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Senate

(Legislative day of Monday, May 15, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, whose dwelling place is the heart that longs for Your presence and the mind that humbly seeks Your truth, we eagerly ask for Your guidance for the work of this day. We confess anything that would hinder the flow of Your spirit in and through us. In our personal lives, heal any broken or strained relationships that would drain off creative energies. Lift our burdens and resolve our worries. Then give us a fresh experience of Your amazing grace that will set us free to live with freedom and joy.

Now Lord, we are ready to work with great confidence fortified by the steady supply of Your strength. Give us the courage to do what we already know of Your will, so that You will give us more for the specific challenges of this day. In the debate of crucial issues, help us to listen attentively to each other. May we never think we have an exclusive corner on the truth. Enable us to be open to aspects of the truth You will provide through the voices of those who may differ with us. Our dominant desire is for Your best in the contemporary unfolding of the American dream. Lead on, O King Eternal, Sovereign of this land. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. CHAFEE. Mr. President, the leader time has been reserved, and the Senate will immediately resume consideration of S. 534, the solid waste disposal bill. We will proceed under the provisions of the consent agreement reached on Friday. Senators should be aware that rollcall votes are expected this morning, possibly as early as 10:30 a.m., on or in relation to the amendments to the solid waste disposal bill.

Following the disposition of the solid waste bill, the Senate will resume consideration of S. 395, the Alaska Power Administration bill. A cloture motion was filed on that measure yesterday, and Senators will have until 2:30 p.m. this afternoon to file first-degree amendments to S. 395.

The Senate will recess between the hours of 12:30 p.m. and 2:15 p.m. for the weekly policy luncheons to meet.

Under the previous order, Mr. President, the Senator from Washington, Senator MURRAY, has an amendment and she has 1 hour on that equally divided in the usual form.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The PRESIDING OFFICER (Mr. CAMPBELL). The Senate will now resume consideration of S. 534, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized to offer an amendment, on which there will be 1 hour equally divided. The Senator from Washington is recognized.

AMENDMENT NO. 1079

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY], for herself and Mr. GORTON, proposes an amendment numbered 1079.

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

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

The amendment is as follows:

Title II, following section (f) State Solid Waste District Authority, add the following section (g) and reletter all the following subsections accordingly:

''(g) STATE MANDATED SOLID WASTE MANAGEMENT PLANNING.—A political subdivision of a State may exercise flow control authority for municipal solid waste, and for voluntarily relinquished recyclable material that is generated within its jurisdiction, if State legislation enacted prior to January 1, 1990 mandated the political subdivision to plan for the management of solid waste generated within its jurisdiction, and if prior to January 1, 1990 the State delegated to its political subdivisions the authority to establish a system of solid waste handling, and if prior to May 15, 1994:

''(1) the political subdivision has, in accordance with the plan adopted pursuant to such State mandate, obligated itself through contract (including a contract to repay a debt) to utilize existing solid waste facilities or an existing system of solid waste facilities; and

(2) the political subdivision is currently undertaking a recycling program in accordance with its adopted waste management plan to meet the State's solid waste reduction goal of fifty percent; and

(3) significant financial commitments have been made, or, bonds have been issued, a major portion of which, were used for the construction of solid waste management facilities.

On page 65, line 10, strike ''or (e)'' and insert ''(e) or (f).''

Mr. CHAFEE. Mr. President, I wonder if the Senator will yield for a quick question. It is my understanding that this amendment she filed is the same as the one she previously circulated, except the previous one had in it additional waste besides solid waste. I

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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think it had construction debris; is that correct?

Mrs. MURRAY. Mr. President, the amendment that I sent to the desk is slightly modified and has been worked out with the committee.

The PRESIDING OFFICER. The Senator may proceed.

Mrs. MURRAY. Mr. President, this morning I rise with my colleague from Washington, Senator GORTON, to offer an amendment to the Interstate Transportation of Municipal Solid Waste Act of 1995.

Let me begin by saying that I appreciate the attempts the managers of this bill have made to accommodate the wide array of waste management systems there are around the country. My colleagues from Connecticut, Florida, Virginia, Delaware, and most recently, from Vermont have found ways to amend this legislation so that the uniqueness of their local systems is recognized within the scope of this legislation. Senator GORTON and I want to ensure that Washington's communities have the same latitude to continue progressively implementing solid waste management systems.

Washington's municipal solid waste management system is a good one. All municipal waste systems comply with the States' comprehensive waste management plan. This plan delegates authority over solid waste management to the State's counties, cities, and towns. These entities, in turn, manage public systems or contract with private industries to handle all municipal solid waste and recycling.

The specifics of each system differ, from county to county, and from county to city, and from city to town; but all share the common elements of minimizing costs and adhering to the State's mandated recycling goals.

