

spending proposals. My preference would have been to have the sole survivor provisions in this legislation funded by spending reductions by the committees of jurisdiction.

I have been told that option was not available for this bill.

The funeral trust provision under Section 9, is a taxpayer favorable provision. It is a purely voluntary provision. It helps people who want to put more money aside in trust to provide for their funeral.

Unlike prior revenue raisers proposed by the majority that would impose tax increases on unsuspecting Americans, this revenue offset is strongly supported by those who would pay the additional tax.

As I said previously, my strong preference would be to not use the tax code to pay for higher spending. However, there is strong support for the funeral trust provision and it is favorable to taxpayers.

Ms. CANTWELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 6580) was ordered to be read a third time, was read the third time and passed.

DTV BORDER FIX ACT OF 2008

Ms. CANTWELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 886, S. 2507.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2507) to address the digital television transition in border states.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "DTV Border Fix Act of 2008".

SEC. 2. CONTINUATION OF ANALOG BROADCASTING ALONG COMMON BORDER WITH MEXICO.

Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended by adding at the end the following:

"(D) CONTINUATION OF ANALOG BROADCASTING ALONG COMMON BORDER WITH MEXICO.—

"(i) IN GENERAL.—Notwithstanding any other provision of this section, any television station that has been granted a full-power television broadcast license that authorizes analog television service prior to February 17, 2009, that is licensed by the Commission to serve communities located within 50 miles of the United States common border with Mexico, and that can establish to the satisfaction of the Commission that such station's continued broadcasting of television service in analog is in the public interest, shall during the period beginning on the date of enactment of the DTV Border Fix Act of 2008, and ending February 17, 2014—

"(I) be entitled to the renewal of such station's television broadcast license authorizing analog television service; and

"(II) operate such television service on a channel between 2 and 51.

"(ii) CONDITIONS.—The rights, privileges, and obligations described under clause (i) shall only be extended if the following requirements are satisfied:

"(I) Any channel used for the distribution of analog television service shall not—

"(aa) prevent the auction of recovered spectrum pursuant to paragraph (15);

"(bb) prevent the use of recovered spectrum for any public safety service pursuant to section 337(a)(1);

"(cc) encumber or interfere with any channel reserved for public safety use, as such channels are designated in ET Docket No. 97-157; and

"(dd) prevent the Commission from considering or granting a request for waiver submitted for public safety service prior to the date of enactment of the DTV Border Fix Act of 2008.

"(II) Each station described in clause (i) operates on its assigned analog channel, as of February 16, 2009, if such channel—

"(aa) is between 2 and 51;

"(bb) has not previously been assigned to such station or any other station for digital operation after the digital transition required under subparagraph (A); and

"(cc) could be used by such station for broadcasting analog television service after the digital transition required under subparagraph (A) without causing interference to any previously authorized digital television stations.

"(III) If such station does not meet the requirements under subclause (II) for operation on its assigned analog channel, as of February 16, 2009, such station may request, and the Commission shall promptly act upon such request, to be assigned a new channel for broadcasting analog television service, provided that such newly requested channel shall—

"(aa) be between channels 2 and 51; and

"(bb) allow such station to operate on a primary basis without causing interference to—

"(AA) any other analog or digital television station; or

"(BB) any station licensed to operate in any other radio service that also operates on channels between 2 and 51.

"(iii) MUTUALLY EXCLUSIVE APPLICATIONS.—If mutually exclusive applications are submitted for the right to use a channel in order to broadcast analog television service pursuant to this subparagraph, the Commission shall—

"(I) award the authority to use such channel for such purpose through the application of the procedures established under this section; and

"(II) give due consideration to any resolution procedures established by the Commission."

Ms. CANTWELL. I ask unanimous consent that the amendment at the desk be agreed to, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements be printed in the RECORD.

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

The amendment (No. 5262) was agreed to, as follows:

On page 7, line 7, strike "2014" and insert "2013".

On page 10, line 18, strike the quotation mark and the second period and insert the following:

"(E) LIMITATION ON EXTENSION OF CERTAIN LICENSES.—The Commission shall not extend or renew a full-power television broadcast license that authorizes analog television service on or after February 17, 2013."

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2507), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2507

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "DTV Border Fix Act of 2008".

SEC. 2. CONTINUATION OF ANALOG BROADCASTING ALONG COMMON BORDER WITH MEXICO.

Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended by adding at the end the following:

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"(I) be entitled to the renewal of such station's television broadcast license authorizing analog television service; and

"(II) operate such television service on a channel between 2 and 51.

"(ii) CONDITIONS.—The rights, privileges, and obligations described under clause (i) shall only be extended if the following requirements are satisfied:

"(I) Any channel used for the distribution of analog television service shall not—

"(aa) prevent the auction of recovered spectrum pursuant to paragraph (15);

"(bb) prevent the use of recovered spectrum for any public safety service pursuant to section 337(a)(1);

"(cc) encumber or interfere with any channel reserved for public safety use, as such channels are designated in ET Docket No. 97-157; and

"(dd) prevent the Commission from considering or granting a request for waiver submitted for public safety service prior to the date of enactment of the DTV Border Fix Act of 2008.

"(II) Each station described in clause (i) operates on its assigned analog channel, as of February 16, 2009, if such channel—

"(aa) is between 2 and 51;

"(bb) has not previously been assigned to such station or any other station for digital operation after the digital transition required under subparagraph (A); and

"(cc) could be used by such station for broadcasting analog television service after the digital transition required under subparagraph (A) without causing interference to any previously authorized digital television stations.

"(III) If such station does not meet the requirements under subclause (II) for operation on its assigned analog channel, as of February 16, 2009, such station may request, and the Commission shall promptly act upon such request, to be assigned a new channel for broadcasting analog television service, provided that such newly requested channel shall—

“(aa) be between channels 2 and 51; and
“(bb) allow such station to operate on a primary basis without causing interference to—

“(AA) any other analog or digital television station; or

“(BB) any station licensed to operate in any other radio service that also operates on channels between 2 and 51.

“(iii) MUTUALLY EXCLUSIVE APPLICATIONS.—If mutually exclusive applications are submitted for the right to use a channel in order to broadcast analog television service pursuant to this subparagraph, the Commission shall—

“(I) award the authority to use such channel for such purpose through the application of the procedures established under this section; and

“(II) give due consideration to any resolution procedures established by the Commission.

“(E) LIMITATION ON EXTENSION OF CERTAIN LICENSES.—The commission shall not extend or renew a full-power television broadcast license that authorizes analog television service on or after February 17, 2013.”.

GREAT LAKES INTERSTATE COMPACT

Ms. CANTWELL. I ask unanimous consent the Judiciary Committee be discharged from further consideration of S.J. Res. 45 and the Senate proceed to its immediate consideration.

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

The clerk will report the joint resolution by title.

The assistant clerk read as follows:

A joint resolution (S.J. Res. 45) expressing the consent and approval of Congress to an interstate compact regarding water resources in the Great Lakes St. Lawrence River Basin.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. KOHL. Mr. President, I wanted to talk to today about the Great Lakes-St. Lawrence River Basin Water Resources Compact. The compact enjoys broad bipartisan support, including all 8 Great Lakes States, Canadian provinces Ontario and Quebec, and 150 business and environmental groups.

The Great Lakes are one of America's national treasures and one of the natural wonders of the world. Holding 20 percent of the world's freshwater, the Great Lakes play a vital role in the daily lives of the people of Wisconsin providing drinking water, jobs, energy, shipping, and recreation. Something that important to our prosperity needs to be conserved so that future generations can benefit.

The compact before us does just that. It is a binding agreement among the Great Lakes States to implement a conservation standard for regulating water withdrawals from the Great Lakes Basin. Specifically, the compact protects the Great Lakes by banning new or increased diversions outside of the Great Lakes basin. The compact also requires each State to implement water conservation measures, which will promote efficient water use and minimize waste.

Not too long ago we faced the specter of foreign companies exporting water out of the lakes—threatening our environment. This compact is a response to those threats, making it clear that the Lakes are not to be exploited. As a co-sponsor of this resolution, I am pleased the Senate passed this important compact.

Mr. VOINOVICH. Mr. President, I rise to today in support of S.J. Res. 45, the Great Lakes—St. Lawrence River Basin Water Resources Compact. During the course of adoption of the Compact by the respective State legislatures, an issue arose concerning the intent and interpretation of section 4.11.2 of the Compact's Decision-Making Standard relating to the scale and scope of impacts that would be deemed sufficiently significant such to preclude approval of a withdrawal proposal. It is my understanding that the intent of the drafters of the Compact is expressed in a memorandum prepared by Dr. Sam Speck, Chair of the Council of Great Lakes Governors Annex 2001 Working Group, dated December 5, 2005, and I ask unanimous consent it be printed in the RECORD.

