

tax law rules that effectively preclude public power entities—entities that financed their facilities with tax-exempt bonds—from participating in a State open access restructuring plans and Federal transmission programs, without jeopardizing the exempt status of their bonds.

No one wants to see bonds issued to finance public power become retroactively taxable because a municipality chooses to participate in a State open access plan. That would cause havoc in the financial markets and could undermine the financial stability of many municipalities. At the same time, public power should not obtain a competitive advantage in the open marketplace based on the Federal subsidy that flows from the ability to issue tax-exempt debt. Clearly we must provide for the transition to allow public providers to enter the private competitive marketplace without severe economic dislocation for municipalities and consumers.

To remedy this dilemma, I have introduced legislation that will allow municipal utilities to interconnect and compete in the open marketplace without the draconian retroactive impacts currently required by the Tax Code. My bill is modeled after legislation that passed Congress last year which addressed electricity and gas generation and distribution by local furnishers.

My bill removes the current law impediments to public power's capacity to participate in open access plans if such entities are willing to forego future use of federally subsidized tax-exempt financing. If public power entities make this election, and choose to compete on a level playing field with other electric power suppliers, tax exemption of the interest on their outstanding debt will be unaffected. They will be allowed an extended period during which outstanding bonds subject to the private use restrictions may be retired instead of retroactive taxation, which is the situation under existing law. The relief provided by my bill applies equally to outstanding bonds for electric generation, transmission, and distribution facilities. This would occur 6 months after the date of the bonds.

Mr. President, without this legislation, public power will face an untenable choice: either stay out of the competitive marketplace or face the threat of retroactive taxability of their bonds. With this legislation, public power will be able to transition into the competitive marketplace.

Let me provide a few examples of real-world choices that public power faces today. According to the Joint Tax Committee report, the mere act of transferring public power transmission lines to a privately operated independent service operator [ISO] could cause the public entity's tax exempt bonds to be retroactively taxable. Similarly, a transfer of transmission lines to a State operated ISO could, in many instances, trigger similar retroactive loss of tax-exemption depending on the

amount or value of the power that is transmitted along those lines to private users. Moreover, participation in a State open access plan could, de facto, force public power entities to take defensive actions to maintain their competitive position which could inevitably lead to retroactive taxation of their bonds. Such actions would include offering a discounted rate to selective customers or selling excess capacity to a broker for resale under long-term contract at fixed rates or discounted rates.

I have also heard from the California Governor and members of the California Legislature about many of these problems and the need for legislation to address them. I stand ready to work with them and representatives from other States to solve this problem as part of the legislation I have introduced.

Mr. President, my bill allows public power to participate in the new competitive world and provides a safe harbor within which they can transition from tax-exempt financing to the level playing field of the competitive marketplace. In addition, the legislation recognizes that there are some transactions that public power entities engage in that should not jeopardize the tax-exempt status of their bonds under current law and seeks to protect those transactions by codifying the rules governing them. This list may need to be expanded and I look forward to the input of the affected utilities in this regard.

In general, the exceptions contained in this bill closely parallel the policies enunciated in the legislative history of the amendments made in the 1986 Tax Reform Act. For example, the sale of electricity by one public power entity to another public power entity for resale by the second public power entity would be exempt so long as the second public power entity is not participating in a State open access plan. In addition, a public power entity would be allowed to enter into pooling and swap arrangements with other utilities if the public power entity is not a net seller of output, determined on an annual basis. Finally, the bill contains a de minimis exception for sale of excess output by a facility when such sales do not exceed \$1 million.

Mr. President, this legislation attempts to balance many competing interests. This will be a difficult transition and this legislation does not address all the difficult problems to be faced. This is why I emphasize today that this is a starting point for discussion over the months ahead.

I look forward to receiving comments from all interested parties and will encourage Finance Committee Chairman ROTH to hold hearings on this bill early next year.