In Washington, according to our State plan, local governments manage solid waste, including recyclables, by way of an integrated system of facilities. The city of Seattle, King County, Spokane County, Snohomish County, Clark County, and Okanogan County, and other jurisdictions use flow control authority in their systems. In this arrangement, the interplay between county ordinances, town and city ordinances, health district regulations, local agreements, and private contracts all play a role.

Although the Supreme Court's decision sent a new wave of insecurity about the future rippling through the public sectors of waste management, Washington State actually began thinking about these issues long ago. We have set a progressive waste management agenda for ourselves that has been nationally heralded and emulated.

In 1989, while I was a State senator, we embraced the growing crisis over solid waste management when we passed the Waste Not Washington Act. Among other things, this plan established the statewide goal of 50 percent recycling. Now, we have the lowest cost recycling systems in the country and the lowest cost disposal systems in the Pacific Northwest.

In Washington State, we are on the cutting edge of recycling. Let me give a few examples of what this means in terms of the waste stream. Statewide, we recycle 56 percent of all newspaper, 57 percent of high grade paper, 52 percent of cardboard, 50 percent of all yard waste, and about 73 percent of all metals.

The city of Seattle's residential recycling rate was 48 percent in 1993. The commercial recycling rate was 45 percent. Eighty-three percent of all newspapers are recycled in Seattle, as is 70 percent of all cardboard, 77 percent of all high grade paper, 68 percent mixed paper, 70 percent of all aluminum, and over 50 percent of all glass recycled.

Curbside programs are currently available to over 70 percent of Washington State's population; and in urban counties and cities, there is almost 100 percent available curbside recycling. The city of Seattle has had a curbside recycling program since 1987.

Not only does Washington State exceed current national standards, it is well beyond the targets of this bill.

The ways we got there were by allowing local communities the flexibility to establish the waste systems they needed. In the future, attaining our recycling goal of 50 percent will depend on the ability to continue managing our waste systems as well as we do now.

Our amendment is for Washington. It would ensure that Washington's counties, towns, and cities will be able to meet the commitments they made when they understood that flow control was a legitimate power.

Millions of dollars' worth of bonds, issued for facility development, could be defaulted upon if Washington's local communities lose the ability to service their waste management debts due to the loss of flexibility to guarantee a reliable waste stream.

In Washington, many communities have issued municipal bonds to pay for the construction of solid waste facilities. These bonds are outstanding. The committee's substitute only partially protects the commitments in communities like these.

In Snohomish County, for instance, improvements to the system were financed through a combination of revenue bonds and general obligation bonds. These debts were assumed with the expectation that solid waste revenues would be used to service them. As of 1995, Snohomish County has issued $26.7 million in general obligation bonds, scheduled to be paid back by 2007. As the bill is currently written, only the revenue bonds of Snohomish could be paid back.

The burdens of these debts will fall on the users of the system—the taxpayers. As we at the Federal level of Government are shifting more and more financial responsibility on local governments, restricting the ability of local governments to manage their solid waste systems is not a good solution.

As it is written, this bill steps all over the jurisdictions of our local authorities. It will raise taxes. It will ruin one of the most effective recycling programs in the Nation, and it will throw many communities in our State into financial jeopardy. This one-size-fits-all approach will not work.

Our amendment is within the scope of this bill—it only grandfathers existing systems and facilities. We do not ask for any extension of the sunset of flow control.

I encourage the passage of this amendment, and in turn, the passage of this legislation.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Mr. President, I am puzzled, perhaps even bewildered at the necessity to speak here on behalf of an amendment for my State and Senator MURRAY's—an amendment designed under the parameters of a bill simply to allow the continuation of a flow control regime in our State which may very well have been the most successful of any State in the United States of America in reducing the amount of solid waste which is not recycled.

This bill, of course, responds to a decision of the U.S. Supreme Court. That decision invalidated flow control regimes all across America on the grounds that a State or municipality which directed or funneled the flow of its waste materials violated the dormant provisions of the interstate commerce clause. That is to say, States and local communities could not impact interstate commerce by flow control regimes in the absence of authority from the Congress of the United States. The Supreme Court, of course, invited the Congress to legislate in this area, and that is precisely what this bill does.

The bill attempts to recognize the fact that many States already have flow control regimes. And while it wishes to move them out of those present regimes toward a greater degree of competition in the private sector, it nonetheless recognizes many, but not all, existing obligations. And that is the defect which leads to this amendment.

While the bill recognizes and grandfathers for an extended period of time of up to 30 years regimes for single facilities financed by revenue bonds, it does not exempt systems of facilities financed in whole or in part by general obligation bonds. Beginning long before this bill was thought of, that was the method adopted by the State of Washington's system of facilities, generally speaking, financed by general obligation bonds; that is, bonds which were a call or a lien on taxpayers through the property that they own in particular counties.

