandoned any pretense of a search for a site in a granite formation. Nothing to do with science. Absolutely nothing.

Then what remained of the act was that we would provide the President of the United States, whoever that person might be, with three choices. That was emasculated in 1987, when the ''Screw Nevada'' bill was enacted, having nothing to do with science. Nobody argued Yucca Mountain should be considered solely and exclusively to the exclusion of everything else except the nuclear utilities and their supporters.

I do not believe you can find a scientist worth his or her salt that will tell you that we ought to have all of our nuclear eggs in one basket. It would be better to have some options on the table to consider other locations and then let the process go forward from there. That is what has made this entire siting process so utterly devoid of any kind of credibility, because the politics has worked through it.

We need the South, so we assured them, in 1984, you will be home free. The DOE looks at political opinion and reaction in the Northeast—no, we are sure not going to look at you. And then the utilities come in and say, look, we do not like the idea of having three sites studied; let us just study the Nevada site—having absolutely nothing to do with science.

Now, fast forward to 1997. I invoke the aid of deity in praying to God we do not get S. 104 enacted into law, and I believe we will not because of the President of the United States, who is taking, in my judgment, the right policy and trying to restore some credibility to the process. However, if S. 104 were enacted into law, the President of the United States is mandated, if he finds Yucca Mountain unsuitable, to make another choice for interim storage. That would have to be submitted to the Congress for approval.

Now, what we are saying is no, we should not allow the President to make that choice.

We ought not to exempt Tennessee, as my friend from Tennessee would have us do, or this morning as our colleagues from South Carolina got their State exempted, and previously the State of Washington. That has absolutely nothing to do with science. That has everything to do with politics.

If you believe for one moment that S. 104 has any merit at all—and in my view it has none, and I oppose it strenuously on a number of grounds that we will get into at a later time during the debate—should not the President of the United States, who is being directed to make other selections with respect to interim storage, have a full range of discretion as to where he should tentatively make that choice, which is always subject to approval by the Congress. We have the right to disagree. But, in effect, what we want to do with these series of amendments that we have dealt with this morning—the Washington exemption, the South Carolina exemption, and now the exemption of my friend from Tennessee—we want to load the deck. It is a stacked deck. ''You cannot look at us; we are in Tennessee.'' ''You cannot look at us; we are in South Carolina.'' That does not have any policy justification at all, in my judgment.

I understand the concern of the able Senator from Tennessee about transporting all this nuclear waste through his State. It would be substantial and extensive. That is why I wish he were allied with us, because if he were, the State of Tennessee and other States would be immune and protected from the irresponsible course of conduct which S. 104 directs us to do.

It is for that reason I find myself in opposition to his amendment, No. 1, on the basis of policy; and No. 2, I believe that makes this legislation, if it is possible, even less defensible than it is in its present unamended form.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Thank you, Mr. President. I appreciate my able colleague's comments. He is eloquent in defense of his position. I respectfully disagree with him with regard to the history of this matter in some respects. It seems often when we agree with a decision, it is based on scientific evidence and when we disagree, it is based on politics.

In this particular matter, the decision not to have the Tennessee site designated as a storage facility actually was also addressed by the courts at that time, and they determined that the DOE at that time in making that decision, violated the Nuclear Waste Act in failing to consult with the State before selecting the sites in Tennessee. So before Congress even got involved in the matter, the courts had addressed the matter and enjoined the DOE from putting the facility in Tennessee.

In listening to my colleague, I am more and more concerned because he makes a case, for his belief anyway that Tennessee apparently would in fact be the logical place once you eliminate all of the other sites that have already been eliminated.

Talking about objective criteria, I think population is one. As I mentioned, the city of Oak Ridge is a city of 28,000 people, in sharp contrast to a place like the Nevada test site, which has a population density of one-half person per square mile. That is subjective criteria. This is not raw politics by any stretch of the imagination.

I am not saying that this site-by-site consideration is the best way to proceed. We simply find ourselves in a situation where we do not want the dagger pointed at the heart of the State of Tennessee, when all the dust settles and find, instead of a place where the facility ought to be, which is embodied in the body of this bill, that we find someplace that the Congress has already rejected in times past as not being meritorious.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if the statement of the Senator from Tennessee is valid, and I am confident that it is, then the Senator should oppose this legislation, because if he believes that there is potential damage to residents of the State of Tennessee, then certainly he should understand that there is significant risk to the people of Nevada. The State of Nevada, people think of as a big wasteland. The fact of the matter is that not far from the Nevada test site are over a million people.

We have significant problems. But not only are there problems in Tennessee and in Nevada; what about the entire route of this transportation? If the Senator from Tennessee is concerned about transportation of nuclear waste within the State of Tennessee, he likewise should be concerned about the transportation of nuclear waste across this country.

We have established, Mr. President, that there are significant groups who are opposed to this legislation. We have yet to find anyone other than utilities companies who favor this legislation, and the utility companies that favor it are necessarily nuclear facilities, with some exceptions.

We have talked this morning and been given a few examples on this floor about the Baptists who oppose this legislation and the United Transportation Workers and an organization in Missouri. We could give hundreds of examples. But I thought it would be appropriate because people believe—I hope they believe—if you are going to side with the Baptists or the nuclear utilities, you should go with the Baptists. But in case someone is concerned about that, we will look at the Evangelical Lutheran Church in America. They wrote a letter to every Senator in this body on March 20 of this year, where they have said, ''Don't support S. 104.''

> In addition to the risks of S. 104, it is objectionable because it weakens environmental standards for nuclear waste disposal by carving loopholes in NEPA, preempting other environmental laws and limiting licensing standards for a permanent repository.

That, Mr. President, really says it all. If, on March 20, they felt that environmental standards were being weakened and loopholes were being carved into the legislation, look what this legislation now is. Every hour that goes by there is a new loophole. We raise a point of order with the Budget Act. Well, what we will do, we will make the utilities and the ratepayers pay $2.7 billion a little early. We want to carve another loophole here for Washington. We will do one for South Carolina, one for Tennessee.

The Evangelical Lutheran church in America opposes this legislation, not because of the Senators from Nevada but because of the Members of their ministry throughout this country. This is some of the worst legislation—and I have been in this Congress for going on 15 years; I know a lot about this legislation—that has ever come through

this body. You talk about special-interest legislation; this is it. The Congress has been appropriating for about 15 years a couple hundred million dollars a year, sometimes more than that, examining, characterizing Yucca Mountain. This legislation just basically throws it out. That is what the Evangelical Lutheran church says. This legislation wipes out the legislation for a permanent repository, which is the only hope of having a safe place to store it if, in fact, that can happen.

If the Senator from Tennessee is concerned about safe transportation, he and the other Members of this body should revisit what has taken place in Europe. I repeat, 30,000 troops and soldiers to carry six nuclear waste canisters 300 miles in Germany—30,000 troops.There were one hundred seventy people injured. Many went to the hospital. And it cost $150 million to move it at the rate of 2 miles an hour. In addition to that—you think we have concerns about Chattanooga and Oak Ridge being close to a proposed nuclear site?—look what happened in Germany. I am reading from the letter.

> The transport of these 6 casks required 30,000 police and $150 million, more than 170 people were injured, more than 500 arrested. Even the police have called for an end of the shipments. They no more like arresting demonstrators, who many sympathize with, than they like guarding highly radioactivity waste casks.

The writer goes on, ''I measured the radiation of these casks at 15 feet.''

Mr. President, that distance is from this Senator to the Presiding Officer. The radiation at 15 feet was 50 times higher than background levels, an amount no one should be voluntarily exposed to, and pregnant women and children should never be exposed to. The police, of course, stand much closer than 15 feet, and for hours at a time. No wonder the German parliament has abandoned and suspended the transportation of nuclear waste in Germany. Why? Because you cannot do it.

So if the sponsors of this amendment are concerned about the safety of the people from Tennessee, then they should be concerned about the safety of the people of this country.

What is the answer to the nuclear waste problem? Leave it where it is in dry cask storage containment or in the cooling ponds. As the representative from the State of Oregon told me this morning in the House, that is why he sided with Representative Vucanovich. If it is safe to transport these nuclear casks, these dry casks—which it is not, we have already established—if it is so safe, leave it where it is. That is why he supported Representative Vucanovich in the past.

This amendment is special legislation, and my friend from Tennessee should be concerned, as I know he is concerned, about the people of this country in addition to the people of Tennessee. That being the case, this amendment shows how fallacious and weak and unsupportable this bill is. It is a bill that is rife with gluttonous nuclear utility industry. That is the only reason it is here and the only reason it is being pushed. This legislation is faulty. It is fake. It is insincere. I said this legislation; I did not say this amendment.

Mr. THOMPSON. Mr. President, my colleague from Tennessee, Senator FRIST, wanted to make a statement on this matter, but he is chairing the Subcommittee on Science and Technology, a subcommittee of the Commerce Committee, so if it is in order, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. REID. I ask unanimous consent this vote be set aside until sometime the two leaders agree would be appropriate.

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

The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I think, again, we have to address the question of informed speculation, and the reference made a few minutes ago by my friend from Nevada to what happened in Germany mixes apples and oranges. The issue was not spent fuel leaving Germany. It was vitrified waste coming back to Germany. There is a substantial difference. What happens in the vitrifying process is that they recover the radioactive material and mix it with a glass form. It is radioactive. There is no question about it. But to suggest, as my friend from Nevada would, that this is the same stuff as shipping spent fuel, that's the apples and oranges issue.

I think what we have seen today proves my point, which is that nobody wants this. I am not being critical of my friends from Nevada. It doesn't make any difference whether it be the State of Michigan—and Vermont has been suggested as having one of the best types of granite-based rocks, from the standpoint of stability and geology. But I am sure if that were a selected site for a permanent repository, or temporary repository, we would have the delegation from Vermont right where the delegation from Nevada is. That is the reality of this. We have had representatives from the West exempt Washington, and for reasons that Washington says they are fed up, they have had enough waste. They continue to have waste, several hundreds of tons of waste, thousands of tons of waste. They don't want any more. The reason they don't want any more is there is no way to dispose of it. They are beginning to start a vitrification process.

The same is true in South Carolina. They don't want any more. They have it there now. The reason they don't want any more is there is no way to dispose of it. They are vitrifying now. The vitrification is, for the most part, military waste. They are recovering liquid waste from the tanks. I have been out to Hanford and I have been to South Carolina. Now, we are seeing Tennessee. Tennessee has high-level nuclear waste stored there. Idaho does, too. I am kind of surprised we don't have every Senator down here exempting his or her State. That is one way to ensure that they are not going to get it. Then where are you going to put it if you can't put it in one of the 50 States? Are you going to put it on the Atlantic coast? No. Are you going to send it to Canada? They don't want it. You might be able to send it to Europe for a fee, I don't know. So you move to the Pacific. What do you have there? You have some islands. Maybe we have some Indian reservations that might be interested. But, undoubtedly, that would not be suitable to the State governments. We have Palmira off of the Hawaiian islands being mentioned from time to time. There is a group, as a matter of fact, that was promoting it—for a fee. They said they owned the island. They have islands in the South Pacific. Some of them are individual nations, and they have been interested in doing it, perhaps, for a fee. But that is a bit dangerous, Mr. President, because we are not sure what the proliferation capability might be in that kind of situation.

So what has happened today on the floor of the U.S. Senate proves my point, which is that nobody wants it. So we have seen three States exempt themselves. The unfortunate part is that we are still left with our friends from Nevada. I was here when the decision was made to put a permanent repository in Nevada. Several of the staff members were there at that time. There was a Republican Senator from Nevada, who is not here anymore, perhaps as a consequence of that decision being made by that body to put a permanent repository at Yucca Mountain. He fought valiantly, he fought hard, and he is not back here. He lost. That is just the reality of being honest with the facts. The facts are that we have to put it somewhere.

Now, the Nevadans would have you leave it where it is. Well, there is a democratic process around here. Nobody ever said it was fair. I convey that in all humility, relative to the reality of what it means. But Nevada has had an extraordinary experience with nuclear weapons over a long period of time. It has been named as a permanent repository. The reality is that when that permanent repository is done, the waste at the 80 sites in 41 States will be transported there. It is rather inconsistent that we don't hear from our colleagues in Nevada the objection about the continued expenditure that is going into Yucca Mountain; $6 billion has been expended and 4½ miles of tunnel is already done, and they continue to work on the tunnel and continue to spend money. And $30 billion is probably going to be expended before it is licensed and opened. That has some benefit. But what it really says is that the decision that

was made by Congress many years ago to site the permanent site at Yucca Mountain, as it progresses, will become a reality and, indeed, Nevada will be the site of a permanent repository.

Virtually everybody is in agreement that we need a permanent repository for our waste, unless we abandon our current policy of burying our high-level nuclear waste. It is kind of interesting because we are one of the few nations that continues to pursue burying waste with plutonium in it. The French and the Japanese recover it through reprocessing. That is how you get rid of the proliferation threat. But there is a mentality and a group of environmental organizations that simply think that that would foster and expand the nuclear power industry in this country and advance nuclear development. I am not here to argue that point today, Mr. President. But that is the harsh reality. We are still talking about burying it. The rest of the world is developing a technology that says it is too valuable to bury. We don't want the proliferation threat, so we reprocess it in MOX fuel and burn it in our reactors. We even have the technology in the United States at Palos Verdes. I was out there in Arizona. That reactor was built to take MOX fuel. We could do that. If there was ever a crack in the administration's armor relative to nuclear waste, it is their reluctant acknowledgment that they must begin vitrification of military waste in this country. Whether that will lead, ultimately, to the recovery of plutonium and putting that back in the reactors, we have yet to see. So we are proceeding under the tired old argument that we have to bury it.

