

Calendar No. 74

104TH CONGRESS
1ST SESSION

S. 534

[Report No. 104-52]

A BILL

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.

APRIL 18, 1995

Reported with an amendment

Calendar No. 74104TH CONGRESS
1ST SESSION**S. 534****[Report No. 104-52]**

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.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 6), 1995

Mr. SMITH (for himself and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

APRIL 18, 1995

Reported, under authority of the order of the Senate of April 6 (legislative day, April 5), 1995, by Mr. CHAFEE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Interstate Transpor-
3 tation of Municipal Solid Waste Act of 1995”.

4 **TITLE I—INTERSTATE WASTE**5 **SEC. 101. INTERSTATE TRANSPORTATION OF MUNICIPAL**
6 **SOLID WASTE.**

7 (a) AMENDMENT.—Subtitle D of the Solid Waste
8 Disposal Act (42 U.S.C. 6941 et seq.) is amended by add-
9 ing at the end the following new section:

10 “INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID
11 WASTE

12 “SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-
13 STATE MUNICIPAL SOLID WASTE.—(1) Except as pro-
14 vided in paragraph (4), immediately upon the date of en-
15 actment of this section if requested in writing by an af-
16 fected local government, a Governor may prohibit the dis-
17 posal of out-of-State municipal solid waste in any landfill
18 or incinerator that is not covered by the exceptions pro-
19 vided in subsection (b) and that is subject to the jurisdic-
20 tion of the Governor and the affected local government.

21 “(2) Except as provided in paragraph (4), imme-
22 diately upon the date of publication of the list required
23 in paragraph (6)(D) and notwithstanding the absence of
24 a request in writing by the affected local government, a
25 Governor, in accordance with paragraph (5), may limit the
26 quantity of out-of-State municipal solid waste received for

1 disposal at each landfill or incinerator covered by the ex-
2 ceptions provided in subsection (b) that is subject to the
3 jurisdiction of the Governor, to an annual amount equal
4 to or greater than the quantity of out-of-State municipal
5 solid waste received for disposal at such landfill or inciner-
6 ator during calendar year 1993.

7 “(3)(A) Except as provided in paragraph (4), under
8 the conditions stated in subparagraph (B), immediately
9 upon the date of publication of the list required in para-
10 graph (6)(E), and notwithstanding the absence of a re-
11 quest in writing by the affected local government, a Gov-
12 ernor, in accordance with paragraph (5), may prohibit or
13 limit the amount of out-of-State municipal solid waste dis-
14 posed of at any landfill or incinerator covered by the ex-
15 ceptions in subsection (b) that is subject to the jurisdiction
16 of the Governor, generated in any State that is determined
17 by the Administrator under paragraph (6)(E) as having
18 exported, to landfills or incinerators not covered by host
19 community agreements, more than—

20 “(i) 3.5 million tons of municipal solid waste in
21 calendar year 1996;

22 “(ii) 3.0 million tons of municipal solid waste in
23 each of calendar years 1997 and 1998;

24 “(iii) 2.5 million tons of municipal solid waste
25 in each of calendar years 1999 and 2000;

1 ~~“(iv) 1.5 million tons of municipal solid waste~~
2 ~~in each of calendar years 2001 and 2002; and~~

3 ~~“(v) 1.0 million tons of municipal solid waste in~~
4 ~~calendar year 2003 and each year thereafter.~~

5 ~~“(B) The conditions stated in this subparagraph are~~
6 ~~that—~~

7 ~~“(i) the Governor of the importing State has~~
8 ~~notified the Governor of the exporting State and the~~
9 ~~Administrator 12 months prior to enforcement of~~
10 ~~the importing State’s intention to impose the re-~~
11 ~~quirements of this section;~~

12 ~~“(ii) the Governor of the importing State has~~
13 ~~notified the Governor of the exporting State and the~~
14 ~~Administrator of the violation by the exporting State~~
15 ~~of this section at least 90 days prior to the enforce-~~
16 ~~ment of this section; and~~

17 ~~“(iii) the restrictions imposed by the Governor~~
18 ~~of the importing State are uniform at all facilities.~~

19 ~~“(C) The authority provided by subparagraphs (A)~~
20 ~~and (B) shall apply for as long as a State exceeds the~~
21 ~~permissible levels as determined by the Administrator~~
22 ~~under paragraph (6)(E).~~

23 ~~“(4)(A) A Governor may not exercise the authority~~
24 ~~granted under this section if such action would result in~~
25 ~~the violation of, or would otherwise be inconsistent with,~~

1 the terms of a host community agreement or a permit is-
2 sued from the State to receive out-of-State municipal solid
3 waste.