So all Senator MURRAY and I propose to do is to provide a narrowly defined fix by defining the nature of the State

statute that covers, in a way, only the State of Washington and allow the continuation of its present regime for roughly the same period of time that it has allowed for other States in this bill.

Nothing, Mr. President, could be more reasonable. One size does not fit all when we are legislating in a field which the States have occupied. One size certainly does not fit all when we are dealing with a State that has been as progressive and as successful with its flow control regime as has the State of Washington.

Now, at one level this debate has already taken place. It took place last Thursday at the beginning of the discussion of this bill with the amendment proposed by the two Senators from Vermont for a special circumstance found in Vermont. This body accepted that Vermont amendment by a relatively close rollcall vote.

This proposal is considerably narrower than that proposed by the two Senators from Vermont, because theirs talked about prospective systems not in existence at the present time; ours talks about existing systems which are in place, in operation, and have already been financed.

Ours requires that significant financial commitments have been made or bonds have been issued, a major portion of which were used for the construction of solid waste facilities—a much more specific definition than that in the Vermont amendment. Nor can we come up with a single exception for a single county. Our counties and cities have been given fairly broad discretion in this field, and different metropolitan counties in the State of Washington have had subtle but distinct differences in the way in which they exercise flow control requirements.

But I can say, Mr. President, that for those who feel that this should be a competitive field, not single-source contracts, that is exactly what the State of Washington does. The management of our solid waste is conducted on a competitive bid basis.

So, Mr. President, we, the two Senators from Washington, are here simply to request the right to continue to do what we have already been doing so successfully—to pay off our bonds and to be subject to the provisions of this bill under essentially the same circumstances as are allowed other States, States to which the members of the committee paid some attention in drafting the bill in the first place.

Mr. President, just as this was appropriate for those that were included in the bill in the first place on single State bases, those which have been added without controversy, that which was added by the amendment of the Senators from Vermont, we wish not to have the Federal Government interfere with us, to tell us that everything we have done in the past is wrong, that in spite of the success of our program, I am sorry, we do not fit into the exceptions and therefore we cannot have one.

Mr. President, we should be allowed to have this exception. We should be allowed to continue a regime which has worked so successfully in our State in the past.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to make the record clear right from the very beginning that this is not a case of the Federal Government interfering in the affairs of any State. The current law of the United States that is defined by the Constitution and the Supreme Court is that you cannot have flow control. That is not the EPA or the Environment Committee or anybody else saying that. The Federal Government is not interfering. The law of the land is that they cannot have flow control in the State of Washington or anywhere in the United States. So we came forward with this legislation.

Why are we here? We are here because of the Carbone decision just a year ago. In that decision, they said having flow control interferes with the commerce clause. However, the Congress of the United States can make arrangements in its acts and they can do something about the so-called flow control. And we have.

We realize that there are lots of communities across the country—or several, anyway—that were caught. They had flow control and they had committed money for a facility that bonded indebtedness or general obligation bonds and that facility was dependent upon the municipal solid waste that would come to it, pursuant to flow control that had been enacted.

So we are taking care of that. Indeed there is one county in Washington that appears to fall within that category. That does not satisfy the folks from Washington. Indeed, it is not restricted to the State of Washington.

I suppose the argument could be made, ''Well, under the act, when certain things have to be enacted, it is solely Washington,'' but there is no restriction solely to Washington. We do not know how many other areas in the country might qualify under this. They are saying, ''We never had flow control. However, we would like to be given that privilege for the future. And we do not even have to have had bonded indebtedness.''

Indeed, if we read the amendment, it says ''Bonds have been issued or significant financial commitments have been made.'' Actually, it is the other way around—''Significant financial commitments have been made or bonds have been issued.''

Now, what does it mean by ''Significant financial commitments have been made?'' They spent some money on some trucks, for example. But they want that to qualify them to have an exception to the Constitution of the United States.

Where do we draw the line? Clearly, this is a place that does not qualify, it does not even come close to qualifying now, under the rules that we have set forth, after a lot of deliberation.

Now, they have pointed out that they have had wonderful success in recycling. That is great. They did not need flow control for that because they never had it. In some communities, yes. But they did not have it in these other communities, and they had the successes of the recycling that the Senator from Washington, Senator MURRAY pointed out.

Mr. President, this just goes too far. Clearly, if this amendment prevails we might as well say all across the country, forget the Constitution. We make an exception to it—not an exception. We just say in the whole Nation of the United States we can have flow control. California is next up.

Mr. President, I just think it is very unfortunate that they are pursuing this amendment. After long discussions we worked out what seemed to me to be a fair compromise. It took care of the specific situation where they had flow control but they had some commitments, general obligation bonds, have made a commitment, but this is not similar to that.

Mr. President, I hope very much that the amendment would not be accepted.