We are committed on that path, and we are going to spend $30 billion and we are going to put that site in Nevada when it is licensed. So we have a democratic process, we have 50 States, and we have to put it in one of them. Now, we talk about praying to the Lord and the comment that the President is likely to veto S. 104. Well, if anyone would ask the administration, as I have done—I have sent three letters to the President in response to the assertion that the administration doesn't approve of S. 104 —for what their proposal is, the truth is that they have no proposal. You have heard it. Leave it where it is. Leave it where it is until Yucca is done in the year 2015.

I have extensively gone through an explanation of how many of our reactors would have to shut down, what percentage of the 22 percent total power generated by nuclear power contributes to this country. We have reactors that are shutting down now. We have some that will shut down next year. We are going to lose power in various States. Maybe we can temporarily put that high-level waste in casks on the surface. But, remember, these areas were not designed for permanent storage. These reactors are in areas of population. They weren't designed to carry long-term high-level waste in the adjacent areas surrounding them.

This needs to be in one place, not 80 sites. Nobody has come up with a better site than the Nevada desert. So when we talk about the administration's plan, there is no plan. During the confirmation of Secretary of Energy Peña, the best we could get was a commitment that the problem of disposal of nuclear waste was ''in his portfolio.'' Well, that is a gracious acknowledgment. Of course it's in his portfolio; he's the Secretary of Energy. We have had no input from the administration about what to do because the administration has yet to perform under the contractual agreement that is due next year. I suppose it is a stacked deck, if I could respond to my friends from Nevada. But it could be a stacked deck against West Virginia, or a stacked deck against Vermont, or a stacked deck against Alaska. But to leave it where it is, it is a stacked deck against 41 States. That simply is not an alternative, Mr. President.

That is where we are in this debate today, and that is where we have been from the beginning. We wander in and out of concerns relative to casks. Good Heavens, if American engineering can't develop casks designed to withstand whatever the threat is—if the British, the Swedes, the Germans, the Japanese and the French can do it, we can do it.

One more time, if I may, let me show you what has happened in this country. It speaks for itself. There is the transportation network, 2,400 shipments. Do you think those were shipped in rubber bands? Those were shipped, according to Federal and State law, in approved containers. To suggest that we don't have approved containers to ship out, we will get what we have to have. You are not going to build these containers and these casks until you have permission to move it. But these are moving now in approved vessels, just as they would be if they are placed in a temporary repository at Yucca Mountain; they would be placed in appropriate casks. They would either be within a cask, a transportation cask, and removed out there, or left in a double cask, or put in a semipermanent cask.

So what we have here, Mr. President, is a lot of informed speculation, which I guess this place has an abundance of, whether it be spring, winter, or fall. But let's be honest with one another. Where we are in this debate is to either leave it where it is or move it to Nevada where, clearly, my friends don't want it moved. I admire their conviction, diligence and commitment. It is almost like they are willing to lay their lives in the path of whatever movement is occurring on this side. But, unfortunately, that is just the way it is because there is no other alternative. I believe my friend from Tennessee may want to speak a bit on the pending business. Am I correct in my assumption?

Mr. FRIST. Not right now.

Mr. MURKOWSKI. I guess I am incorrect. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Is the Senator from Tennessee waiting to speak now?

Mr. FRIST. I will just take about 3 minutes in 3 or 4 minutes.

Mr. REID. While the Senator is getting ready, I would like to say a few things.

First of all, there is no question that the two Senators from Nevada are doing everything we can to protect the State of Nevada. But in the process of preparing, as we have for years, for this debate, we have also come to the conclusion that this is not a Nevada issue; this is an issue for the well-being of all the people of this country. That is why organizations throughout this country support opposition to S. 104—churches, environmental groups, and cities are passing resolutions.

The only supporters of this legislation are the very powerful nuclear industry who generate electricity. For example, there has been some talk in this debate that the facility in Connecticut, the Haddam Neck reactor fuel pool would be full by 2001 and the plant might have to close. There has been testimony before the Natural Resources Committee on February 5 that Haddam Neck permanently closed on December 4, 1996, for reasons that had nothing to do with waste disposal issues.

Mr. President, fuel fill-up dates have been exaggerated for reactors that have been examined. This is just all part of the game played by the individuals who do not have rules—the nuclear power generating companies. They change the rules. They change the rules in the very middle of the ball game. They change the rules during timeouts. It doesn't matter. Whatever meets their greedy financial interests they satisfy that by changing the rules in the middle of the game.

Right now we have 109 operating reactors in the United States. All of their waste is stored on site. In effect, S. 104 would create 110 storage sites for nuclear waste using the same technology that is already used at some reactor sites and is available to all the reactor sites.

Why in the world would we want to create another site when we are spending $200 million a year trying to determine if Yucca Mountain is suitable?

Mr. BRYAN. Mr. President, will the Senator yield for a question? I thought I heard the Senator say that if S. 104 is enacted we would have not 109 reactor sites but 110 reactor sites. I invite the Senator's attention looking at this chart. If I understand the point he is trying to make, before S. 104 would be enacted—these would be the various reactor sites—every site prior to its enactment is still there and we add one more at Yucca Mountain, or at the Nevada test site. So we have 110.

Mr. REID. That is right. Although after S. 104, not only would you have the additional site near Las Vegas, but in addition to that you would have a

significant number of other temporary sites caused because of accidents, traffic jams, and protests. I mean that is what is not on the bottom chart. Not only do we have the proposed temporary repository near Las Vegas but you will have several temporary sites as a result of the chaos that will ensue with this legislation.

Mr. BRYAN. Will the Senator agree that S. 104 holds out a false promise, that somehow, if it were enacted, everything would disappear and wind up near Las Vegas?

Mr. REID. I say to my friend from Nevada, we would have to show on this chart after S. 104 massive traffic jams. Remember, to move it in Germany recently, it took 30,000 police. In addition to the 30,000 police, it required medical personnel to haul the people to the hospital. Five hundred people were arrested. The waste only went 300 miles. Think about what would happen if they were to move it 3,500 miles from the State of Maine to the State of Nevada.

So I appreciate the question. The chart is very graphic and shows the potential danger of not having 109 sites but maybe having 125 sites because of what would occur as a result of moving this.

I repeat. Mr. President, if in fact these casks are so good, leave them where they are. In fact, it has been said during the debate here today that the present technology of the casks indicate you can haul it, but in a crash of more than 30 miles an hour the container might be breached, or if you had a fire that occurred as you are hauling that and the fire burns at more than 1,400 degrees you are in big trouble. And the big trouble would occur because diesel fuel burns at 1,800 degrees. That is what propels trains and trucks.

So the question is asked all the time. What do you want to do with it? You leave it where it is until there is a determination made that we can transport it safely and there is a site to accept it.

I also am compelled to respond to a number of things said earlier today by my friend from Idaho. In fact, the description was used of picking up a quart of milk at a store and taking it home. He said no, no. Nuclear waste is safer to transport than that. Well, try to explain that to the people that have really transported nuclear waste. If you look at what has gone on in this country, you will find that Japan is actively pursuing a nuclear program based on reprocessing of nuclear fuel with the aim of becoming energy independent. We understand why. They have no natural resources. But the facts speak volumes of different language. A serious accident at the Honshu breeder reactor, the flagship of the Japanese reprocessing program, in December 1995, ended all thoughts that Japan could breed its own nuclear fuel. Honshu to this day has not been restarted and probably will never restart.

A second serious accident at the Tokyo reprocessing facility in March 1997, just a few weeks ago, ended all thoughts of reprocessing as a serious option, in Japan. In fact, Japan cannot site any new nuclear plants due to overwhelming public opposition. This fact has been acknowledged in numerous newspaper accounts. The Japanese Government is now laying aside all hopes for nuclear expansion, and with reprocessing no longer a viable option Japan now faces a problem. But to think it can be transported safely is just not true.

I would also respond to my friend from Idaho. There has been talk here by him and others that there have been several thousand shipments, a couple of thousand shipments of high-level nuclear waste made in the United States up to this date. Of course, these shipments, mostly of naval reactor fuel, were not only far smaller than any shipment contemplated under this bill but carried a radioactive inventory of thousands of curies rather than tens of millions of curies that would be carried by each cask from a commercial reactor.

These shipments typically travel far fewer miles. There were seven accidents in these 2,400 shipments. A ratio of one accident for every 343 shipments. I say to my friend from Nevada. It has been established here that there has been one nuclear accident for every 343 trips. I ask my friend. Is it not true that there is contemplated at least 17,000 shipments of nuclear garbage under this bill?

Mr. BRYAN. The Senator from Nevada is correct; 17,000 shipments of approximately 85,000 metric tons, shipments that would occur over a period of several decades. So, in effect, what we would have, wherever you live in America, nuclear waste would be streaming into your community and into your State from virtually every point on the compass, not just for a brief period of time but for decades as contemplated.

Mr. REID. I also ask my friend. Then, if it has been established that there would be 2,400 shipments and that we would have 7 accidents, a little math indicates to me that there would be about 50 accidents if the same ratio is maintained hauling these 17,000 shipments. Wouldn't that be about right?

Mr. BRYAN. I have never challenged the Senator's math. That was not the subject that I either excelled in or like. But it seems to me that the Senator is right. I remind my senior colleague that we had an accident, as I recall in 1982, in Livingston, LA. If we use a computer model to determine whether the proposed standards of these casks have no problem at all—these are casks not yet in existence but the proposed casks that would be used for this transit—that the temperatures generated in that accident—not a nuclear accident—but the temperatures were so high and so intense for such a long period of time that the cask design would fail. That indicates that there would be a release of radioactivity. That is not a theoretical, or speculative, or conjectural accident. That is one that actually occurred. If one uses a computer model in terms of the standards being proposed for these casks, those casks would have failed. That means those people in that community—I don't know the area—would have been placed at considerable risk for an extended period of time.

So, as the Senator is suggesting, multiplying the number of accidents that may occur over the course of several decades, many communities could face that kind of exposure, and that is a legitimate concern, it seems to me, for each of us as we contemplate this very dangerous situation.

Mr. REID. I ask my friend. On the maps that he has on the chart to his left, contemplate with me, if he will, where he thinks the 50 accidents will be.

Mr. BRYAN. I would say to my senior colleague, his guess is as good as mine. But we know this. We know that there are 43 States that have corridor routes. I envy our friend from Alaska with whom we have been engaged in this debate over the last few days. He is fortunate that his State is not among them. But most of the rest of us are.

So this is not just a Nevada issue. You have 43 States. You have thousands and thousands of rail and highway miles involved. I remind my colleague that we have 51 million people who live within 1 mile of these rail and highway corridor routes. These are existing routes. Nothing is going to be done new in the context of any construction, or an attempt to bypass communities. We are talking about existing rails and highway corridors.

So when the Senator asks the question of where those would be, may I say with great respect—and not trying to be flip about it—throw a dart at the map of the lower 48 States in America and his guess and my guess would be as good as any that could be conjectured.

Mr. REID. Mr. President, in short, S. 104 is bad policy. As I have indicated with this amendment, what is being done is a further attempt to worsen this bill. S. 104 is an environmental nightmare. It is a financial and public safety threat to America.

Is it any wonder that every environmental group in the United States supports the defeat of S. 104? In addition to churches as has been laid on the Record, transportation unions believe that this legislation is truly a nightmare.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise in support of the underlying legislation, with one hesitation, and that is as it regards an amendment introduced by my colleague from Tennessee on behalf of both of us about 45 minutes ago. I do not want to rehash the various points that have been made thus far, but I would like to speak to the importance of that amendment, the purpose of

which was to provide that the President shall not designate the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility. The Oak Ridge Reservation is best known initially for its history in the Manhattan project during the Second World War, but its evolution since that time has truly been amazing.

I had the opportunity to be there 3 days ago with my distinguished colleague from New Mexico, Senator DOMENICI, and we really had a good examination of the ongoing projects in Oak Ridge. Oak Ridge is not simply a semi-idle nuclear site nor a remnant of cold war strategic arms mission. But it is home now to our Nation's largest civilian national lab, a functioning weapons stockpile stewardship and management facility, and a variety of other user facilities for our national research and development effort. As a physician by training, it is poised as a particular interest to me, and is really on the edge of some exciting breakthroughs in the life sciences in genetic research.

Oak Ridge simply would be an unwise location for storage of high-level waste from a purely environmental standpoint. I know earlier references were made in the debate talking about the fact that it had been recommended in the 1980's as a potential site, and that the courts struck that down. But I think it is very important to say that, even though those recommendations had been made in the 1980's, things are very different today, in addition to the fact that they were struck down.

It would simply be an unwise location from an environmental standpoint. The area lies in a geological zone typified by what is called karst topography, which is distinguished by limestone bedrock with water flowing through caverns and underground rivers very close to the surface.

The danger here is that clearly any seepage into the groundwater could potentially put into jeopardy the water supply of several States.

The reason I was not in the Chamber 30 or 40 minutes ago is that I was chairing another hearing, and Dr. Arch Johnston, professor and director of research, center for Earthquake Research and Information at the University of Memphis, testified just an hour ago to the fact that in the 1980's, because of concerns of earthquakes in that area, the Nuclear Regulatory Commission undertook seismic studies, and over the course of that year they demonstrated that through that region of east Tennessee—and it is called the southern Appalachian seismic zone—there were earthquakes noted, but they were noted 2 miles deep and not on the surface. Dr. Johnston said that this is a problem in this zone of the southern Appalachian region, which includes Oak Ridge, because you cannot study it on the surface. Only two zones exceed its level of activity, according to Dr. Johnston, with 90 percent of this is in east Tennessee.

I say all this because the purpose of this amendment, especially in light of this earlier recommendation in the 1980's, is to say that a level playing field would not be established because of the chance that people would look back to that study and put Oak Ridge back on the table, which was clearly inappropriate.

We have the geological arguments, we have the environmental arguments, and I again will not go through the debate that was made by my colleagues—we had the argument of population. Several million people today live within a relatively short distance of Oak Ridge, and although that was not clearly true in 1942 when it was an locally isolated region, it today is within a metropolitan area of nearly a million people.