4 “(B) Except as provided in paragraph (3), a Gov-
5 ernor may not exercise the authority granted under this
6 section in a manner that would require any owner or oper-
7 ator of a landfill or incinerator covered by the exceptions
8 provided in subsection (b) to reduce the amount of out-
9 of-State municipal solid waste received from any State for
10 disposal at such landfill or incinerator to an annual quan-
11 tity less than the amount received from such State for dis-
12 posal at such landfill or incinerator during calendar year
13 1993.

14 “(5) Any limitation imposed by a Governor under
15 paragraph (2) or (3)—

16 “(A) shall be applicable throughout the State;

17 “(B) shall not directly or indirectly discriminate
18 against any particular landfill or incinerator within
19 the State; and

20 “(C) shall not directly or indirectly discriminate
21 against any shipments of out-of-State municipal
22 solid waste on the basis of State of origin and all
23 such limitations shall be applied to all States in vio-
24 lation of paragraph (3).

1 ~~“(6)(A)(i) Any Governor who intends to exercise the~~
2 ~~authority provided in paragraph (2) or (3) shall, within~~
3 ~~120 days after the date of enactment of this section, and~~
4 ~~on the same day of each year thereafter, submit to the~~
5 ~~Administrator information documenting the State of ori-~~
6 ~~gin and the quantity of out-of-State municipal solid waste~~
7 ~~received for disposal at landfills and incinerators covered~~
8 ~~by the exceptions provided in subsection (b) in the State~~
9 ~~of such Governor during calendar year 1993.~~

10 ~~“(ii) The Administrator is authorized and directed to~~
11 ~~collect such additional information in addition to what is~~
12 ~~submitted under clause (i) as may be necessary to deter-~~
13 ~~mine if the level of exports of municipal solid waste by~~
14 ~~any State exceeds the level established in paragraph (3).~~

15 ~~“(B) On receipt of the information submitted or col-~~
16 ~~lected pursuant to subparagraph (A), the Administrator~~
17 ~~shall notify the Governor of each such State and the Gov-~~
18 ~~ernors of States with exports that exceed the level of ex-~~
19 ~~ports of municipal solid waste established in paragraph (3)~~
20 ~~and shall publish notice and shall provide a comment pe-~~
21 ~~riod of not less than 30 days.~~

22 ~~“(C) Not later than 60 days after receipt of informa-~~
23 ~~tion from a Governor, and any additional information ob-~~
24 ~~tained by the Administrator, under subparagraph (A), the~~
25 ~~Administrator shall determine the quantity of out-of-State~~

1 municipal solid waste that was received for disposal in the
2 State during calendar year 1993, the State of origin and
3 the total amount of municipal solid waste exports from
4 each State that exceeds the level established in paragraph
5 (3), and the quantity of out-of-State municipal solid waste
6 received for disposal at landfills and incinerators covered
7 by the exceptions provided in subsection (b) in the State
8 of such Governor during calendar year 1993. The Admin-
9 istrator shall publish a public notice and shall provide di-
10 rect notification to each of the Governors of all States af-
11 fected by this determination, for each such State for which
12 the determination is made. A determination by the Admin-
13 istrator under this subparagraph shall be final and not
14 subject to judicial review.

15 “(D) Not later than 180 days after the date of enact-
16 ment of this section, the Administrator shall publish a list
17 of the quantity of out-of-State municipal solid waste that
18 was received during calendar year 1993 at each landfill
19 and incinerator covered by the exceptions provided in sub-
20 section (b) for disposal in each State in which the Gov-
21 ernor intends to exercise the authority provided in para-
22 graph (2) or (3), as determined in accordance with sub-
23 paragraph (C).