Mr. GORTON. Mr. President, I am truly puzzled. The Senator from Rhode Island says we ought to be satisfied because 1 county out of 39 in the State of Washington might possibly qualify under a general bill that he has written to continue its present system.

The Senator from Rhode Island says, ''They say the Constitution be damned, we just want to go ahead.'' He is entirely correct when he says that a decision of the U.S. Supreme Court stated that under the dormant reading of the interstate commerce clause, flow control regimes all across the United States were invalid.

That same Supreme Court decision asked the Congress if it wished to do so to legislate in this area, pointing out that it could grant States full authority if it wished to do so, to continue forever all of their existing or any future regime.

Now, the Senator from Rhode Island has done that. He is passing legislation which under certain circumstances States can exercise flow control regimes. One might ask, why does he not just simply allow it to the full extent that the Constitution would allow it, but he has not. He wants a certain pattern, but he has made exceptions to that certain pattern and we would like such an exception.

Ours is all retrospective. Unless financial obligations have been undertaken or bonds sold, unless there is a system in place by a State statute that is some 5 years old or more, the exception does not apply. It does not apply in any other State, Mr. President.

Why should a community be penalized because it had enough money to pay for these facilities in cash? Why should it be penalized if it pays for

them by general obligation bonds which cover other facilities as well, rather than a specific revenue bond for one specific facility?

Now, Mr. President, this committee did not have to bring a bill out on this subject at all. It could just have told the country that it had to live with this Supreme Court decision. The committee decided that the Supreme Court decision mandated legislation. The legislation does have differences from one State to another. This body has adopted an amendment for Vermont which is infinitely broader than the amendment proposed for the State of Washington.

Why in the world these people sitting here in this body have to tell the State of Washington, ''Sorry, you did it wrong and we are not going to let you do it anymore,'' is simply beyond the understanding of this Senator.

Mr. CHAFEE. Mr. President, several times the Senator has said he is puzzled.

First of all, with regard to Vermont, there are exceptions in the Vermont situation, and I might point out that this Senator, nor the committee, did not support the Vermont amendment.

Was it adopted? Yes, by a vote, over the objections of this Senator and others who are managing the bill.

To take a whole State such as Washington that has never had flow control—they are seeking something they never had—talk about puzzlement. I wish the Senator from Washington would explain why he needs flow control.

Why is he here? Because they had this remarkable record as recited of the recycling and they have achieved all of that without flow control.

Now, once again, why did we bring this bill to the floor? The Senator says, why did they bring it up? We brought it up to take care of those communities that were truly hurt by the Carbone decision. Those communities had enacted flow control, had issued bonds, usually revenue bonds, to pay for either an incinerator or very carefully planned landfill. They wanted to pay it off, and they are planning to pay off their bonds through the flow control that required all the trash within the municipality or the county—wherever it is—to come to a central place.

That is not the situation with the Senator and the State of Washington at all.

If there are explanations that are needed here, I think they are needed from the Senator, or the prime sponsor of the amendment, if she would say what they need these for. They had all these wonderful recycling achievements without flow control, so now they are in here asking for an exception to an entire State.

By the way, in all fairness, there is some difference between the population of Vermont, which is relatively modest, and the population of the State of Washington and what this will trigger, should this amendment be adopted.

Mr. President, I suggest during these pauses that the time be equally divided.

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

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, let me again stress in no way does the State of Washington in the proposed amendment come close to meeting the exceptions that were provided for in this legislation. First, they do not have flow control; and, second, under the amendment as submitted it does not require there be outstanding bonded indebtedness.

The Senator from Washington has frequently mentioned to us they have general obligation bonds, but that is not what this amendment says. This amendment says, ''significant financial commitments have been made.'' That could be the community had spent some money, as I say, on some trucks, to haul garbage. So it does not even come close to the criteria that we have set forth in the bill and I just think it is a vast overreaching.

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. SMITH. 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. SMITH. Mr. President, I rise in opposition to the Murray-Gorton amendment. We worked on it hard to try to craft a compromise to accommodate as many people as possible on this legislation. The amendment of Senators GORTON and MURRAY would simply open up the current provisions under S. 534 and would allow prospective flow control for areas that currently do not have flow control, and some areas that do flow control but do not have bonds and currently need to be paid off.

The whole spirit of the compromise worked out so carefully as we put this legislation together was we would not do things prospectively, that the intent here was to protect those people who had made financial commitments. Most specifically, they had let bonds or contracts that would require substantial losses possibly, conceivably, to the investment. That was the purpose. We were not trying to pass a bill here that would open up the whole interstate commerce issue again and allow States to prospectively implement flow control anywhere or any time for whatever reason, no matter how small the cost, whether it be the purchase of a truck or some minor item of cost.