Thus, in summary, my colleague from Tennessee, Senator THOMPSON, and myself have introduced this amendment, which says that the Oak Ridge reservation should not be considered as a site for the construction of an interim nuclear storage facility for environmental, geological, and population reasons.

I thank you very much. I will urge support of the underlying bill if we can ultimately have this amendment attached.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, we are somewhat optimistic that we are going to have a time agreement soon, and it is my understanding that the leaders are addressing that matter now, so I hope to have some information for Senators very soon.

Let me make a few comments relative to accidents, which, of course, are of concern as we contemplate moving nuclear waste throughout the country. But let us take a look at facts because again we have been graced with a good deal of informed speculation.

Let me refer first to the NEI fact sheet dated June 10, 1996, from the Nuclear Energy Institute, an objective evaluation on the question of accidents. The question was: Have there been accidents that exposed the public to radiation from spent fuel cargo? And the answer is on absolutely no occasion between 1971 and 1989 has any person been exposed to radioactivity or radiation from spent-fuel cargo or associated accidents.

Let us talk about the accidents, Mr. President, because this is what it is all about.

Seven accidents occurred in the movement of 2,400 shipments from 1979 to 1995 as indicated by the chart. None caused any release of radioactivity. The most severe of these, and it was severe, occurred in 1971 in Tennessee. We just heard from the Senator from Tennessee. We had a tractor trailer carrying a 25-ton spent-fuel shipping container swerve to avoid a head-on collision. It went out of control and overturned. The trailer with the container still attached broke free from the tractor and skidded into a rain-filled ditch. The container suffered minor damage but did not release any radioactive material.

Now, how many chemical spills have we had where the tank car was broken open or spilled or punctured in some way? The difference between the two exposures are obvious. These are designed to withstand accidents, and they have. So again we can reflect on the rhetoric, but if we look at reality nothing is risk free, Mr. President, nor is nuclear transportation relative to high-level waste.

A lot of people assume that if there is a penetration, there is going to be a calamity of some kind. Obviously, there would be radiation. But we have technology that addresses that radiation, just as it is addressed when the rods are taken out of the pools. You would think there is some magic here. These nuclear rods sit in the pools. What are in the pools? Water. They come out of the pools. They are exposed. They are placed in a cask. There is exposure there, but it is regulated and controlled.

We have a statement by Mr. Robert M. Jefferson. Who is Mr. Jefferson? He was manager of the Transportation Technology Center at the Sandia National Labs in the early 1970's, distinguished in his knowledge and expertise on the matter of transportation of high-level radioactive wastes.

I ask unanimous consent that his letter of July 16, 1996, be printed in the RECORD.

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

ALBUQUERQUE, NM,
July 16, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR SENATOR MURKOWSKI: I have been informed that the High-Level Radioactive Waste Bill (S–1936) will be considered on the floor of the Senate this week. I have also been informed that there are concerns about the resulting transportation of spent fuel through various regions of our country. based upon my work in this field over the past 35 years, this fear is unfounded. Let me offer this information for your consideration.

As Manager of the Transportation Technology Center at the Sandia National Labs in the early 70s, I was asked, and subsequently conducted an extensive testing program to both validate the computational tools for evaluating spent fuel shipping containers (casks) and to measure their performance in real world situations. Up until I retired in 1985 Sandia had conducted about 1,500 tests on shipping casks and their subsystems. Five of these tests were conducted on real casks in simulated accidents. In addition, both DOE and NRC funded studies to evaluate the historical experience and to develop risk assessment models to predict shipping cask safety.

As a result of these efforts we reached the conclusion that the transportation of spent nuclear fuel in casks designed to meet the NRC standards, evaluated and certified by the NRC, would never encounter a transportation accident severe enough to challenge

the integrity of the container. Specific among these studies was a review of all severe transportation accidents in this country which reached the conclusion that there has never been an accident that would seriously threaten one of these casks. Coupled with the historical experience in this country and around the world I believe there is no safer transportation activity ever undertaken.

Because transportation of spent fuels has been proven safe by history, analysis and test and should not be a factor in the consideration of this bill, and because of the importance of this bill to the future of our country, I implore you to pass this legislation as soon as possible.

Sincerely,

ROBERT M. JEFFERSON,
Consultant.

Mr. MURKOWSKI. I am just going to read the reference to the question of exposure on transportation. He is responding to the questions relative to his area of responsibility in cask design and transportation, and I quote:

As a result of these efforts we reached the conclusion——

And this is the National Sandia Laboratories——

We reached the conclusion that transportation of spent nuclear fuel in casks designed to meet NRC standards evaluated and certified by NRC would never——

Now, this is something——

Would never encounter a transportation accident severe enough to challenge the integrity of the container.

This is a pretty broad statement by a professional who stands behind his statement with his career.

Would never encounter a transportation accident severe enough to challenge the integrity of the container.

Some of these accidents, I am told, involved flat tires. Well, I am not going to get into all seven accidents.

One other reference, and that is to the Japanese situation.

Yes, there was a leak in the sodium liquid coolant associated with the Honshu reactor in Japan. That reactor is currently shut down. Again, like with all mechanical devices, accidents can occur. In this particular case the accident was addressed by a professional procedure. No one was exposed to radioactivity. And to suggest Japan is somehow abandoning its commitment to nuclear power defies reality.

Outside of Matsue, Japan, is a place called Rekosha. The Japanese are committed to spend $24 billion. I went in the plant. I physically saw it. It is absolute state of the art—$24 billion to initiate a fueling, reprocessing mox fuel facility which would be the most advanced in the world. The reason the Japanese are pursuing this, they obviously have a great deal of sensitivity to nuclear radiation based on their unfortunate experience in the Second World War, but they feel nuclear power generation is appropriate for Japan. It addresses the concern they have over air quality, and it addresses an economic concern they have on dependence on oil from the Mideast. So they have made their decision, Mr. President.

It is important that we keep facts in mind as we address where we are in this debate. Again, the debate boils down to my point: Nobody wants it. We have to put it somewhere. Unfortunately, Nevada seems to be the site that has been selected for the permanent repository.

Mr. President, I am told that there is a colloquy pending which would, I believe, wind up our side's discussion for now.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. I ask unanimous consent to be recognized for 3 minutes as in morning business.

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

MR. INHOFE. I thank the Chair.

(The remarks of Mr. INHOFE pertaining to the introduction of S. 556 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, for the benefit of all Senators, I am advised by the leadership that we can expect a vote very soon on the disposition of the Thompson amendment, followed by at least one vote on the Bingaman amendment and a vote on the Bumpers amendment yet tonight.

Mr. BRYAN. May I inquire of my friend, it is my understanding, not at the request of the Senators from Nevada, but my understanding that there was at least a tentative understanding that we would not be having rollcall votes on these pending amendments until next week. Maybe there is some change.

I emphasize for the benefit of all Senators and my colleagues, that is certainly not at the request of the Senators from Nevada, certainly not at the request of the Senator from Alaska, either. But if there has been a change, I think we need to make others aware of that.

Mr. MURKOWSKI. I certainly concur with my friend from Nevada. I was advised by our leadership that agreement has been proposed and, in effect, that is what the leader plans to do. I cannot comment relative to the position on the other side, but I think Senators should simply be aware of the possibility, knowing the way this place works, seldom does the possibility occur. In reality, just the opposite may occur. For anybody who is listening, that appears to be the intent of the leadership, at least as many as three votes yet tonight.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KEMPTHORNE. Mr. President, I would like to, if I may, utilize this opportunity for a few moments to discuss this whole issue of S. 104, the ramifications and some of the particulars of S. 104, and in doing so, I would like to direct a few questions, if I may, to the chairman of the Energy Committee.

I also want to acknowledge that I think the Senator from Alaska, who is the chairman of the Energy Committee, and my colleague from Idaho, the senior Senator, Senator CRAIG, have done a tremendous job on this legislation.

Does this problem exists today? Absolutely. Are we trying to find a solution? Well, we certainly should, and I commend the Senator from Alaska and the senior Senator from Idaho bringing forward what is a solution.

With that, let me ask the chairman, is it true that in July 1996, the U.S. Court of Appeals affirmed the Department of Energy's contractual obligation to take title to the commercial spent nuclear fuel by January 31, 1998?

Mr. MURKOWSKI. The Senator from Idaho is correct, the court made that decision.

Mr. KEMPTHORNE. And is it also true then, Mr. President, that the officials at the Department of Energy decided not to appeal this decision?

Mr. MURKOWSKI. It is my understanding the Department of Energy indicated that they would not appeal the ruling of the court.

Mr. KEMPTHORNE. So we have an affirmation by the courts that title is to be taken by the Federal Government, and we have the Department of Energy that has not sought to appeal that and, in fact, I remember, the Assistant Secretary of Energy, Tom Grumbly, had indicated the Federal Government is going to take title to this.

Is it also true that the Department of Energy has informed the utilities that it will not be able to meet its contractual and legal obligation to take title to this spent nuclear fuel as called for in the court's ruling?

Mr. MURKOWSKI. That is my understanding. The Senator from Idaho, I think, has projected the position very clearly, that is correct.

Mr. KEMPTHORNE. Is it also true that ratepayers and utilities across the country have paid approximately $13 billion to the Federal Government to dispose of this waste?

Mr. MURKOWSKI. The Senator from Idaho is correct. It is a figure in excess of $13 billion at this time.

Mr. KEMPTHORNE. That has already been paid by the ratepayers.

Mr. MURKOWSKI. The Senator from Idaho is correct. It is my understanding it is going into the general fund. It does not remain in escrow. When the Federal Government takes the waste, they will probably have to appropriate it.

Mr. KEMPTHORNE. I appreciate that. Is it true that utilities currently store spent nuclear fuel in temporary—I underscore temporary—storage facilities that were never intended for long-term storage?

Mr. MURKOWSKI. There are basically two types of storage. One is in a pool adjacent to the reactor which is temporary and, in many cases, that is full. At least one power company is beginning to store their fuel in casks on the surface, they simply have run out of space, and the Senator from Idaho is correct in his assessment that those facilities were not designed to be of a permanent or long-lasting nature, they were to be of a temporary nature pending the movement of that out to a central site.

Mr. KEMPTHORNE. I further ask the Senator from Alaska, in light of the Federal Government's failure to meet its contractual obligation, numerous utilities across the country expect to run out of space, just as you have indicated, to store spent nuclear fuel in the near future. These utilities have two options, as I understand it: they can either shut down operations or they can build additional storage space on site. Are those the two options that currently exist?

Mr. MURKOWSKI. The Senator from Idaho is correct. However, it should be noted that there may be limitations placed on any further storage capacity associated with what they are currently licensed for, and that would be a combination of Federal and State licenses that must be obtained. It is theoretically possible that there may be a determination that the areas are inadequate to store additional fuel and the reactors will have to shut down.

Mr. KEMPTHORNE. To demonstrate, Mr. President, the fact this is a serious problem for many States, I ask the chairman of the Energy Committee, is it true that many States, such as Vermont, Connecticut, Maine, New Jersey, South Carolina, Illinois, New Hampshire and Virginia, generate between 80 percent to approximately 50 percent of the energy needed by their States through nuclear power?

Mr. MURKOWSKI. The Senator is correct. I think New Jersey is up around 70 or 75 percent dependent on nuclear power.

Mr. KEMPTHORNE. And if utilities in these States are forced to shut down nuclear powerplants because there is no place to put the additional spent nuclear fuel, is it true that these States will have to look to alternative sources of energy which has been part of your discussion, such as perhaps burning coal, oil and gas to meet the energy needs of these States?

Mr. MURKOWSKI. The Senator from Idaho is correct, there may be a possibility of purchasing excess energy from Canada, and some of the States adjacent to the Canadian border. Clearly, there is not an access in those areas. It would have to be created.

Mr. KEMPTHORNE. I ask the Senator from Alaska, and point out the Senator from Alaska and my friend from Idaho, Senator CRAIG, have warned the Senate, in light of the Department of Energy's admission that it will not be able to meet its legal obligation to take title to commercial fuel, the court may rule that the Federal Government is liable for the cost of storing this waste. Is it true that some estimates indicate that it may cost between $40 billion to $80 billion to store this waste?

Mr. MURKOWSKI. It is my understanding that the figure is in that range of $40 billion to $80 billion. There was a more precise figure. It was figured at about $59 million. I think it is important for the Senator from Idaho to note evidently there was a meeting recently between the Secretary of Energy and some representatives of the nuclear power industry where the Department of Energy offered to pay the nuclear power companies for storing the fuel at the sites of the reactors.

It is my understanding the industry declined to accept or pursue that proposal any further because it would simply leave the fuel in those temporary areas and would not solve the problem of getting rid of the fuel. It would simply transfer, if you will, a funding mechanism. I think it is rather ironic the administration would make that kind of a proposal when, clearly, the intent of Congress is to provide a permanent repository or, as this bill provides, a temporary repository until such time as Yucca Mountain is predetermined to be suitable.

So what they are doing is kind of, on the one hand, acknowledging their financial responsibility by offering to reimburse them, and acknowledging that they, in 1998, have to take title to the fuel but physically not wanting to take it because they have no place to put it. That is why I have been so critical of the administration's lack of any substantive suggestions on, as they opposed S. 104, what they are for, and they have yet to communicate to this Senator what they are for or what their proposal is relative to the immediacy of these reactors that are facing maximum capacity and potential shutdown.

Mr. KEMPTHORNE. I appreciate the response from the Senator from Alaska. Let me further ask, is it also true, in addition to the commercial fuel we have been discussing, S. 104 will address the national problem of naval fuel and defense high-level waste which is also currently stored in temporary facilities across the country?

Mr. MURKOWSKI. The Senator is correct.