24 “(E) Not later than March 1, 1997, and on March
25 1 of each year thereafter, the Administrator shall publish

1 a list of States that the Administrator has determined
2 have exported out of State an amount of municipal solid
3 waste in excess of 3.5 million tons in calendar year 1996,
4 3.0 million tons in each of calendar years 1997 and 1998,
5 2.5 million tons in each of calendar years 1999 and 2000,
6 1.5 million tons in each of calendar years 2000 and 2001,
7 and 1.0 million tons in calendar year 2002 and each year
8 thereafter, as determined in accordance with subpara-
9 graph (C).

10 “(F) Not later than March 1 of each year after the
11 date of enactment of this section, or as required by State
12 law, the owner or operator of each landfill or incinerator
13 receiving out-of-State municipal solid waste shall submit
14 to the Governor of the State in which the landfill or incin-
15 erator is located information specifying, by State of origin,
16 the amount of out-of-State municipal solid waste received
17 for disposal during the preceding year. Each year the Gov-
18 ernor of a State who intends to exercise the authority pro-
19 vided in paragraph (2) or (3) shall publish and make avail-
20 able to the public a report containing information on the
21 amount of out-of-State municipal solid waste received for
22 disposal in the State during the preceding year.

23 “(7) Any affected local government that intends to
24 submit a request under paragraph (1) or take formal ac-

1 tion on a host community agreement shall, prior to taking
2 such action—

3 “(A) notify the Governor, contiguous local gov-
4 ernments, and any contiguous Indian tribes;

5 “(B) publish notice of the action in a news-
6 paper of general circulation at least 30 days before
7 taking such action;

8 “(C) provide an opportunity for public com-
9 ment; and

10 “(D) following notice and comment, take formal
11 action on any proposed request or action at a public
12 meeting.

13 “(8) Any owner or operator seeking a host commu-
14 nity agreement shall provide to the affected local govern-
15 ment the following information, which shall be made avail-
16 able to the public from the affected local government:

17 “(A) A brief description of the planned facility,
18 including a description of the facility size, ultimate
19 waste capacity, and anticipated monthly and yearly
20 waste quantities to be handled.

21 “(B) A map of the facility site that indicates
22 the location of the facility in relation to the local
23 road system and topographical and hydrological fea-
24 tures and any buffer zones and facility units to be
25 acquired by the owner or operator of the facility.

1 ~~“(C) A description of the existing environ-~~
2 ~~mental conditions at the site, and any violations of~~
3 ~~applicable laws or regulations.~~

4 ~~“(D) A description of environmental controls to~~
5 ~~be utilized at the facility.~~

6 ~~“(E) A description of the site access controls to~~
7 ~~be employed, and roadway improvements to be~~
8 ~~made, by the owner or operator, and an estimate~~
9 ~~of the timing and extent of increased local truck~~
10 ~~traffic.~~

11 ~~“(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT~~
12 ~~OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The au-~~
13 ~~thority to prohibit the disposal of out-of-State municipal~~
14 ~~solid waste provided under subsection (a)(1) shall not~~
15 ~~apply to landfills and incinerators in operation on the date~~
16 ~~of enactment of this section that—~~

17 ~~“(A) received during calendar year 1993 docu-~~
18 ~~mented shipments of out-of-State municipal solid~~
19 ~~waste; and~~

20 ~~“(B)(i) in the case of landfills, are in compli-~~
21 ~~ance with all applicable Federal and State laws and~~
22 ~~regulations relating to operation, design and location~~
23 ~~standards, leachate collection, ground water monitor-~~
24 ~~ing, and financial assurance for closure and post-clo-~~
25 ~~sure and corrective action; or~~

1 ~~“(ii) in the case of incinerators, are in compli-~~
2 ~~ance with the applicable requirements of section 129~~
3 ~~of the Clean Air Act (42 U.S.C. 7429) and applica-~~
4 ~~ble State laws and regulations relating to facility de-~~
5 ~~sign and operations.~~