Local flow control laws are by their very nature monopolistic and they are anticompetitive. I have stated numerous times during the course of this debate that I personally do not favor flow control, but in working with my colleagues I tried to help out some of the States that had very, very significant financial commitments, most specifically bonds, or in the case of a State like New Jersey, where they had an entire system for flow control and we wanted to try to accommodate them, we put a grandfather clause in here that would say that all flow control would be by the boards after 30 years. That was to allow for any bonds that may have been let to run out and then it would be entirely the free market system.

This amendment just flies in the face of the entire bill, the entire compromise. It is very important that my colleagues understand that if you support the free enterprise system and want to see less flow control in the future—not more—then you would be opposed to this amendment.

The Supreme Court ruled last year that these types of flow control laws are a violation of the commerce clause of the Constitution. Yet, it can be argued that governments that issued bonds—and the key here is bonds—to build facilities in reliance on flow control should be allowed to continue flow control only until these bonds are repaid. After this, the free market should prevail.

The purist argument would be they knew what they were doing when they let the bonds, and the free market ought to prevail anyway. Frankly, that is my position. But in an effort to compromise on this, Senator CHAFEE and I and others agreed that we would allow this grandfather, that it would be restrictive, that it would not be an open-ended grandfather that would simply allow prospectively anybody to think, ''Well, I might have an opportunity in 10 years to implement flow control and, you know, we might want to sign a contract, or we might want to let a bond, or prospectively, we may want to do it in 10 years.'' That is not the intent of this legislation. It would not be in the best interests of those who want to see flow control restricted rather than increased.

So the key here is that this amendment vastly expands the universe of communities that would be allowed the flow control—I mean vastly. This is not just Washington State. This is an open end that is going to allow flow control, and it would be flow control allowed not on the basis of financial need, not on the basis of financial commitments, not at all; just maybe we will have some financial commitments, or maybe in the future we would like to pass a bond, or maybe we would like to sign a contract, or maybe we would like to build a facility sometime in the future. That defeats the entire purpose of the legislation. I cannot emphasize that strongly enough.

This amendment goes beyond the principles that only those facilities that incurred bonded indebtedness should be grandfathered and instead it

grants flow control authority to a large universe of local governments who are simply implementing a State solid waste management plan.

Again, I go back to the hearing that we held in the subcommittee on flow control when we heard from New Jersey and other units which were affected by this. We heard that bond holders were going to be harmed and even some of us felt that they knew what they were doing or should have known what they were doing when they let the bonds and invested in the bonds. We decided, be that as it may, to be as fair as possible, we were going to allow the grandfather to kick in. A 30-year period gives everybody a chance to recoup any losses that they might have as a result of investments in the bonds. That was a compromise. It was very carefully struck. It was not my position. It was not the position of Senator LAUTENBERG or others on the committee who supported flow control. But it was a compromise. As compromises are, you give a little bit and you take a little bit. And that is the way it works.

But now to say we are down to the end, or very close to where we want to have a vote on this bill, to say now we are going to open this whole thing up prospectively to any locality or any community whatsoever anywhere which may want to have flow control is basically undoing the bill.

It is an anti-free-market amendment. It opens up flow control to a variety of communities that currently do not practice it, and it will shut out private companies that could meet the solid waste disposal needs of these areas. What we are hoping will happen in States like Washington and other States is that the free market will kick in; that over the next 30 years as we grandfather those who are currently implementing flow control, we will see the free market kick in in States like this where there is no flow control now, and it will work and it will work very well, and the free market frankly usually works, if not always works.

So I think that is the approach we ought to take. To just now come in with an anti-free-market amendment is a serious mistake. Recent studies indicate that flow control jurisdictions charge, on average, 40 percent higher rates than non-flow-control jurisdictions—40 percent higher.

This amendment goes against the spirit of the bill, the intent of the bill, and it should be defeated.

Flow control is not necessary for recycling, according to a recent EPA report called ''Report to Congress—Flow Controls and Municipal Solid Waste'':

> There are no data showing that flow controls are essential for the development of new solid waste capacity or for the long-term achievement of State and local goals for source reduction, reuse, and recycling.

That is a quote from that report. Thus, even the EPA has demonstrated that there is no need for flow control to meet State recycling goals.

The bottom line, as has been said before, my colleagues, is that this is a killer amendment. It kills the bill. It guts the bill. It makes the bill totally worthless, and it should not be passed.

I hope my colleagues will think very carefully and weigh this very carefully before the vote.

I call attention to item three in the amendment, which says significant financial commitments have been made. What is a ''significant financial commitment''? Is it a few dollars, $10, $15, or $20? Maybe it is a fee to buy a license or a permit. We are not talking about that. We want to limit future flow control in this legislation. We want it to end in 30 years. We do not want it to begin in States that do not have it. We are just allowing the exception or the grandfather in the States that do.