Mr. KEMPTHORNE. Also, as I read S. 104, the Nuclear Waste Policy Act of 1997, I see it will not interrupt the scientific assessment regarding the suitability of Yucca Mountain to serve as a permanent repository for spent nuclear fuel. Indeed, is it true, I ask the Senator from Alaska, that under your bill, the Nevada test site is not designated as an interim storage site until after Yucca Mountain is determined to be suitable to serve as a permanent repository?

Mr. MURKOWSKI. The Senator from Idaho is absolutely correct. We would not anticipate accepting fuel until into the year 2001 or possibly 2002. So that verification must take place. So there would be the assurance that, indeed, Yucca Mountain would be closer to the reality of being a permanent repository.

Mr. KEMPTHORNE. In fact, is it not true that S. 104 gives the President 18 months to designate another interim storage site if Yucca Mountain is found unsuitable for a permanent repository?

Mr. MURKOWSKI. The Senator from Idaho is correct, and the reason for that is, it was felt it was necessary to either have Congress address the responsibility of a temporary repository at Yucca Mountain or the President designate it, and if the President chose not to designate it, it would be at Yucca Mountain.

What we have attempted to do by this legislation is basically close the box so we simply could not walk out of here after a week of debate without a definitive solution to putting our waste, at least in a temporary repository, until Yucca Mountain is done. And we spent a great deal of time discussing and fashioning the bill and felt it imperative that we had to conclude some solid solution as opposed to simply finding ourselves going through an extended debate and leaving it where it is at 80 sites in 41 States.

Mr. KEMPTHORNE. So just to reiterate, if it is determined that Yucca Mountain is not to be the permanent repository, then this legislation will not designate Yucca Mountain for the temporary repository, and, therefore, the transportation of the nuclear waste would not be coming to Yucca Mountain?

Mr. MURKOWSKI. The Senator is correct.

Mr. KEMPTHORNE. Is it true that Senate bill 104 contains an amendment offered by Senator CRAIG which directs that at least 5 percent of the waste shipped from storage sites shall be defense high-level waste?

Mr. MURKOWSKI. The Senator from Idaho is direct.

Mr. KEMPTHORNE. Is it true that under Senate bill 104 the interim storage facility will be licensed by the Nuclear Regulatory Commission and the Environmental Protection Agency and that they will establish the radiation standards at the interim storage facility?

Mr. MURKOWSKI. It is my understanding.

Mr. KEMPTHORNE. Regarding the Nevada test site, I referenced this as a member of the Senate Armed Services Committee. I am very familiar with the important work previously done at this site.

For example, I believe the United States has conducted 100 aboveground nuclear tests and 804 underground nuclear tests at the Nevada test site.

So I ask the chairman of the Energy Committee, is this the location proposed to serve as the interim storage facility under the Murkowski-Craig bill?

Mr. MURKOWSKI. The Senator from Idaho is correct. That is the general location.

Mr. KEMPTHORNE. Regarding the Nevada test site, in the current fiscal year, Congress provided $230 million to maintain the site for possible underground nuclear tests. The President's budget requested $226 million for the test-readiness program at the Nevada test site in fiscal year 1998.

In June of this year, the Department of Energy will conduct the first of two planned tests called the subcritical tests in the underground tunnels at the Nevada test site. Now these subcritical tests, which cost over $15 million a test, combine high explosives and plutonium to help scientists verify the safety and reliability of our aging nuclear weapons.

I will point out that we currently have the oldest weapons arsenal in our history. These subcritical plutonium tests are compatible with the comprehensive test ban and they are supported I believe by the Senators from Nevada.

I would acknowledge too that the Senator from Nevada, Senator BRYAN, had been a member of the Armed Services Committee. And I had the great pleasure of working with him in the committee, and was sorry to see he had transferred to a different committee.

But when we look at this, I would believe then, asking the Senator from Alaska, we would see the transportation, in order to carry out these tests, of plutonium shipments to Nevada to carry out these tests; would that not be correct?

Mr. MURKOWSKI. The Senator from Idaho makes a very valid point. Obviously, it is going to be shipped in. And it will be shipped in a container that obviously meets the Department of Defense criteria, environmental protection criteria, and the necessary criteria to ensure that the shipment is done in a safe manner and the interests of public health and safety are addressed, as has been the case in numerous other shipments, some 2,400 in the last 15 years.

Mr. KEMPTHORNE. Finally, if I may ask the Senator from Alaska, regarding transportation standards, because that has been a great portion of this whole debate, is it true that Senate bill 104 maintains the highest health and safety standards for the transportation of this nuclear waste to the interim storage facility?

Mr. MURKOWSKI. The Senator from Idaho is correct. It even provides for the training of personnel.

Mr. KEMPTHORNE. Again, if Yucca Mountain is determined to be the permanent repository, this material will go to Yucca Mountain.

Mr. MURKOWSKI. That is correct.

Mr. KEMPTHORNE. If it is determined that Yucca Mountain cannot be the permanent repository, then your legislation states that Yucca Mountain will not be the temporary repository?

Mr. MURKOWSKI. The President would then decide another location. And if the President chose not to decide, it would theoretically go back.

Mr. KEMPTHORNE. I wish to thank the Senator from Alaska.

I would like to say, Mr. President, that there is a problem that exists today. Clearly, this is not a debate of whether you are pronuclear or antinuclear. You have hundreds of metric tons of nuclear waste in over 40 States throughout the United States. We are looking for a solution.

The Nuclear Waste Policy Act of 1997 offers the Nation a safe and scientific verified solution to the problem of nuclear waste.

The Murkowski-Craig bill says, build a safe, central facility to store this waste at a place where our Nation has tested hundreds of nuclear weapons at the same location.

The other side says, leave the waste where it is, in facilities that were not constructed for long-term permanent storage.

One side says, deal with this national problem. The other side says, let us hope the problem goes away.

The Senate and the Nation face a clear choice, and that is to deal with this problem. I appreciate the approach that the Senators from Nevada have taken. I understand where they are coming from with regard to this issue. But I look at all of the nuclear technology, scientific research that has taken place in the State of Nevada over so many, many years. Again the 100 above-ground nuclear tests, the 804 below-ground nuclear tests, and that this is the same area that is being discussed in Senate bill 104 for the temporary storage of this nuclear waste.

I commend the Senator from Alaska, Senator MURKOWSKI, and the Senator from Idaho, Senator CRAIG, for bringing this issue forward so that we can finally deal with it so that we can finally have a solution to what do we do with spent nuclear fuel, because currently there exists no solution. And to do nothing continues that problem of no solution.

I thank the Senator from Alaska and I yield the floor.

Mr. MURKOWSKI. I thank my friend from Idaho for that excellent colloquy.

Mr. BRYAN. Would the Senator from Idaho yield for a question or two?

Mr. KEMPTHORNE. I will be happy to yield.

Mr. BRYAN. Is the Senator from Idaho aware of the fact that there has never been a contemplated interim storage facility at Yucca Mountain? I understood part of the colloquy, that the Senator was suggesting Yucca Mountain as the site for the interim storage.

And my question to my friend from Idaho is, does the Senator from Idaho understand that there has never been a contemplated interim storage facility at Yucca Mountain?

Mr. KEMPTHORNE. I understand that. I understand that Senate 104 opposes that nuclear storage.

Mr. BRYAN. That was not the case, I say with respect. What is contemplated is interim storage at the Nevada test site. The Nevada test site and Yucca Mountain are two separate geographical areas. And the Senator was asking our distinguished chairman a series of questions.

Does the Senator understand that if the President of the United States makes no finding with respect to suitability by March 31, 1999, then automatically the interim storage is designated at the Nevada test site automatically?

Mr. MURKOWSKI. That is right.

Mr. BRYAN. And if the President of the United States makes a determination that Yucca Mountain is not suitable and submits to the Congress an alternative site other than the interim storage site at the Nevada test site, that if the Congress refuses to accept the President's recommendation then automatically the interim storage comes to the Nevada test site?

I know the Senator was distracted, and I will repeat that.

My question to my friend from Idaho is, does the Senator understand that if the President of the United States makes a finding that Yucca Mountain is not suitable and then under the bill is directed to make a choice of an interim storage site, that interim storage site must be approved by an act of Congress, and if the Congress does not approve that site then automatically the Nevada test site becomes the interim storage?

Mr. KEMPTHORNE. The Senator is correct.

Mr. BRYAN. The point being is, that we do not have a site-selection process here that has any rationale.

And I guess the last question I would ask, because the Nevada test site has been an area that has been used, as the Senator correctly points out, for testing, is the Senator aware that the equivalency of 85,000 metric tons of nuclear waste which would be stored would require 2.3 million atomic tests the size of the test at Alamogordo during World War II—2.3 million tests?

Mr. KEMPTHORNE. Yes. To the Senator from Nevada, you are probably more aware of those numbers than I am, so I would not respond to that.

Mr. BRYAN. I appreciate the Senator may not have that.

But the point that I think needs to be made—if the testing schedule at the

Nevada test site should continue at its historical rate, it would take between 10,000 and 100,000 years of that testing schedule to equal the radioactive comparability of the nuclear waste that is being stored in the Nevada test site. I just wanted to make that point.

Mr. KEMPTHORNE. I appreciate that point by the Senator from Nevada.

Again, based upon this very series of questions and discussion I have had with the Senator from Nevada, it demonstrates there has been a tremendous history and knowledge over dealing with the nuclear issue in the State of Nevada. The millions and billions of dollars that have been directed to the State of Nevada by the Federal Government to deal with this Federal issue is well documented. And certainly Nevada has demonstrated that it has the expertise that is there to deal with this issue and is well suited, I believe, to help solve the nuclear issue for the Nation.

I thank the Chair.

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Nevada.

Mr. REID. We have been here now for several days. Every question that has been asked by the Senator from Idaho has an answer that is much different than the answer given by my friend from Alaska.

The fact of the matter is, that there are hundreds of nuclear tests at the Nevada test site. That was part of the national security of this country. Nevada did not run with open arms ''bring these aboveground nuclear tests and kill all our animals, make people have cancer.'' We did not know at the time. But in spite of it, all of the nuclear tests described by my friend from Idaho created 5 tons of nuclear waste—5 tons. They are talking about moving 85,000 tons to Nevada.

This is not a Nevada issue. Our friends on the other side of the aisle are trying to make this a Nevada issue. It is not a Nevada issue. It is an issue that affects our country, this Nation.

Mr. MURKOWSKI. I wonder if my friend would yield for a question?

Mr. REID. Of course.

Mr. MURKOWSKI. I am the first to acknowledge the probability of some 5 tons of nuclear waste being exposed to the air, the land, moving in whatever moisture that may take place in that arid area. But that is unlike the high-level nuclear waste that would be stored there in a temporary retrievable repository. That waste would be enclosed in casks designed to omit no radioactivity outside the cask.

So I would point out to my friend that there is a significant difference when you talk about 85 tons of contained waste in many, many containers that are designed to hold it with no exposed radioactivity outside and 5 tons of nuclear waste that just went up. It is in the dust. It is in the air. And that is indeed unfortunate. I think it does express a difference.

Mr. REID. I would just say that is why, because of the aboveground tests, there was radiation which went various places because of the cloud.

The fact of the matter is we all know such explosions are very dangerous. That is why they should continue the characterization at Yucca Mountain until they find a safe place to dispose of this garbage. The transportation is a problem, a significant problem. We have established that, I think, with substantive evidence today.

Mr. President, suffice it to say we believe that the record is clear in answering every argument that has been suggested by the Senator from Idaho. I hope staff Members and Senators have had an opportunity to listen to this debate. We are where we are today because the nuclear power industry is trying to short circuit the system. There is no reason to transport nuclear waste to an interim storage site until there is a permanent repository. Even then, we have to be careful about the transportation.

I do not want to go over the same arguments we have talked about on a number of occasions. It is my understanding there is to be a vote, and after that the leaders, hopefully, will be able to propound a unanimous consent request.

VOTE ON AMENDMENT NO. 37

Mr. MURKOWSKI. Under the previous order, having consulted with both leaders, I ask unanimous consent that the Senate now resume amendment No. 37. It is my understanding we are ready to vote on it.

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

Under the previous order, the question is on agreeing to amendment No. 37, offered by the Senator from Tennessee.

The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON] are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent due to the severe disaster in their States.

I further announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

I also announce that the Senator from California [Mrs. BOXER] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 33, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—60

Abraham	Burns	Coverdell
Allard	Campbell	Craig
Ashcroft	Chafee	D'Amato
Bennett	Cleland	DeWine
Bond	Coats	Domenici
Brownback	Cochran	Enzi
Bumpers	Collins	Faircloth
Ford	Johnson	Santorum
Frist	Kempthorne	Sessions
Gorton	Kyl	Shelby
Graham	Lott	Smith (NH)
Gramm	Lugar	Smith (OR)
Grassley	Mack	Snowe
Gregg	McCain	Specter
Hagel	McConnell	Stevens
Hatch	Murkowski	Thomas
Helms	Murray	Thompson
Hutchison	Nickles	Thurmond
Inhofe	Roberts	Warner
Jeffords	Roth	Wyden

NAYS—33

Akaka	Glenn	Levin
Baucus	Harkin	Lieberman
Biden	Hollings	Mikulski
Bingaman	Inouye	Moseley-Braun
Breaux	Kennedy	Moynihan
Bryan	Kerrey	Reed
Byrd	Kerry	Reid
Daschle	Kohl	Robb
Dodd	Landrieu	Rockefeller
Durbin	Lautenberg	Sarbanes
Feingold	Leahy	Torricelli

NOT VOTING—7

Boxer	Feinstein	Wellstone
Conrad	Grams	
Dorgan	Hutchinson	

The amendment (No. 37) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. CAMPBELL. Mr. President, today I express my concern for the Nuclear Waste Policy Act of 1997. I first want to reiterate my firm belief that a permanent geological repository represents the most responsible solution for the ultimate disposition of spent commercial nuclear reactor fuel.