6 ~~“(2) A Governor may not prohibit the disposal of out-~~
7 ~~of-State municipal solid waste pursuant to subsection~~
8 ~~(a)(1) at facilities described in this subsection that are not~~
9 ~~in compliance with applicable Federal and State laws and~~
10 ~~regulations unless disposal of municipal solid waste gen-~~
11 ~~erated within the State at such facilities is also prohibited.~~

12 ~~“(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-~~
13 ~~STATE MUNICIPAL SOLID WASTE.—(1) In any case in~~
14 ~~which an affected local government is considering entering~~
15 ~~into, or has entered into, a host community agreement and~~
16 ~~the disposal or incineration of out-of-State municipal solid~~
17 ~~waste under such agreement would preclude the use of~~
18 ~~municipal solid waste management capacity described in~~
19 ~~paragraph (2), the Governor of the State in which the af-~~
20 ~~ected local government is located may prohibit the execu-~~
21 ~~tion of such host community agreement with respect to~~
22 ~~that capacity.~~

23 ~~“(2) The municipal solid waste management capacity~~
24 ~~referred to in paragraph (1) is that capacity—~~

1 “(A) that is permitted under Federal or State
2 law;

3 “(B) that is identified under the State plan;
4 and

5 “(C) for which a legally binding commitment
6 between the owner or operator and another party
7 has been made for its use for disposal or inciner-
8 ation of municipal solid waste generated within the
9 region (identified under section 4006(a)) in which
10 the local government is located.

11 “(d) COST RECOVERY SURCHARGE.—

12 “(1) AUTHORITY.—A State described in para-
13 graph (2) may adopt a law and impose and collect
14 a cost recovery charge on the processing or disposal
15 of out-of-State municipal solid waste in the State in
16 accordance with this subsection.

17 “(2) APPLICABILITY.—The authority to impose
18 a cost recovery surcharge under this subsection ap-
19 plies to any State that on or before April 3, 1994,
20 imposed and collected a special fee on the processing
21 or disposal of out-of-State municipal waste pursuant
22 to a State law.

23 “(3) LIMITATION.—No such State may impose
24 or collect a cost recovery surcharge from a facility
25 on any out-of-State municipal solid waste that is

1 being received at the facility under 1 or more con-
2 tracts entered into after April 3, 1994, and before
3 the date of enactment of this section.

4 “(4) AMOUNT OF SURCHARGE.—The amount of
5 the cost recovery surcharge may be no greater than
6 the amount necessary to recover those costs deter-
7 mined in conformance with paragraph (6) and in no
8 event may exceed \$1.00 per ton of waste.

9 “(5) USE OF SURCHARGE COLLECTED.—All
10 cost recovery surcharges collected by a State covered
11 by this subsection shall be used to fund those solid
12 waste management programs administered by the
13 State or its political subdivision that incur costs for
14 which the surcharge is collected.

15 “(6) CONDITIONS.—(A) Subject to subpara-
16 graphs (B) and (C), a State covered by this sub-
17 section may impose and collect a cost recovery sur-
18 charge on the processing or disposal within the State
19 of out-of-State municipal solid waste if—

20 “(i) the State demonstrates a cost to the
21 State arising from the processing or disposal
22 within the State of a volume of municipal solid
23 waste from a source outside the State;

24 “(ii) the surcharge is based on those costs
25 to the State demonstrated under subparagraph

1 (A) that, if not paid for through the surcharge,
2 would otherwise have to be paid or subsidized
3 by the State; and

4 “(iii) the surcharge is compensatory and is
5 not discriminatory.

6 “(B) In no event shall a cost recovery surcharge
7 be imposed by a State to the extent that the cost for
8 which recovery is sought is otherwise paid, recov-
9 ered, or offset by any other fee or tax assessed
10 against or voluntarily paid to the State or its politi-
11 cal subdivision in connection with the generation,
12 transportation, treatment, processing, or disposal of
13 solid waste.