So, Mr. President, with the greatest respect to my colleagues who have offered the amendment, it is ill advised. It will hurt what we are trying to do in this compromise, and frankly if this is passed, this could lead to the very defeat of the flow control bill, which will hurt those people, those very people out there, the bond holders who are sitting there now worried about whether or not they are going to get relief. And if the bill is defeated or somehow taken down because of this, then those people are not going to get relief.

So I hope this amendment will be defeated.

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

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, who has control of the time, and how much time is remaining?

The PRESIDING OFFICER. Five minutes for the Senator from Rhode Island; 14 minutes for the Senator from Washington.

Mr. BAUCUS. Mr. President, I assume I have the time of the Senator from Rhode Island. I yield myself a few minutes.

Mr. President, it is with some reluctance that I oppose the Murray-Gorton amendment. I have the highest regard for the Senators from Washington, both Senator MURRAY and Senator GORTON. They are trying to protect their State.

I must reject their amendment and oppose it, Mr. President, very simply because the approach that they are coming up with to meet the conditions in their State is much too broad, is much too general, and it goes much, much beyond the intent of the bill.

The intent of the bill is to protect those communities which, essentially, prior to a certain date—May 15, 1994—had flow control either by regulation or by ordinance or by State law. It is not, frankly, to protect those communities which did not have any kind of flow control; that is, that had not designated certain sites where trash would go.

The amendment offered by the Senators from Washington essentially says that flow control is OK if there had been a plan, a general plan to deal with trash in the State of Washington. The amendment by the Senators from Washington does not say that there was in some case flow control but rather, essentially, there is a waste management plan. For that reason it is much, much too broad. It is very unfair to other States, frankly, who would like to do the same thing.

If this amendment passes, there is a good argument it should apply to every other State in the Nation. And if it applies to every other State in the Nation then we might as well pull down this bill. Because the compromise that has been reached, one between free enterprise hauling the trash according to the wishes of different communities and trash haulers across State lines, combined with the other, that municipalities control their own trash, that compromise would fall apart. There would be no compromise. We would have no bill.

I, therefore, suggest to the Senators from Washington that if the amendment is rejected—and I very much hope it is rejected—that they, the Senators from Washington, work in conference, and the conferees come up with a generic approach to address the kinds of problems that are raised by the Senators from Washington.

This is a very complicated matter. I wish I could support the amendment offered by the Senators from Washington, but, in good faith, I cannot. And I cannot because it goes way, way beyond the compromise reached in the bill. It is way beyond the provision we adopted to deal with the situation in the State of Vermont just a few days ago.

And I must say that if this amendment passes, every other Senator can stand up on this floor and very legitimately say, ''Well, gee, it should apply to my State.'' And if that is the case, the bill falls apart and it will not pass. I guarantee it will not pass. I guarantee there are going to be Senators whose other points of view will stand up on the floor and prevent its passage.

Basically, Mr. President, I believe, for those reasons, that the amendment should be soundly rejected and we can work in conference to come up with a solution that might deal with some of these problems, if not all.

Mr. President, if a community does not need flow control, I think we should let the private market work and not just rely on Government regulation. This amendment is a Government regulation amendment which basically says we want more Government on your backs, we want more regulation, we want more control. I think that there are a good number of people in this country, particularly this body, that might have some reservations about adding more control, more regulations, more laws on the backs of the American people.

Mr. President, I reserve the remainder of our time on this side.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, again, as I have stated, I am completely puzzled by the nature of the argument of those a committee and on a committee staff, who worked in a committee without a Member from the State affected by this amendment and who presume to know much more about the desires of the people of the State represented by Senator MURRAY and myself than they themselves do, and who continue to use language such as ''prospective'' and ''wide open'' and ''applicable to everyone.''

Well, Mr. President, we have offered to make a specific reference to the revised code of Washington, if they want to make certain that this applies only to the State of Washington. They are not interested, because, of course, such an amendment would be useless. The description we have in here now is single State in nature. We have offered to put in ''continue to exercise flow control'' in this amendment, but they are not interested because they know that this is not a prospective amendment as it is.

Mr. President, this requires the State to have had a law before the year 1990 and it requires the plans to have been in existence in particular communities before May 15, 1994. Now, what is prospective about that?

These are existing plans. These are existing systems of facilities in one single State.

Now, if the bill is dead because one single State is permitted to continue to do what it wishes to do, it is already dead by reason of the Vermont amendment last week, which is much more broad and is prospective and does allow that State to go forward with plans in the future.

The answer, Mr. President, is that this is just something that this committee did not consider and does not want to consider now.

Senator MURRAY and I are asking for the continuation of an existing system in various counties of our State which has resulted, I believe, in more recycling and less disposal of solid waste perhaps than any other State in the United States of America. That is all we are asking for.

It is not prospective. It does not allow new counties and new communities even in our State who already had these ordinances and these obligations underway a year ago yesterday, May 15, 1994, to do so at some time in the future. It is State-specific and it is system facilities-specific. That is all there is to it. And there is no reason in the world for this amendment to be turned down.