Presently, this radioactive material sits in temporary storage at 70 or so sites around the country, including my State, Colorado. Colorado also has several tons of the much deadlier plutonium haunting Rocky Flats, less 20 miles from Denver. So, I am no stranger to nuclear material, the related hazards and costs. Nor is my view different from that of any other Coloradan, or citizen of any other State—I want safe, efficient, responsible solutions to the questions presented by nuclear technology.

But S. 104 does not present a safe, responsible solution to the question of commercial spent fuel and I cannot vote for it. First, S. 104 would make Denver the crossroads of radioactive material on an almost daily basis for the next 30 years. S. 104 will send much of the spent fuel and high-level nuclear waste from eastern States traveling west through Denver on I–70, while trans-uranic waste from Idaho will travel south through Denver on I–25 to New Mexico.

Therefore, my first point of concern is that Colorado would bear the brunt of the risks of truck and train accidents and the risks of radioactive releases almost every day, for the next 30 years. This gives me great pause. Only with the utmost confidence in the transportation details—the routing plans, the casks housing the spent fuel assemblies, the emergency response

preparedness—would I feel comfortable subjecting the residents of Colorado to this great burden. I do not have that confidence yet. In fact, for example, the Colorado Highway Patrol has indicated that I–70 west of Denver is simply not suitable for the safe transportation of radioactive materials. Federal preemption through S. 104, however, threatens to override the CHP's designation and force the use of the I–70 corridor anyway.

I do not mean to suggest that this is my only concern with S. 104, or that this concern in and of itself would be sufficient to cause my opposition. If the bulk of S. 104 represented a sound, responsible solution to an urgent national problem, then my analysis would be quite different. S. 104 is not such a bill, however.

Although no one can deny the growing problem of spent nuclear fuel throughout our country, the problem is currently not one of safety, but one of cost. It costs the utilities and, therefore, the ratepayers a lot of money to store this material in temporary facilities. Again, Colorado is not immune. Many Colorado ratepayers contributed to the nuclear waste fund, which was established to finance the permanent disposal of this material, and must pay to maintain storage. But, by all accounts, safety is not an urgent issue for temporary, onsite storage in Colorado or any other State. Were safety an urgent consideration at this point, again, my analysis would be quite different.

What concerns me most, however, is the chronology of disposal in S. 104. This bill requires that the Energy Department construct an interim storage site 100 miles north of Las Vegas, NV, and begin accepting spent fuel and high-level nuclear waste well before the permanent repository at nearby Yucca Mountain, NV, is licensed, or even found suitable for permanent disposal.

Consequently, there is the very real danger that, even if the permanent site is for some reason deemed unsuitable for disposal of the spent fuel, it will be used anyway simply because the waste would already be nearby at the interim site. Worst yet, there is the danger that the material would remain at the interim site indefinitely. Finally, there is the haunting specter that if Yucca Mountain is not found suitable as a permanent repository, all the spent fuel then stored at the interim site would have to be shipped back across the country—through Colorado again—to some other site.

I am sympathetic to the pressures bearing on the nuclear utilities and the ratepayers who have paid once already to have this material disposed of and who must pay again to store this waste while Yucca Mountain is prepared. I also understand that the Energy Department is contractually obligated to begin removing the spent fuel from the States by 1998.

But, the safe, responsible disposition of material that will remain deadly for many tens of thousands of years is simply not like buying a car. If it takes some years longer than anticipated, if it costs more money than we thought at first, so be it. In finding a safe place in which to keep this material for a time longer in duration than all of recorded human history, 5, 10, even 20 additional years should not deter us. In the context of radioactive waste, truly, I would rather be safe, than sorry. These words point the way to a better approach to a daunting national problem. S. 104 does not.

Mr. CRAIG. Mr. President, I address this body to express my support of S. 104, the Nuclear Waste Policy Act of 1997.

Today, I wish to address specifically provisions of the substitute amendment introduced yesterday by the chairman, my colleague from Alaska.

Before I discuss the details of our substitute amendment, however, I would like to set the backdrop for my remarks.

This week, while debating the motion to proceed, you have heard my colleague from Alaska, the able chairman of the Energy and Natural Resources Committee, invite those who say they cannot support provisions of this bill, S. 104, to suggest alternatives.

I hope all of my colleagues heard this invitation and I know some of my colleagues accepted this invitation.

The provisions of our substitute are a product of this invitation, to participate with us in solving this national problem—the problem of spent nuclear fuel and radioactive waste, and how to address this problem in a timely manner.

We have listened to those who have expressed concerns about this legislation.

In our effort to continue and enhance the strong bipartisan support for this legislation, our substitute addresses, point-by-point, the concerns expressed by the other side.

Let me discuss these changed provisions.

First, we had heard concerns that the schedule outlined in S. 104 for the development of an interim storage facility is unrealistic.

Mr. President, our substitute now extends the schedule for siting and licensing of the interim storage facility: from the original proposal of the year 1999, we now have a facility operating in 2003.

But let me talk about why we have extended the schedule.

The interim storage facility will be licensed by fully exercising all provisions of the Nuclear Regulatory Commission licensing process.

We have extended the schedule for environmental reviews.

We have extended the schedule for public involvement in this licensing process.

Let me repeat this.

We have heard allegations that S. 104 does not allow for public involvement.

Public involvement during licensing has always been part of the S. 104 process for an interim storage facility.

By extending our schedule to 2003, there will be even more time and ample opportunity for the public to participate in the licensing process.

Another provision that is changed by our substitute is that we have shortened the license duration—the operating period—of the interim storage facility from 100 years to 40 years.

We have also provided that the amount of fuel and high-level radioactive waste stored in the interim storage facility will be only that amount needed to fulfill the Government's obligations until a permanent repository is available.

Mr. President, we are not looking for a blank check on this facility.

We propose to build only what is needed to stem the Government's looming financial liability under the lawsuit and the contracts signed in 1982.

We have accommodated our critics on their concerns regarding preemption of other laws.

Our substitute now contains language virtually identical to the preemption provision of the Hazardous Materials Transportation Act.

I hope this finally puts to rest the entirely misguided allegation that this legislation will gut environmental laws.

That simply has never been the truth.

The language of our substitute on the issue of preemption requires compliance with applicable environmental laws and hopefully puts this issue to rest.

Finally, our substitute revises the approach to setting an environmental standard for the deep geologic repository.

S. 104, as introduced, set a standard of 100 millirem.

On Monday, I addressed this body and set this 100 millirem in the context of everyday risks, from day-to-day living.

I noted for my colleagues that we receive an annual radiation dose of 80 millirem simply from working day-to-day in the Capitol Building—a product of the granite and other building materials here.

We have listened, however, to the concerns that this legislation should allow a risk-based standard.

We have heard suggestions that this legislation should adopt the recommendations of the National Academy of Sciences.

As I have stated, in our openness to enhancing the broad, bipartisan support already enjoyed by this legislation, we have listened to these suggestions.

Therefore, our substitute now requires that the Environmental Protection Agency determine a risk-based radiation standard for the repository.

Our substitute directs that the Environmental Protection Agency set this radiation standard in accordance with the National Academy of Sciences recommendations.

Mr. President, I commend my colleague, the chairman of the Energy and

Natural Resources Committee, the Senator from Alaska, in conducting a process for developing this legislation, and this substitute, that I believe to be unprecedented in its openness and its willingness to hear and respond to the concerns of our opponents.

When this substitute and the Committee amendments are considered in their totality, I can firmly state that this legislation will decisively deal with the issue of spent nuclear fuel and high-level radioactive waste, and it will deal with this issue in the most stringent, most safe, and most environmentally sound manner.

S. 104, the Nuclear Waste Policy Act of 1997, will allow the Government to fulfill the contractual obligation it assumed, under the law passed by this body in 1982.

The deadline for action on this obligation is just 9 months away.

I urge my colleagues to consider thoroughly the changes made by this substitute, to consider the basis for any concerns they may have had.

I assert that, with these changes, there simply are no possible reasons for any action other than support of final passage of S. 104.

Mr. MURKOWSKI. Mr. President, for the benefit of all Senators, it is my understanding that we very likely can dispose of three amendments in the balance of the evening. One, as I understand it, is going to be offered by Senator BUMPERS from Arkansas. I might ask how much time he will require.

Mr. BUMPERS. I suggest 20 minutes equally divided.

Mr. MURKOWSKI. I will accept that. A Bingaman amendment, we anticipate—we are not sure the Senator is on the floor at this time. We will have to wait for Senator BINGAMAN. And we have a Domenici amendment that we are prepared to take on this side. I believe there may be an objection from the other side. That could be held over until Monday. One of the Domenici amendments we are prepared to take at this time.

Mr. DOMENICI. Can we do that now?

Mr. MURKOWSKI. I will take Senator BUMPERS while he is in the mood. Senator BINGAMAN, as I understand, has agreed to 20 minutes on either side, so 40 minutes total. That gives you an idea of what to anticipate for the remainder of the evening. We anticipate two votes.

I will ask unanimous consent that the time on the Bumpers amendment No. 33—might I ask if I heard the Senator from Arkansas correctly, that he wanted 2 minutes?

Mr. BUMPERS. I said 20 minutes equally divided.

Mr. MURKOWSKI. I thought the Senator said 2 minutes. I ask unanimous consent for the following agreement: That the time on the Bumpers amendment No. 33 be limited to 20 minutes with no second-degree amendments, equally divided, and that the time on the Bingaman amendment be limited to 40 minutes——

Mr. BINGAMAN. Make that 30 minutes, and I will take a little less.

Mr. MURKOWSKI. Thirty minutes equally divided, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, Mr. President, I do so only to suggest that we stack the two votes and that they be held no later than 6:45.

Mr. LOTT. Mr. President, let me make sure I understand what the chairman and the Democratic leader are working on here. We have two remaining votes here, and we would stack those at 6:45. Is the recommendation both of those votes at 6:45?

Mr. MURKOWSKI. Or earlier.

Mr. LOTT. Then that would only leave for consideration next week two amendments on Monday, and we would have stacked votes. Are we ready to enter into this agreement?

Mr. MURKOWSKI. It is my understanding that we would have the two Wellstone amendments pending on Monday, and we would have one Domenici amendment, which is still in disagreement—

Mr. BRYAN. I believe we are going to be able to resolve this in a minute or two.

Mr. LOTT. I want to pursue the details of what would be left. It is my intent that we have no more than three votes stacked on Tuesday morning. We will need to work out the final agreement. I have no objection to these two votes at 6:45.

Mr. DASCHLE. Mr. President, I think it would be helpful if, in the next 45 minutes, we worked out the final arrangement for the vote to be taken on Tuesday. I amend my request to see if we can finish the votes at 6:30. I think if you take the time both Senators require, we could accommodate the Senators and still finish by 6:30. I amend my request in that regard.

Mr. DURBIN. Will the majority leader yield for a question?

Mr. LOTT. Yes.

Mr. DURBIN. Would the majority leader respond in reference to the pending question relative to Mr. Pete Peterson's confirmation as Ambassador to Vietnam?

Mr. LOTT. Mr. President, is this under a reservation, reserving the right to object?

Before I respond to that, Mr. President, if I could direct a question to the Democratic leader, to make sure I understand again what he is saying, is that all debate will be concluded at 6:30.

Mr. DASCHLE. That is correct on the two amendments.

Mr. LOTT. That the vote begin.

Mr. DASCHLE. At 6:30.

Mr. LOTT. And, further, that all votes be concluded by a specific time?

Mr. DASCHLE. No.

Mr. LOTT. Strictly at 6:30 we would vote. That is fine. I have no objection to that.

With regard to the question, we are still working on trying to get final clearance on the Pete Peterson nomination to be ambassador. I am hoping that while we are having this final debate and getting the vote on these issues that we will be able to bring that to the floor for consideration this afternoon possibly on a voice vote. But depending on when we get done, it may require some time and a recorded vote. I believe we can get it up tonight. If we run into a snag on this agreement, it would be our intent then to try to do it during the day Tuesday, probably. I would like to do it tonight. We are working on it. We have asked the administration for some information that is critical. I believe we will have a response in the next 4 hours.

I thank the minority leader.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Without objection, it is so ordered.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, if I might engage the chairman of the Energy Committee, on the two DOMENICI amendments, Senator REID and I have no objection. We are prepared to accept those.

Mr. MURKOWSKI. I advise my friend from Nevada that one of amendments is satisfactory to us. We have a second degree on the second amendment which has been worked out I believe with the Senator from New Mexico.

Is the Senator aware of the second degree?

Mr. BRYAN. I am not. No. I am not aware of a second-degree amendment.

Mr. MURKOWSKI. We would be happy to provide you with that. But in the interest of moving this now, we will move the one that there is no objection to.

AMENDMENT NO. 40 TO AMENDMENT NO. 26

(Purpose: To prevent ''double counting'' in the determination of the fee)

Mr. DOMENICI. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 40 to Amendment No. 26.

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

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

The amendment is as follows:

In the pending amendment, beginning on page 49 line 11 strike all through page 53 line 11 and insert the following:

''(2) NUCLEAR WASTE OFFSETTING COLLECTION.—

''(A) For electricity generated by civilian nuclear power reactors and sold during an offsetting collection period, the Secretary shall collect an aggregate amount of fees under this paragraph equal to the annnual level of appropriations for expenditures on those activities consistent with subsection (d) for each fiscal year in the offsetting collection period, minus—

the percentage of such appropriation required to be funded by the Federal government pursuant to section 403.

''(B) The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold.

''(C) For purposes of this paragraph, the term 'offsetting collection period' means—

''(i) the period beginning on October 1, 1998 and ending on September 30, 2001; and

''(ii) the period on and after October 1, 2006.