I am open to making revisions to this bill consistent with a public policy that emphasizes a level playing field and a soft transition to competition for our important public utilities. I look

forward especially to working with the chairman of the Senate Finance Committee, Senator ROTH, who has been a leader in addressing tax issues relating to competition in this industry.

#### INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. HATCH. Mr. President, I was very pleased that the Senate has acted on S. 1454 and want to commend Senators CHAFEE, WARNER, BAUCUS, and BOND for coming up with this extension bill for the Intermodal Surface Transportation Efficiency Act [ISTEA]. Despite the fact that this temporary extension of ISTEA is just that—temporary—and obviously not a preferred way of doing business, I welcome it. I join in urging the House of Representatives to take it up and pass it. It will provide a modicum of certainty for the States given that we were unable to pass S. 1173, the 6-year reauthorization of ISTEA.

We all know that ISTEA is an essential piece of legislation. It is precisely because of its great importance and significance to every State that it generates controversy. Among the many controversial issues associated with the reauthorization are certain labor provisions, safety and environmental concerns, and the always difficult issue of the distribution of highway funding.

Believe me, I am well aware of how difficult it is to build majorities—and, in the case of ISTEA, a super-majority—on controversial legislation.

Let me say unequivocally for the record that I support the 6-year authorization measure that Senator CHAFEE and the other members of the Environment and Public Works Committee brought to the Senate floor last month. Though it would be hard to imagine any transportation funding bill being 100 percent perfect from the standpoint of any one State, this bill was a solid bill and one I was pleased to support. In fact, I voted for this bill four times in the form of four cloture votes.

But, Senator CHAFEE, despite his best efforts, was not allowed to move this bill. Unfortunately, as we all know, ISTEA fell victim to the efforts of those on the other side of the aisle to force the Senate to act on another piece of legislation; namely, campaign finance reform.

Well, Mr. President, I am here to tell you that Utahns are indeed interested in campaign finance reform. But, at the moment, with numerous road construction projects underway, and facing a 2002 deadline for the Winter Olympic Games, they are equally if not more interested in ISTEA.

The people of every State in the Union are going to pay dearly for the filibuster waged against ISTEA for the sake of campaign finance reform. They will be paying for it with bad roads, unrepaired bridges, and unimproved mass transit. They are going to pay for it with delays in making the necessary improvements.

The Environment and Public Works Committee did its job. Senator LOTT did his job in calling the bill up for debate. But, it takes 60 votes to cut off a filibuster and pass a bill. We tried four times.

I am not enthusiastic about this short-term bill. It is a far cry from what we should have done earlier and what I hope we will do at our earliest opportunity next year.

But, we have to be realistic about where we are today. And we have to face the reality that the 6-year ISTEAA reauthorization bill did not pass this year. Under such circumstances, I think that the majority leader would have been entirely justified in not bringing up and facilitating the passage of the short-term extension. He could easily say to Senators that we should stew in our own juice.

So as a Senator from a State severely affected by the failure to move ahead on ISTEAA, I appreciate that he took the high road. The short-term bill will at least relieve the vulnerable position States would be in under no ISTEAA authority at all.

But, I want the people of Utah to know that I will be working hard in the months ahead to support the Senator from Rhode Island and the Senator from Montana in the effort to get the 6-year ISTEAA bill passed in the Senate and into conference with the House.

---

#### EXTENSION OF MORNING BUSINESS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that morning business be extended until noon today.

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

Mr. MURKOWSKI. I yield the floor.

---

#### PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Ruth Fleischer and Andrea Nygren. Andrea Nygren is a fellow. I ask floor privileges be granted today to both these members of my staff.

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

The Senator from the great State of North Dakota.

Mr. CONRAD. I thank the Chair, and especially thank him for his characterization of my State.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair.

(The remarks of Mr. CONRAD and Mr. DORGAN pertaining to the introduction of S. 1515 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

---

#### TRIBUTE TO DERIK FETTIG

Mr. CONRAD. Mr. President, I rise today for the purpose of recognizing the efforts of Derik Fettig, a legisla-

tive assistant on my staff who will be leaving the Senate at the end of this session. With his good humor and hard work, Derik has been a tremendous asset as we have worked on issues impacting North Dakota.