Mr. BAUCUS addressed the chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I do not want to get into an argument with my good friend, the Senator from Washington. But the fact is, the committee very directly considered these points, contrary to the statement of the Senator from Washington. Second, contrary to the statement of the Senator from Washington, the amendment is prospective.

He talks about a solid waste plan. Mr. President, a plan is so general. We are not talking about plans in this bill. We are talking about whether a specific flow control ordinance passed, and if a specific indebtedness was created. We are talking about a specific contract where people are obligated. That is what we are talking about.

We are not talking about providing flow control authority if a State only has a solid waste plan. But that is what this amendment does. It would allow a State to use flow control if the State has a solid waste plan even if the State has not relied on flow control in the past. Washington only has only a general solid waste plan. If Washington was a lot more specific, and had relied on flow control in the past then Washington would be covered. The problem is Washington is not specific as a general plan, and that is why this is prospective.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I join my colleague, Senator GORTON, in being perplexed at the reasons for not accepting this amendment. I go back to the fact that my colleagues from Connecticut, Florida, Virginia, Delaware, and Vermont have come to the committee with specific concerns from their States that have been worked out to this point in this debate and in this bill. The concerns from Washington State are just as needy.

I was in our State senate back in 1989 when we passed the Waste Not Washington Act. We were ahead of this country in how to deal with our waste management. It is a very effective piece of legislation. We do not want it undermined now by actions on this Senate floor.

We have offered to the committee words that will deal with their concerns about being prospective. We have offered to put in language that makes it Washington State specific by referencing the Waste Not Washington Act. I assure my colleagues there is no intent to open loopholes. The intent is to allow the waste management in our State of Washington to work well, as it is currently doing.

I invite any of my colleagues to my hometown of Seattle and to take a look at the curbside recycling program that exists there. We recycle everything. We put out our pop bottles. We put out our plastic. We put out our newspaper. We separate our paper into different colors. It is done on every street in the city of Seattle. We do not want to see it undermined. People are very proud of that program there.

I think it is absolutely critical that this Senate does not go on record undermining a very progressive recycling program in the State of Washington. I assure you that I did not know the rest of the Nation was so far behind us until I moved here 2½ years ago, and my children said, ''What is with the garbage cans here that are so full?'' They could not believe what was not recycled here on this coast.

I encourage all of my colleagues to take a look at this legislation, to allow Washington State to continue to be progressive, to be an example for the rest of the Nation, and to not undermine us by exempting us within the legislation that is before us. Our amendment very simply allows the State of Washington to continue doing what it is doing. I ask and encourage all of our colleagues to allow local control to exist on this very serious problem in my home State of Washington.

I thank the Chair.

The PRESIDING OFFICER. The time of the opposition has expired.

Mr. SMITH. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Do the Senators from Washington yield back their time?

Mr. GORTON. Not quite yet. How much time is remaining to the Senator from Washington?

The PRESIDING OFFICER. Eight minutes.

Mr. GORTON. I would like to speak for perhaps 2 of those minutes, Mr. President, I say to the Senator from New Hampshire, and then I think his motion will be in order.

My colleague from Washington reminds me of my own experience. I, too, live in the city of Seattle. I hear a great deal about monopolies and competition and the like. I can assure my colleagues I pay much less for a much more efficient system at home than I do in the District of Columbia by a long shot.

What we are saying is that if we had a plan that was in place a year ago on which there is a contract—not some amorphous future plan, Mr. President. The municipality not only had to have a plan a year ago; it had to obligate itself by a contract—it has to be undertaking this process right now. It has to be in place. It is not in the future. And it has to have cost money.

Now, somehow or another we are criticized because some of our communities were wise enough and responsible enough to pay for these major facilities out of cash, that they did not have to bond, but for some reason or other to this committee that is a terrible thing.

A responsible municipality which has paid for these facilities already cannot recover for them. Now, that is another part of the absurdity of this amendment. This is State specific, Mr. President. It is not prospective. It deals only with things that are already in place. And it is in pursuance of a system which has worked very well and very effectively and should be allowed to be

continued. It is not as broad as amendments which are already a part of this bill for other States.

Mr. President, with the permission of the other Senator from Washington, I will yield back the remainder of our time.

Mr. SMITH. Mr. President, I move to table the amendment and 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 motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oklahoma [Mr. INHOFE] is necessarily absent.