''(3) NUCLEAR WASTE MANDATORY FEE.—

''(A) Except as provided in subparagraph (C) of this paragraph, for electricity generated by civilian nuclear power reactors and sold on or after January 7, 1983, the fee paid to the Secretary under this paragraph shall be equal to—

''(i) 1.0 mill per kilowatt-hour generated and sold, minus—

''(ii) the amount per kilowatt-hour generated and sold paid under paragraph (2);

''Provided, that if the amount under clause (ii) is greater than the amount under clause (i) the fee under this paragraph shall be equal to zero.

''(B) No later than 30 days after the beginning of each fiscal year, the Secretary shall determine whether insufficient or excess revenues are being collected under this subsection, in order to recover the costs incurred by the Federal government that are specified in subsection (c)(2). In making this determination the Secretary shall—

''(i) reply on the 'Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program,' dated September 1995, or on a total system life-cycle cost analysis published by the Secretary (after notice and opportunity for public comment) after the date of enactment of the Nuclear Waste Policy Act of 1997, in making any estimate of the costs to be incurred by the government under subsection (c)(2);

''(ii) rely on projections from the Energy Information Administration, consistent with the projections contained in the reference case in the most recent 'Annual Energy Outlook' published by such Administration, in making any estimate of future nuclear power generation; and

''(iii) take into account projected balances in, and expenditures from, the Nuclear Waste Fund.

''(C) If the Secretary determines under subparagraph (B) that either insufficient or excess revenues are being collected, the Secretary shall, at the time of the determination, transmit to Congress a proposal to adjust the amount in subparagraph (A)(i) to ensure full cost recovery. The amount in subparagraph (A)(i) shall be adjusted, by operation of law, immediately upon enactment of a joint resolution of approval under paragraph (5) of this subsection.

''(D) The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

''(4) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1997 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1997 pursuant to the contracts, including any interest due pursuant to the contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2001. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fees assessed under this subsection, on or before the date on which such fees are due, and the license shall remain suspended until the full amount of the fees assessed under this subsection is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

''(4) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 1997, the aggregate amount of fees assessed under this subsection is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

The percentage of such appropriations required to be funded by the Federal Government pursuant section 403—

the Secretary may make expenditures from the Nuclear Waste Fund up to the level equal to the difference between the amount appropriated and the amount of fees assessed under this subsection.

Mr. DOMENICI. Mr. President, the purpose of this amendment is to correct some double counting of budget authority that occurs when calculating the annual fee for the nuclear waste collection. I think it is agreed to on all sides.

I yield the floor.

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

Mr. MURKOWSKI. Mr. President, we have no objection and urge adoption of the amendment.

Mr. BRYAN. We have no objection, Mr. President.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 40) was agreed to.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 33 TO AMENDMENT NO. 26

(Purpose: To clarify Congressional intent with respect to enactment of this Act in response to DOE's inability to meet the January 31, 1998 contractual deadline to start disposing of spent nuclear fuel)

Mr. BUMPERS. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 33.

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

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

The amendment is as follows:

On page 75, strike lines 4 through 8 and insert:

''It is the sense of the Senate that—

''(1) the Department of Energy has entered into contracts with utilities for the disposal of spent nuclear fuel or high-level radioactive waste, under section 302(a) of the Nuclear Waste Policy Act of 1982, based on the standard contract in subpart B of 961 of title 10, Code of Federal Regulations;

''(2) the U.S. Court of Appeals for the District of Columbia Circuit, in *Indiana Michigan Power Company* v. *DOE*, has interpreted the Nuclear Waste Policy Act of 1982 to require the Department of Energy to start disposing of the utilities' spent nuclear fuel no later than January 31, 1998;

''(3) the Department of Energy cannot begin to receive and transport significant amounts of spent nuclear fuel by January 31, 1998, because of delays arising out of causes beyond the control and without the fault or negligence of the Department of Energy, including the following acts of Government in its sovereign capacity—

''(A) the failure of Congress to appropriate funds requested by the Department in order to proceed expeditiously with—

''(i) the characterization and development of the Yucca Mountain site, and

''(ii) the design and development of associated systems required to transport spent nuclear fuel;

''(B) the enactment by Congress, since 1982, of additional environmental statutes affecting the process of designing and licensing the repository;

''(C) the failure of the Environmental Protection Agency to meet statutory deadlines in section 801 of the Energy Policy Act of 1992 for the promulgation of radiation standards for the Yucca Mountain site; and

''(D) delays on the part of the State of Nevada in issuing permits necessary for the Department to initiate exploratory activities at the Yucca Mountain site;

''(4) the enactment of this Act is intended by the Congress to address the Department's inability to meet the January 31, 1998, deadline and to provide an adequate remedy to contract holders by ensuring that the Department meets its obligations under the contracts in paragraph (1) at the earliest practicable time, consistent with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and applicable Commission regulations; and

''(5) in any action alleging failure by the Department to perform its obligation to start disposing of spent nuclear fuel by January 31, 1998, under a contract based on the standard contract in subpart B of part 961 of title 10, Code of Federal Regulations, the court should take due account of article IX(A) of such standard contract.''.

Mr. BUMPERS. Mr. President, this is fairly simple and will only take about 10 minutes.

Mr. President, last July a D.C. circuit court ruled that the Waste Policy Act of 1982 required the Department of Energy to take the utilities' nuclear waste in 1998. The utilities and the public service commissions brought two separate actions, and the court consolidated them. They argued that DOE was clearly under an obligation to take this waste in 1998. And the court ruled in their favor saying—this is good news for my adversaries on this amendment—''In conclusion, we hold that the petitioners' reading of the statute comports with the plain language of the

measure. * * * Thus, we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of the [nuclear waste] no later than January 31, 1998.''

You may think that the utilities have all the best of it as a result of that decision, and they may very well have. But as you know, there is a case pending now in the D.C. Circuit in which the utility companies are seeking a judgment seeking to have the fees that they are paying put in escrow. I am not sure what they get out of that. But the purpose of this amendment is very simple. The District of Columbia Circuit right now has this action of the utility companies under consideration. As I said, the utility companies are asking that the fees they are paying, which is hundreds of millions of dollars a year, be put in escrow. And in my opinion, in order for the court to rule on that, the court is going to have to again look at the contract—not the Nuclear Waste Policy Act, which they interpreted in last July's decision—bear in mind we are talking about two different lawsuits. Last summer, in July, the court was interpreting the Nuclear Waste Policy Act of 1982. This time, in my opinion, they have to look at the contract and see if the contract that was negotiated pursuant to that act requires the Department of Energy to take this waste.

So here is my amendment. It is written in the mother tongue, which is in English, so everybody here ought to be able to understand it. This is a sense-of-the-Senate amendment. It states that it is the sense of the Senate that the Department of Energy's failure to meet the January 1998 deadline was caused by Congress' failure to appropriate funds the program needed and other Government actions beyond DOE's control, and that the court should take the contract's provisions on excusable delays into consideration when it rules on the pending lawsuits.

As I said, that is the mother tongue, and it is not hard to understand. Look at the contract. See what the contract says. Is the United States, or the Department of Energy, under the terms of the contract, excused for its inability to take this waste in 1998? Bear in mind that court last summer did not find DOE liable for a breach of contract. A breach of contract is the failure without a legal excuse to perform the contract. All you brilliant lawyers here understand that. We have a contract. That is what the court is going to be construing. This is a sense of the Senate calling to the court's attention some language that was in the contract. And I have not heard this debated one minute since this debate started. The question is, was there a failure to have a permanent repository ready to take this waste in 1998? Was that their fault? I submit that it was not. But that is not what we are debating here. That is my opinion. My opinion is, and I really defy anybody to say otherwise, that the reason they didn't have it ready is because the Government didn't appropriate the money fast enough to do it.

Listen to this. Here is what the contract says. The Government will not be liable ''for damages caused by a failure to perform its obligations'' under the contract ''if such failure arises out of causes beyond the control and without the fault or negligence'' of DOE.

That is simple enough. Anybody can understand that. The contract goes on to state that ''acts of the Government''—that is us, colleagues—''acts of the Government'' that ''cause delay in scheduled acceptance or transport'' of utility waste shall be an excusable failure by the Department of Energy.

It says that DOE shall notify the utilities of such a delay and ''the parties will readjust their schedules, as appropriate, to accommodate such delay.''

I don't know how many lawyers there are in the U.S. Senate. But I promise you there isn't a lawyer here worth the powder of blowing you know where that hasn't had cases exactly like this. All contracts provide for excusable delays. What do you do if you have a delay that is beyond your control? What if you have a tornado blow a project away while you are right in the middle of it? Normally you would have insurance to cover that. That is normally covered by contracts. Here they simply say, if there is any justifiable reason for the DOE not being ready to take this fuel in January of 1998, that is a legitimate excuse and that includes actions by the Government, and the actions of the Government was we didn't appropriate the money to get the repository built. Now the utilities are coming in and saying, ''We don't care about the language of the contract. We want you to take it, or put our money in escrow.''

There have been all kinds of figures. I am not going to debate the amount of money involved here. I have heard a lot of figures thrown around about what this is going to cost the Government by not taking this spent fuel, and those figures are so exaggerated, if you look at the details of what the cost is likely to be, it is exaggerated by a magnitude of about 300 percent.

But it is not correct for Senators on the floor of the U.S. Senate to suggest—indeed, openly state, as I heard some do—that this is already a done deal and that DOE has already been found liable. That is not true. The contract is now under consideration by the U.S. Court of Appeals in Washington, DC. I submit to you that if anybody is to blame it is us. We are the ones who kept DOE from being prepared to take this.

So, Mr. President, I think it is only appropriate. After all, we are not trying to interfere with the judicial proceedings. We are simply saying it is a sense of the Senate that this language which I just read to you should be very carefully considered by the court. There not only is not nothing wrong with that, there is everything in the world right about it. And the court is going to interpret the contract, and here is the clear language of it.

I say in my sense-of-the-Senate amendment that the court should take the contract's provisions on excusable delays into consideration when it rules on the pending lawsuit.

Why wouldn't it? DOE didn't put that language in there just to make the contract a little longer. They put it in there so that they would have an out if there was an excusable delay. There has been an excusable delay. All I am saying is it is the sense of the Senate that we ought to call that to the attention of the court.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I appreciate the persuasive arguments of my friend from Arkansas who is a well-known lawyer. I happen to be a banker and not nearly as well known. But I know what a contract is. A contract is a binding commitment of performance. And the question that the Senator from Arkansas raises in his amendment is the sanctity of that contract. This is a subject of pending litigation. I think it is inappropriate to interfere in the sanctity of the Federal contracts. We have a fair administrative process. The courts are involved in this. I think it is important to look at a little history because the Department of Energy has been aware of its obligation since 1982.

My reading of the Bumpers amendment suggests that it is essentially representing a determination now by Congress that the Department of Energy is faultless in its default. I think it is the court's job to make that determination. In my opinion, the Department of Energy has followed a consistent course of delay, a consistent course of avoidance including their failure to ask Congress for any additional funds or authority needed to meet the obligation.

The Senator from Arkansas suggests that it is the responsibility of the Congress because Congress did not appropriate any money. I am not aware that the Department of Energy ever asked for any money.

Let us look at the history because I hope that my colleague from Arkansas, when he clearly listens, will agree that this legacy of broken promises is something that is reprehensible relative to a responsible department addressing its contractual commitment. I think it sets, if you will, a norm on the issue of contracts. If a contract with the Government is not binding, it sets a pretty poor example, a pretty poor example for youth and a pretty poor example of how Government meets its obligations.

Mr. FORD. Mr. President, will the Senator from Alaska yield for a question?

Mr. MURKOWSKI. I would be happy to yield for one question.

Mr. FORD. I just want to make one thing clear, and I am not a lawyer, not even a famous banker.

Mr. MURKOWSKI. That takes care of both Senators.

Mr. FORD. That takes care of both. I understand the Senator from Alaska says a contract is binding, but the content of the contract is what binds you. Therefore, if the contract says certain things, you are bound to what the contract says. I think the Senator is evading, in my judgment, the content of the agreement.

Mr. MURKOWSKI. I appreciate the views of my friend from Kentucky.

Mr. FORD. And this is from both Senators.

Mr. MURKOWSKI. I think it is the responsibility of the court to make the determination of what the contract says, not the Senator from Arkansas or the Senator from Alaska or the Senator from Kentucky. And that is what the court has done. And if the Senator will bear with me while I go through the history, I think he will agree.

Mr. FORD. But we have every obligation, because we pass the law, to be sure that the legislative language, the legislative history is understood by the courts also.

Mr. MURKOWSKI. I would certainly agree with my friend from Kentucky, and I hope he will agree after a short review of the history that that is exactly what happens.

Let me give you my version of the record because it goes back to a legacy of broken promises starting in 1984. We had a commitment, a clear promise by Don Hodel, then Secretary of Energy, affirming that the Energy Department is obligated to begin accepting spent nuclear fuel from nuclear powerplants in 1998 whether or not a permanent disposal facility is ready.

Now, we went on a few years and got into 1987, a 3-year delay. Congress then, this body, designated Yucca Mountain, NV, as the only site to be evaluated. Meanwhile, the Department of Energy announces a 5-year delay in the opening date for a disposal facility from 1998 to the year 2003. They did not ask for any money. They did not mention money. They simply announced a 5-year delay in the opening day.

In 1989, another delay, another promise. The Department of Energy announces another delay in the opening date for a permanent disposal facility until the year 2010. We are told now, of course, by the most recent Secretary of Energy, Hazel O'Leary, that that cannot be ready until the year 2015.

We went on in 1991 with mounting concerns. The first sign of concern appears over the Energy Department's ability to meet its obligations under the Nuclear Waste Policy Act. The State of Minnesota tells the Energy Secretary, James Watkins, that it is ''highly probable that your department will experience significant delay in meeting its obligation to begin taking high-level radioactive waste in 1998.'' Nothing about money.

So we move into 1992. More promises. Secretary Watkins tells Minnesota's DOE, and I quote, ''The DOE is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act. The department has sound, integrated programs and plans that should enable us to begin spent fuel receipt on an MRS, a monitored retrievable, storage facility in 1998.''