A native of Bismarck, ND and graduate of Colorado College, Derik joined my Washington office in May 1995, and was immediately drawn into some of the most important issues that confront our State. His portfolio—which includes water projects and disaster relief—bears witness to the fact that he has served at a critical time in our State's history.

Derik played a pivotal role in the aftermath of this year's historic disasters. He worked with the Corps of Engineers, as well as with the different mayors and local officials up and down the Red River Valley, to address the daily crises associated with what was dubbed "Blizzard Hannah" and the millennium flood. Even more significantly, he helped design and implement the Federal assistance strategy, which has provided the groundwork for North Dakota's long road to recovery and more than \$770 million in Federal aid.

Derik has also been of great help with the ongoing water problems facing North Dakota. He has worked to ensure that the Federal Government responds adequately to the unfolding tragedy in Devils Lake. In addition, he has been the point person on my staff for producing a reformulated Garrison Diversion project. With Derik's able assistance, we have forged an unprecedented political consensus among North Dakota's elected political leadership on a revised plan to address the State's long-term water needs. And in the middle of all of this, he ran Grandma's Marathon in Duluth, MN.

We will miss you, Derik. I commend you for your tireless work and wish you the very best in your future endeavors.

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

The bill clerk proceeded to call the roll.

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

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

---

#### RIVER GOVERNANCE AND FISH WILDLIFE ISSUES FOR ELECTRICITY RESTRUCTURING

Mr. GORTON. Mr. President, late last week the distinguished Senator from Arkansas, Senator BUMPERS, and I introduced broad-based electricity restructuring legislation. Each of us spoke to that legislation at that time. We expressed the belief that this first bipartisan approach to a major national issue facing the country would trigger even more serious consideration than has been given during this first session of this Congress to that

subject, and expressed the hope, which I repeat here, that it is an issue that will seriously be considered by both Houses of Congress during the course of the next year.

One major portion of that bill, S. 1401, is a title dealing with the Pacific Northwest fish and the management of the Columbia River system. I greatly appreciated Senator BUMPERS' willingness to put his name on those regional provisions, as he did in my case, I believe, with respect to the provisions dealing with the Tennessee Valley Authority.

This morning I wish to speak briefly on the fish and wildlife issues that are a part of S. 1401. The bill does not address, Mr. President, except in the most general way, the critical need for an improved "river governance" process, especially with respect to issues relating to fish and wildlife. This omission should not be misinterpreted. Legislation may well be needed in this area to assure that the multiple purposes of the Federal power system are protected together with the public benefits that they bring.

I hope that over the next several months the region can reach a consensus on these issues, including who pays the costs associated with needed actions. Bonneville ratepayers currently fund this effort through their power rates at a cost of \$435 million a year on average, and their ability to make additional contributions to this effort and still meet other statutory obligations is increasingly constrained by an increasingly competitive, deregulated wholesale electric energy market. In forging a financing package, it will be important to look to all who benefit from this important natural resource to assume their fair share of financial responsibility, and to act consistently with sound business principles by holding administrative costs to as low a level as possible.

Money alone, however, is not the answer. Today, the salmon recovery effort is failing. It is failing because of a flawed process for decisionmaking. This process has conflicting goals. It disperses decisionmaking authority among many Federal and State agencies and tribes and has little accountability for cost effective results.

To make real progress, we need a regional plan; a plan in which all governmental interests—States, tribes, and the Federal Government—are partners, together with economic and environmental interests, for success. And success will mean the achievement of clearly defined goals measured by unambiguous results; results that rely on the best science of how to improve the survival of downstream smolts and that assure adequate escapement of returning adults to the spawning beds.

All northwesterners care about our salmon resources. We argue sometimes about the best way to reach our shared goals but it is vital to remember that we share the goal of preserving and