The PRESIDING OFFICER (Mr. THOMAS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—54

Abraham	Dole	McConnell
Ashcroft	Faircloth	Moynihan
Baucus	Frist	Murkowski
Biden	Gramm	Nunn
Bingaman	Grams	Packwood
Bond	Gregg	Pell
Bradley	Hatch	Pressler
Brown	Hatfield	Reid
Burns	Heflin	Robb
Campbell	Hutchison	Roth
Chafee	Kassebaum	Santorum
Coats	Kempthorne	Simpson
Cohen	Kerrey	Smith
Coverdell	Kyl	Snowe
Craig	Lautenberg	Specter
D'Amato	Lieberman	Thomas
DeWine	Lugar	Thurmond
Dodd	McCain	Warner

NAYS—45

Akaka	Ford	Levin
Bennett	Glenn	Lott
Boxer	Gorton	Mack
Breaux	Graham	Mikulski
Bryan	Grassley	Moseley-Braun
Bumpers	Harkin	Murray
Byrd	Helms	Nickles
Cochran	Hollings	Pryor
Conrad	Inouye	Rockefeller
Daschle	Jeffords	Sarbanes
Domenici	Johnston	Shelby
Dorgan	Kennedy	Simon
Exon	Kerry	Stevens
Feingold	Kohl	Thompson
Feinstein	Leahy	Wellstone

NOT VOTING—1

Inhofe

So the motion to table the amendment (No. 1079) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mrs. FEINSTEIN. Mr. President, I would like to express my deep dismay over the defeat of the Murray-Gorton amendment.

Frankly, it was my intention if the Murray-Gorton amendment were successful, to move an amendment which would be a slight change to take California's situation into consideration.

I cannot help but note that there have been a number of specific amendments to deal with a number of States. Nine States have received some preferential treatment in this bill. For my State, and I speak for Senator BOXER, as well, California has a unique situation.

We have a State law which mandates a 50-percent reduction in solid waste by the year 2000. How can a State do that if it does not have some flow control over its waste?

Eight local governments in my State, based on last year's bill, made agreements and incurred debts totaling $125 million which are unaddressed by this bill. Those counties are very concerned.

The California Association of Counties had asked that if the Gorton-Murray amendment were successful, an amendment be introduced based on that amendment which would clarify certain gray areas in the bill. The gray areas are contracts and franchises that have been consummated after the grandfather date, but based on last year's bill.

I very much regret that these issues are not taken into consideration, particularly by a Congress that is very concerned about States' rights.

I, for one, and Senator BOXER as well, will have to vote against this bill, based on the fact that we believe our State is seriously disadvantaged by it. I yield the floor.

Mr. CHAFEE. Mr. President, I gather from what the Senator said she, therefore, will not proceed with the amendment?

We had a reserve amendment slot for the Senators from California, and I gather the Senators will not proceed on that.

Mrs. FEINSTEIN. If I could have a couple of minutes to think about this I would appreciate it.

Mr. BAUCUS. Mr. President, what is the regular order?

The PRESIDING OFFICER. The bill is open to amendment.

AMENDMENT NO. 1083

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. KEMPTHORNE, proposes an amendment numbered 1083.

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

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

The amendment is as follows:

On page 35, line 5, after the word ''agreements'', insert the words, ''or permits authorizing receipt of out-of-State municipal solid waste''.

One page 45, lines 15 and 16, after the word, ''tax'', strike the words, ''assessed against or voluntarily''; on lines 16 and 17, after the word, ''subdivision'', insert the following: '', or to the extent that the amount of the surcharge is offset by voluntarily agreed payments to a State or its political subdivision''.

Mr. CHAFEE. Mr. President, this is a technical amendment that has been cleared with the other side.

Mr. BAUCUS. Mr. President, the Senator is correct.

We have reviewed this amendment and we find it acceptable.

The PRESIDING OFFICER. Is all time yielded back?

Mr. CHAFEE. All time is yielded back.

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

The amendment (No. 1083) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, here is the situation now.

We have two more amendments that were provided for, and then we would hope be able to go to final passage. One is the Levin amendment and the other is the Domenici amendment. We are working on both of those.

Mr. BAUCUS. Mr. President, it is my understanding that the Levin amendment is withdrawn and Senator LEVIN will not offer his amendment.

Mr. CHAFEE. All right, that takes care of that.

I received word that the Senator from California will withdraw the so-called Boxer amendment.

Mr. BAUCUS. Mr. President, if the Senator will yield, that is my understanding.

Mrs. FEINSTEIN. Mr. President, that is correct.

Mr. CHAFEE. Now, 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. LEAHY. 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. LEAHY. Mr. President, I understand the distinguished managers of the bill are in the process of working on what may come next. While that is going on, I ask unanimous consent I be permitted to speak in morning business. I assure the distinguished managers when they reach a point where they want to interrupt, I will yield.

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

IS AMERICA GOING TO LEAD?

Mr. LEAHY. Mr. President, there is an important question hanging over us like Damocles' sword today. It will loom over us as we consider the budget. It will confront us directly as we debate the reorganization of our foreign affairs agencies. The question is ''Is America going to lead?''

This is not a question that keeps people awake at night anymore. After all,