We move to December 1992, another promise. Energy Secretary Watkins acknowledges that attempts to find a volunteer host for an MRS facility have not succeeded. He promised to do whatever is necessary to ensure that the Energy Department is able to start removing spent fuel from nuclear power sites in 1998.

I do not know what my friend would think of the moral obligation, but it is interesting to note that Secretary O'Leary in May 1993 affirms that the Energy Department ''has an obligation'' to electric utilities and their customers. ''If it does not have a legal obligation, then it has a moral obligation.'' That really does not mean much other than acknowledgement of just a moral obligation.

But in May 1994 there was a notice of inquiry. DOE published a notice of inquiry to address the concerns of affected parties regarding the continued storage of spent nuclear fuel at reactor sites beyond 1998. The energy agency says, ''Preliminarily, it's our view that it does not have a statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or suitable storage facility.''

That is the first time they denied, if you will, that they had a statutory obligation to accept the spent fuel.

Well, then we move over to May 1994 and 14 utilities and 20 States bring suit to the Department of Energy. A coalition of 14 utilities and public agencies in 20 States file separate but similar lawsuits seeking clarification of the Energy Department's responsibility to accept spent fuel beginning back in 1998.

Then we go to April 1995. No obligation to take the fuel, the Department of Energy says. No obligation on the one hand. Previously, they said they did not have a statutory obligation. In April, they said the Federal Government has no legal obligation to begin accepting high-level waste in 1998 if a repository is not open, according to the DOE's interpretation of the Nuclear Waste Policy Act and contracts with utilities. Still no mention about funding.

In July 1996 we have a different view, a very different view. In July 1996 the court ruled, and this is the U.S. Court of Appeals, that the Department of Energy's obligation to take the fuel in 1998 is a legal as well as a moral obligation. So there we have the dictate of the court, which I think addresses the concern of the Senator from Arkansas.

In December 1996, the Department of Energy does not challenge the court's ruling and admits failure. The DOE acknowledges that it will not be able to meet its commitments to take the waste in 1998.

In January 1997, the DOE's liability is addressed and 46 State regulatory agencies and 33 electric utilities file new action for escrow of nuclear waste funds and to order the DOE to take the spent fuel in 1998.

In March 1997, the court rejects the Department of Energy's motion to dismiss before it is filed.

So that is the last legal action. The court tells the DOE that a motion to dismiss would be ''inappropriate in this case'' and sets the case for damages for a hearing on the merits.

Mr. President, a deal is a deal.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator's time has expired.

The Senator from New Mexico.

AMENDMENT NO. 41 TO AMENDMENT NO. 26

(Purpose: To strike all provisions relating to special consideration of potential sites for an interim storage facility)

Mr. BINGAMAN. Mr. President, I understand it is appropriate at this point for me to send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Yes.

Mr. BINGAMAN. I do so.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 41 to Amendment No. 26.

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

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

The amendment is as follows:

On page 28, strike the second sentence of section 204(c)(2).

Mr. BINGAMAN. Mr. President, in order to describe what this amendment does, let me first just give my colleagues the context, the way this bill is structured so they understand what we are talking about here.

Under this bill, the way it is pending before us, we have the Secretary of Energy proceeding to go forward and study and analyze the appropriateness of using the Yucca Mountain site as a permanent repository and doing what is called the viability assessment to decide whether Yucca Mountain is going to be the right site, or an appropriate site.

If the Department of Energy, the Secretary of Energy, advises the President and the President determines that Yucca Mountain is not a proper site, then at that point we go to plan B, and plan B says that the President then has 18 months in which to choose another interim site for the waste except that under the bill the way it now stands after the last amendment and previous amendments that were adopted, he can

choose another site with some exceptions.

The exceptions are, first, the President shall not designate the Hanford Nuclear Reservation in the State of Washington as a site for the construction of an interim storage facility. The second exception is that he shall not designate the Savannah River site and any of Barnwell County in the State of South Carolina. And, of course, we just adopted an amendment saying that he shall not designate the Oak Ridge reservation in the State of Tennessee.

Mr. President, what this amendment does that I am offering right now is say let us strike those exceptions. If in fact the President determines that Yucca Mountain is not the right site for a permanent repository, then we ought to all be in this thing together and the Secretary and the President should have full discretion to designate whatever site they want. Otherwise, Mr. President, I as a Senator from New Mexico have to answer the question from my constituents, why didn't I stand up and get some exceptions added for New Mexico.

For example, everyone in my State knows that we have a nuclear waste site being constructed in New Mexico and not too far from being opened, the WIPP site, the Waste Isolation Pilot Plan. Why didn't I stand up and offer an amendment to exclude the WIPP site? That would be a very logical thing to do.

If I were representing Colorado, I think the citizens of Colorado would have a very legitimate question that they could put to me: Why didn't you, Senator, stand up and move to exclude Rocky Flats? That is a contaminated site, just as contaminated as Hanford, just as contaminated as Savannah River. Rocky Flats certainly should be on the list of excluded sites.

If I was representing Idaho, why haven't I excluded the Idaho site? There is great concern in the State of Idaho about the possibility of nuclear waste remaining in that State. Ohio, the mound site. There has been a lot of concern about contamination of the mound site. How could a Senator representing the good people of Ohio explain to them why that site was not also excluded? What about Florida? We have the Pinellas site there which was a manufacturing site for components for nuclear weapons. Why haven't we excluded that site?

I would ask how any Senator here could stand and explain to their constituents why we have not excluded all Superfund sites. Superfund sites would be very logical sites for the President to choose as an alternative to this Nevada site if in fact the President has to make that determination.

What about shutdown military bases. Why shouldn't we exclude them? There is a real danger in many of our States—we have been fortunate in New Mexico. None of our military bases have been shut down, but there are many States in the country where military bases have been shut down. If I was representing one of those States, I would want to be sure that shutdown military bases were not on the list that the President could choose from.

So, I think I have made the point fairly clear that it is very hard for me to explain to people in my State why I am opposed to putting waste in Tennessee, I am opposed to putting waste in South Carolina, I am opposed to putting waste in Washington State, but I do not mind putting it in our State. That is a very difficult argument to make.

So my amendment would say, look, let us eliminate the exceptions. Let us recognize that there is a certain amount of risk involved in the legislation we are passing. The risk says if we determine, if the President determines, down the road that Yucca Mountain is not to be chosen, then we are all in this thing together and everyone is in the barrel. We cannot just say this State is out, that State is out, the other State is out, and the other 47 are in the barrel.

I think that is only reasonable. I know we have a lot of so-called NIMBY amendments around the Congress—''not in my backyard'' is a NIMBY amendment. We have three NIMBY amendments stuck in this bill so far. I am just wondering why we do not have 47 additional ones stuck in here so we can exclude all 50 States, if we are going to exclude 3. So my amendment would say let us eliminate the three that are there. If we are going to go down this road, if we are going to adopt this bill, if we are going to give the President discretion to choose an alternative site, let us give him discretion to choose an alternative site wherever he determines or she determines it makes sense to put this waste.

That is the sum and substance of the amendment. To me it is straightforward. It is good government. It is good politics for any of us who represent States other than the three that are now excluded. I hope very much my colleagues will support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, if I may make a correction regarding what I believe is the intent of my friend from New Mexico. It does not exclude a State, but it does exclude sites. My State of Alaska has had the experience of two underground nuclear explosions, the two largest that have ever occurred. That is the limitation of our experience. I cannot speak for Senators from the State of Washington or Oregon. Senator WYDEN, as you know, felt very strongly about eliminating the Hanford site. He explained his rationale to me, that Hanford was still receiving substantial quantities of waste associated with reactors that had been cut up from the submarines, coming up the Columbia River. I hope he comes to the floor and speaks for himself, but on this matter he explained that he felt that Hanford had taken enough waste and Hanford is the largest current holder of spent nuclear fuel in inventory in tonnage, approximately 2,133 tons. Whether that satisfies the Senator from New Mexico, I do not know.

Savannah River, SC, Senator THURMOND and Senator HOLLINGS felt very strongly about the continued responsibility of the Savannah River facility to take additional waste, wastes coming in from Europe at this time, waste that is being vitrified. They have approximately 206 metric tons.

At Oak Ridge, in Tennessee, Senator FRIST and Senator THOMPSON have indicated their concern. They currently have 46 tons of spent nuclear fuel.

Whether those sites can be construed as different, I think you could probably make a case, from the situation in your State—but I cannot speak for your State and I will not. The only thing I can say is this is spent nuclear fuel. The theory, as the Senator knows, of this process of everybody coming in and eliminating his State could progress on this floor. We could go through 47, 48, 49—whether we would get them all and come full circle, I do not know. But I can express that these sites have major cleanup operations ongoing, unlike other sites. The Department of Energy is spending literally billions of dollars to attempt to stabilize these wastes. I have been out to Hanford. I have seen the efforts out there to generate the technology, to get the destabilized waste out of the tanks. Some of those tanks are believed to be unstable and leaking.

I have seen the efforts at Savannah to recover the liquid waste from the tanks. The spent fuel is in pools and corroding. I have seen that physically. They claim they have a priority. I cannot make that scientific judgment. But the Senators from those States are obviously concerned that these sites cannot handle the new job of dealing with more commercial fuel and continuing their obligation to clean up sites that have not been properly taken care of. So I think, if I can perhaps express the argument which I assume prevails among the majority of my colleagues who have spoken on this subject—I would welcome the rest of them to come down and speak for themselves. I reserve the remaining time on our side to accommodate those Members.

Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. All time is concluded at 6:30, so we have about 9 minutes left.

Mr. MURKOWSKI. It is equally divided?

The PRESIDING OFFICER. To whomever uses the time first.

Mr. MURKOWSKI. Is there any objection to splitting the remaining time?

Mr. BINGAMAN. I will be glad to split the time.

Mr. MURKOWSKI. I propose we split the time, and I reserve the remainder

of my time for Members from those States.

The PRESIDING OFFICER. Without objection, it is so ordered. The time will be so divided.

Mr. BINGAMAN. Mr. President, let me respond. I certainly agree with the Chairman's point that these Senators are greatly concerned about these sites in their States. I compliment them for proposing and being able to get these amendments that they have gotten into this bill into the bill. I think they have done very good work in representing their States' interests. My point is that there are many other sites in this country which have an equal or perhaps an even greater claim to being excluded. We need to either put those sites in or take these sites out. That is the simple thrust of my amendment.

Much of the waste that is concerning people at Savannah River, Oak Ridge, and Hanford—some of that waste will wind up in my State and not on an interim basis. Under the proposal for the WIPP site, that is a permanent repository for transuranic defense-related waste. These Senators are providing that they will not have to take any additional interim waste, and the plans are that much of the waste that they are now complaining about having been put in their States will in fact travel to my State of New Mexico in the future once the WIPP site is open. So I have great difficulty agreeing with them that their States should be excluded from possible consideration as a future interim site while my State should be included.

As I say, I would feel the same way if I were representing Rocky Flats in Colorado, if I were representing Ohio, the mound site there, or if I were representing the Pinellas shutdown facility in Florida. And, of course, as all of us know, there are a great many Superfund sites around the country which have been determined to be contaminated. I think all of those sites would be at great risk of being chosen by the President and therefore they, their Senators, would want to stand up and get their States or their sites excluded as well.

Mr. President, I think this is a very difficult issue, where you put nuclear waste. But the only way I know to get from here to there, to a reasonable result, is to say we are all going to have to share the risk. That is what my amendment would try to do.

I yield the floor. I ask, is there additional time on my side?

The PRESIDING OFFICER. Less than a minute.

Mr. BINGAMAN. I reserve that time and yield the floor.

Mr. MURKOWSKI. Mr. President, it is my understanding the Senator from Oregon wants to speak. We have about 6 minutes left. I yield 2 minutes to the Senator.

Mr. WYDEN. Thank you very much, Mr. Chairman. I suspect that there are some who now think this whole discussion is sort of a question of ''not in my backyard'' run wild. I submit to my colleagues, that is not what is at issue. In fact, Hanford is in Washington State. It is not in the State of Oregon. But I care greatly about this because there is already more high-level nuclear waste now stored at Hanford than at any other Federal facility in the Nation. There is no place in the United States where nuclear materials are stored under worse conditions than at Hanford. So, the fact is, if there are to be tens of thousands of tons of additional nuclear waste parked at Hanford, even though it is not safely storing the waste it now has on site, there will be great problems for the Pacific Northwest. So, I tell the Senate today, and Senator SMITH also joins me in this effort, that I think this is a critical public health and safety question that when, in fact, you have high-level nuclear waste stored there already and you cannot deal with that safely, you certainly should not put additional waste there.

I thank Chairman MURKOWSKI for yielding to me. I want to say to the Senate, this is not, in my view, a question of not in my backyard run rampant, but that there are really public interest reasons for ensuring that additional problems are not foist upon the Pacific Northwest. I thank the chairman for yielding.

Mr. MURKOWSKI. Mr. President, I think my time is about up. I do not see anybody rising to speak on it. I think each Member should evaluate for himself or herself, relative to the question of whether or not there is a certain uniqueness associated with the Hanford site, the Savannah site, and the Oak Ridge site. I hope we would not have any more amendments coming up to address individual States, because I do not think they could fall under the same category.

Mr. President, I ask that we vote first on the Bumpers amendment.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is the Senator asking to vote first on the Bumpers amendment?

Mr. MURKOWSKI. First on the Bumpers amendment followed by the Bingaman amendment. I ask for the yeas and nays on both. Is there any objection to 10 minutes?

Mr. BINGAMAN. Mr. President, I have no objection. I would like to take my additional 30 seconds to conclude my debate on my amendment before we start the votes.

Mr. MURKOWSKI. I ask unanimous consent the second vote be a 10-minute rollcall vote to accommodate Senators.