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

DECEMBER 5, 2005.

To: George Kuper, President and CEO, Council of Great Lakes Industries.

From: Sam Speck, Director, Ohio Department of Natural Resources, Chair, Great Lakes Governors' and Premiers' Water Management Working Group.

You and other stakeholder representatives have raised concerns regarding three specific sections of the November 10 drafts of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact). On behalf of the Working Group, I would like to provide you with a description of our intent with respect to these sections. Please share this memo with other interested parties.

CONCERNS AND RESPONSES

Please note that all Section references below are to the November 10 drafts of the compact and “your submission” mean the joint submission from the Council of Great Lakes Industries and the National Wildlife Federation dated October 9, 2005. Each “concern” below is the text that you submitted to us and the “response” is on behalf of the Working Group.

1. CONCERN: The “grandfathering” of existing users.

The “grandfathering” issue has been known—and industry widely believes agreed to—since the beginning of the deliberations. But, there are major problems with current language:

(a.) The current baseline from which “new” or “increased” will be determined is unnecessarily unclear/imprecise and potentially constraining (Section 4.12.2 ii). An industrial capital investment made in any part of a facility's water withdrawal system must be permitted to operate at the capacity for which it was designed and built, no matter if other parts of the water treatment or distribution system may require enlargement. Above all, this section will generate wide dissatisfaction and a decided lack of support if it is not clarified.

(b.) There is no provision for challenging/correcting the list of existing withdrawers—and the grandfathered withdrawal quantities—that will be created by each Party

which may omit users or cite incorrect quantities. Some will believe that if they are inadvertently left off such a list they will not be considered for an existing use at some point in the future.

Response

(a.) In your submission to the Working Group, you proposed that existing Withdrawals would be determined as follows:

“The existing Withdrawal will be determined by the [larger] of either the applicable Withdrawal limitation in any permit authorizing the Withdrawal; or, the physical capacity of the withdrawal system facility (which includes Withdrawal capacity, treatment capacity, and other capacity limiting factors) as of the effective date of the Compact.”

The Working Group's intent and effect of Section 4.12.2 of the Compact is consistent with your submission. Each State will have the flexibility of choosing either to use the permitted amount or capacity limiting factors for determining existing withdrawals.

We encourage interested stakeholders to work with the individual States to help them determine which approach to use when identifying existing water withdrawals.

(b.) The individual States will have the authority to create the process for developing and maintaining lists of existing water withdrawals. It is our understanding that States intend to use processes similar to those that have been used for other management and regulatory initiatives with opportunities for public participation, appeals and due process. All interested stakeholders are encouraged to work with the individual States as they develop these processes to ensure that the lists are accurate.

2. CONCERN: Change to a mandatory requirement not understood.

A very recent change to a decision-making standard (Section 4.11.2)—a substitution of “and” instead of “of” as the conjunctive in the last phrase—changes the entire meaning of the provision and sets up a situation where a significant impact on a few feet of a stream could be viewed as a bar to permitting. Hopefully this is just a “typo.” If not, this constitutes a considerable and unsupportable change in intent of the section.

Response

The Working Group's intent is consistent with your submission regarding the scope of evaluating “no significant adverse impacts.” To clarify, a “Source Watershed” is the watershed of a Great Lake or the St. Lawrence River. Therefore, requiring that there be no significant adverse impacts to a Source Watershed means that, for example, there be no significant adverse impacts to the Lake Michigan watershed.

In your submission to the Working Group, your proposed criterion included in your Section 4.9.2 read as follows:

“The Consumptive Use [or] Withdrawal . . . will be implemented so as to ensure that the Proposal . . . will result in no significant individual or cumulative adverse impacts to the quantity or quality of the *Waters and Water Dependent Natural Resources of the applicable Source Watershed.*” [Emphasis added.]

With this language and the corresponding definitions, your submission would require that there be no significant individual or cumulative adverse impacts at both the Basin-wide and Source Watershed (e.g. Lake Michigan watershed) scale.

In the Compact, the definition of “Water and Water Dependent Natural Resources” (Section 1.2) reads as follows:

“Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the *Waters of the Basin.*” [Emphasis added.]

And the definition “Waters of the Basin” reads in the Compact as follows (Section 1.2):