Mr. BINGAMAN. Could we have a 2-minute period, equally divided, a minute each before the second vote to explain just what it is?

Mr. MURKOWSKI. I have no objection.

Mr. BINGAMAN. Could we have a ruling on the request for the yeas and nays?

The PRESIDING OFFICER. Without objection, the first vote will be on the Bumpers amendment.

Mr. BUMPERS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will be very brief.

The PRESIDING OFFICER. Forty-five seconds.

Mr. BINGAMAN. Forty-five seconds? I will not take any longer.

I appreciate the comments of the Senator from Oregon and his concern for the Pacific Northwest. I compliment him on getting this provision in the bill. I will only make the point that I represent the desert Southwest, not the Pacific Northwest. And just as the Pacific Northwest ought to be excluded, so should the desert Southwest. Therefore, I suggest we have a level playing field and not exclude anyone. We all ought to be in this barrel together.

When we get to my amendment, I will restate that position, because we will have 2 minutes of additional debate on it.

I also support Senator BUMPERS' amendment which we are going to vote on right now.

The PRESIDING OFFICER. All time has expired.

VOTE ON AMENDMENT NO. 33

The PRESIDING OFFICER. The question is on agreeing to the Bumpers amendment No. 33. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON], are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. DORGAN], and the Senator from Minnesota [Mr. WELLSTONE], are necessarily absent due to severe disaster conditions in their States.

I further announce that the Senator from California [Mrs. BOXER] is necessarily absent.

I also announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 24, nays 69, as follows:

[Rollcall Vote No. 38 Leg.]

YEAS—24

Akaka	Durbin	Lautenberg
Baucus	Ford	Moynihan
Biden	Glenn	Murray
Bingaman	Harkin	Reed
Breaux	Inouye	Reid
Bryan	Kennedy	Rockefeller
Bumpers	Kerry	Torricelli
Daschle	Landrieu	Wyden

NAYS—69

Abraham	Frist	Mack
Allard	Gorton	McCain
Ashcroft	Graham	McConnell
Bennett	Gramm	Mikulski
Bond	Grassley	Moseley-Braun
Brownback	Gregg	Murkowski
Burns	Hagel	Nickles
Byrd	Hatch	Robb
Campbell	Helms	Roberts
Chafee	Hollings	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Jeffords	Sessions
Collins	Johnson	Shelby
Coverdell	Kempthorne	Smith (NH)
Craig	Kerrey	Smith (OR)
D'Amato	Kohl	Snowe
DeWine	Kyl	Specter
Dodd	Leahy	Stevens
Domenici	Levin	Thomas
Enzi	Lieberman	Thompson
Faircloth	Lott	Thurmond
Feingold	Lugar	Warner

NOT VOTING—7

Boxer	Feinstein	Wellstone
Conrad	Grams	
Dorgan	Hutchinson	

The amendment (No. 33) was rejected.

Mr. MURKOWSKI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the senior Senator from West Virginia, Senator BYRD, be recognized for 3 minutes following the next vote.

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

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

VOTE ON AMENDMENT NO. 41

Mr. MURKOWSKI. Mr. President, my understanding is that the Bingaman amendment is next; and there is 1 minute on both sides, I believe Senator BINGAMAN and then Senator WYDEN.

The PRESIDING OFFICER. By agreement there is 1 minute on each side prior to voting on the Bingaman amendment.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, this amendment is straightforward. The bill, as it now stands before us, says that the Department of Energy will go ahead and try to determine whether it can use the Yucca Mountain site in Nevada for a permanent repository.

Mr. President, the Department of Energy will go ahead and try to determine if it can use the Yucca Mountain site. If the President decides, before the deadline in here, in 1999, that Yucca Mountain is not an appropriate site, then they cannot proceed with Yucca Mountain anymore.

The President is given 18 months to find another interim site for this nuclear waste, except that the President—and this is in the bill now—it says: The President shall not designate Hanford Nuclear Reservation in the State of Washington and the Savannah River site in Barnwell County in the State of South Carolina or the Oak Ridge Reservation in the State of Tennessee as a site for construction of an interim storage facility.

Mr. President, what I am saying is, let us strike those exemptions. All of our States, all of our sites, ought to be at risk if we decide to go this route.

The PRESIDING OFFICER. The 1 minute has expired.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I hope our colleagues will oppose the Bingaman amendment. This is not a question of ''not in my backyard'' run rampant. In fact, Hanford is in the State of Washington. It is not in the State of Oregon.

The reason that it is important to include Hanford in this legislation is that there is no place in the United States where nuclear materials are now stored under worse conditions than at Hanford. In fact, there is already more high-level nuclear waste stored at Hanford than at any other Federal facility in the country. I offered this in the committee with Senator SMITH of Oregon.

I hope our colleagues will reject the Bingaman amendment.

Mr. MURKOWSKI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Bingaman amendment. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Minnesota [Mr. GRAMS] and the Senator from Arkansas [Mr. HUTCHINSON] are necessarily absent.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] the Senator from North Dakota [Mr. DORGAN] the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent due to severe disaster condition in their States.

I further announce that the Senator from California [Ms. BOXER] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

I also announce that the Senator from California [Mrs. FEINSTEIN] is absent due to illness.

The PRESIDING OFFICER (Mr. ROBERTS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 56, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—36

Akaka	Bumpers	Domenici
Baucus	Byrd	Durbin
Bingaman	Collins	Feingold
Breaux	Daschle	Glenn
Bryan	Dodd	Graham
Harkin	Lautenberg	Reid (NV)
Johnson	Levin	Robb
Kennedy	Lieberman	Rockefeller
Kerrey	Mikulski	Santorum
Kerry	Moseley-Braun	Sarbanes
Kohl	Moynihan	Snowe
Landrieu	Reed (RI)	Torricelli

NAYS—56

Abraham	Ford	McCain
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Murray
Biden	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Roth
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Chafee	Hollings	Smith (NH)
Cleland	Hutchison	Smith (OR)
Coats	Inhofe	Specter
Cochran	Jeffords	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kyl	Thompson
D'Amato	Leahy	Thurmond
DeWine	Lott	Warner
Enzi	Lugar	Wyden
Faircloth	Mack	

NOT VOTING—8

Boxer	Feinstein	Inouye
Conrad	Grams	Wellstone
Dorgan	Hutchinson	

The amendment (No. 41) was rejected.

Mr. MURKOWSKI. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Mr. President, I understand that a unanimous consent request has been entered into to allow the distinguished Senator from West Virginia to speak at this point. I have spoken to him, and with his permission, if he would allow me to proceed before that, I ask for that consent.

Mr. BYRD. I am delighted.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that the only remaining amendments in order to the committee substitute to S. 104 be the following, and I further ask unanimous consent that the Domenici and Wellstone amendment No. 30 is limited to relevant second-degree amendments; one Domenici amendment regarding points of order, amendment No. 38; two Wellstone amendments, amendments numbered 29 and 30; and one Bingaman amendment, numbered 31.

I further ask unanimous consent that following the disposition of the abovementioned amendments, the committee substitute be agreed to, and the bill be advanced to third reading.

I further ask unanimous consent that the votes occur in a stacked sequence, beginning at 9 a.m. on Tuesday, April 15, with 3 minutes of debate between each vote, and all votes following the first vote be limited to 10 minutes in length.

I further ask unanimous consent that all amendments must be offered and debated prior to the close of business on Monday, April 14, and limited to 1 hour each, to be equally divided in the usual form, and any second-degree amendments be limited to the same time restraints as the first-degree amendments.

I further ask unanimous consent that no amendments dealing with the storage of nuclear materials on Palymra Atoll, Wake Atoll or any other U.S. Pacific island be in order.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, through you to the distinguished majority leader, the intent I am sure of the unanimous consent agreement is to have 3 minutes prior to the first vote. It did not say that, but I am sure 3 minutes prior to debate of the first vote.

Mr. LOTT. Mr. President, I amend that request to say that we would have 3 minutes prior to the first vote and between the successive votes, yes.

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

Mr. LOTT. Mr. President, for the information of all Senators, in light of the recent agreement and the request to bring the nuclear waste bill to a conclusion on Monday morning, I want to thank first of all, the Democratic leader for his cooperation in getting us to a point where we will get the final vote. The Senate, therefore, will not be in session on Friday this week. The Senate will convene on Monday, and following morning business the Senate will resume the pending nuclear waste bill under the previous order for debate of the remaining amendments. However, no votes will occur during Monday's session of the Senate.

The Senate will convene on Tuesday, April 15, and begin a series of back-to-back votes beginning at 9 a.m. Following those votes, which would include final passage of the nuclear waste bill, the Senate will conduct morning business to discuss the significance of April 15, which is tax filing day. It is the hope of the leadership that the Senate could consider the nomination of Alexis Herman to be Secretary of Labor on Wednesday. Therefore, a vote is expected on that nomination during the day, Wednesday, April 16, session of the Senate.

Also, we are very close, I believe, to getting an agreement with regard to the nomination of Pete Peterson to be Ambassador to Vietnam. One of the Senators has had some concerns in reviewing a fax matter at this point, and immediately after we hear from Senator BYRD, we hope to be ready to proceed on that under a time limit agreement. If we could get 30 minutes equally divided on each side unless yielded back, and perhaps a voice vote, but we will determine that during the next very few minutes.

Again, Mr. President, I thank all Senators for their cooperation. I know it has been a very hard issue for the Senators from Nevada, and they have been very tenacious, but they have been reasonable in their approach. I appreciate that and I want to thank Senator MURKOWSKI and others for their good work and thank you, Senator DASCHLE for your cooperation.

AMENDMENT NO. 42

(Purpose: To ensure that budgetary discipline will apply to fees levied under this Act)

Mr. LOTT. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. LOTT] for Mr. DOMENICI, proposes an amendment numbered 42.

At the appropriate place insert the following:

Notwithstanding any other provision of this act, no points of order, which require 60 votes in order to adopt a motion to waive such point of order, shall be considered to be waived during the consideration of a joint resolution under section 401 of this Act.

Mr. LOTT. Mr. President, I ask unanimous consent that it be in order to send a second-degree amendment to the desk.

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

AMENDMENT NO. 43 TO AMENDMENT NO. 42

Mr. LOTT. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for Mr. MURKOWSKI, proposes an amendment numbered 43 to amendment No. 42.

AMENDMENT NO. 43

In the pending amendment, on page 1, insert at the end the following:

''Notwithstanding any other provision of this Act, except as provided in paragraph (3)(c), the level of annual fee for each civilian nuclear power reactor shall not exceed 1.0 mill per kilowatt-hour of electricity generated and sold.''.''

Mr. LOTT. Mr. President, I thank Senator BYRD for yielding at this time and allowing me to complete these agreements.

I yield the floor.

Mr. BYRD. Mr. President, I ask unanimous consent that following my brief remarks, the distinguished Senator from New York, Mr. MOYNIHAN, be recognized for 3 minutes, and following Mr. MOYNIHAN, I ask unanimous consent that Mr. LEVIN be recognized for 3 minutes.

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

Under the previous order, the Senator from West Virginia is recognized for 3 minutes.

COURT RULING REGARDING THE LINE-ITEM VETO ACT

Mr. BYRD. Mr. President, in March of last year, the Congress passed the Line-Item Veto Act. That law, for the first time in our Nation's history, gave the President the power to single-handedly repeal portions of appropriations or tax laws without the consent of Congress. I vigorously opposed passage of the act because of my deep concern over the effects of that act on our system of checks and balances and the separation of powers that has served this Nation so well for over 200 years.

As I have told my colleagues on many occasions, I viewed the passage of that law as one of the darkest moments in the history of the republic. On January 2 of this year, I, along with Senators MOYNIHAN and LEVIN, former Senator Hatfield, and Representatives WAXMAN and SKAGGS, filed a civil action in the U.S. District Court for the District of Columbia challenging the constitutionality of the Line-Item Veto Act.

Today, U.S. District Judge Thomas Penfield Jackson of the U.S. District Court for the District of Columbia handed down a ruling declaring the act to be unconstitutional. Among other things, Mr. President, the court held, ''Where the President signs a bill but then purports to cancel parts of it, he exceeds his constitutional authority and prevents both Houses of Congress from participating in the exercise of lawmaking authority. The President's cancellation of an item unilaterally effects a repeal of statutory law, such that the bill he signed is not the law that will govern the Nation. That is precisely what the Presentment Clause was designed to prevent.''

As Judge Jackson also stated, ''Just as Congress could not delegate to one of its chambers the power to veto select provisions of law, it may not assign that authority to the President.'' For the reasons set forth in his 36-page opinion, the court adjudged and declared unconstitutional the Line-Item Veto Act.

I am very pleased with the court's decision, which I believe to be a great victory for the American people, the Constitution, and our constitutional system of checks and balances and separation of powers.

Mr. President, I express my deep appreciation to Mr. MOYNIHAN, Mr. LEVIN, Mr. WAXMAN, Mr. SKAGGS, former Senator Hatfield, for their cooperation, and to our excellent team of lawyers for their support, for their dedication, and for their active and effective participation in this case.

For the benefit of my colleagues, I ask unanimous consent that the Court's full opinion be printed in the RECORD.

Mr. President, I understand the Government Printing Office estimates that it will cost $1,916 to print this memorandum and order in the RECORD.

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

[United States District Court for the District of Columbia, Civil No. 97–0001 (TPJ)

SEN. ROBERT C. BYRD, ET AL., PLAINTIFFS *v.* FRANKLIN D. RAINES, ET AL., DEFENDANTS

MEMORANDUM AND ORDER

This action challenges the validity of legislation entitled the Line Item Veto Act, Pub. Law No. 104–130, 110 Stat. 1200 (1996) (to be codified at 2 U.S.C. §§681 note, 691 *et seq.*) (''the Act''), which empowers the President unilaterally to ''cancel'' certain appropriations and tax benefits after signing them