14 “(C) The grant of a subsidy by a State with re-
15 spect to entities disposing of waste generated within
16 the State that does not constitute discrimination for
17 purposes of subparagraph (A)(iii).

18 “(7) DEFINITIONS.—As used in this subsection:

19 “(A) The term ‘costs’ means the costs in-
20 curred by the State for the implementation of
21 its laws governing the processing or disposal of
22 municipal solid waste, limited to the issuance of
23 new permits and renewal of modified permits,
24 inspection and compliance monitoring, enforce-

1 ment, and costs associated with technical assist-
2 ance, data management and collection fees.

3 ~~“(B) The term ‘processing’ means any ac-~~
4 ~~tivity to reduce the volume of solid waste or~~
5 ~~alter its chemical, biological or physical state,~~
6 ~~through processes such as thermal treatment,~~
7 ~~bailing, composting, crushing, shredding, sepa-~~
8 ~~ration, or compaction.~~

9 ~~“(e) SAVINGS CLAUSE.—Nothing in this section shall~~
10 ~~be interpreted or construed—~~

11 ~~“(1) to have any effect on State law relating to~~
12 ~~contracts; or~~

13 ~~“(2) to affect the authority of any State or local~~
14 ~~government to protect public health and the environ-~~
15 ~~ment through laws, regulations, and permits, includ-~~
16 ~~ing the authority to limit the total amount of munic-~~
17 ~~ipal solid waste that landfill or incinerator owners or~~
18 ~~operators within the jurisdiction of a State may ac-~~
19 ~~cept during a prescribed period, provided that such~~
20 ~~limitations do not discriminate between in-State and~~
21 ~~out-of-State municipal solid waste, except to the ex-~~
22 ~~tent authorized by this section.~~

23 ~~“(f) DEFINITIONS.—As used in this section:~~

1 ~~“(1)(A) The term ‘affected local government’,~~
2 ~~used with respect to a landfill or incinerator,~~
3 ~~means—~~

4 ~~“(i) the public body created by State law~~
5 ~~with responsibility to plan for municipal solid~~
6 ~~waste management, a majority of the members~~
7 ~~of which are elected officials, for the area in~~
8 ~~which the facility is located or proposed to be~~
9 ~~located; or~~

10 ~~“(ii) the elected officials of the city, town,~~
11 ~~township, borough, county, or parish exercising~~
12 ~~primary responsibility over municipal solid~~
13 ~~waste management or the use of land in the ju-~~
14 ~~risdiction in which the facility is located or is~~
15 ~~proposed to be located.~~

16 ~~“(B)(i) Within 90 days after the date of enact-~~
17 ~~ment of this section, a Governor may designate and~~
18 ~~publish notice of which entity listed in clause (i) or~~
19 ~~(ii) of subparagraph (A) shall serve as the affected~~
20 ~~local government for actions taken under this section~~
21 ~~and after publication of such notice.~~

22 ~~“(ii) If a Governor fails to make such a des-~~
23 ~~ignation, the affected local government shall be the~~
24 ~~elected officials of the city, town, township, borough,~~
25 ~~county, parish, or other public body created pursu-~~

1 ant to State law with primary jurisdiction over the
2 land or the use of land on which the facility is lo-
3 cated or is proposed to be located.

4 “(C) For purposes of host community agree-
5 ments entered into before the date of publication of
6 the notice, the term means either a public body de-
7 scribed in subparagraph (A)(i) or the elected offi-
8 cials of any of the public bodies described in sub-
9 paragraph (A)(ii).

10 “(2)(A) The term ‘host community agreement’
11 means, with respect to any agreement entered into
12 on or after March 10, 1995, a written, legally bind-
13 ing document or documents executed by duly author-
14 ized officials of the affected local government that
15 expressly authorizes a landfill or incinerator to re-
16 ceive specified amounts of municipal solid waste gen-
17 erated out of State.

18 “(B) The term ‘host community agreement’
19 means, with respect to any agreement entered into
20 before March 10, 1995, a written, legally binding
21 document or documents executed by duly authorized
22 officials of the affected local government expressly
23 authorizing a landfill or incinerator to receive munic-
24 ipal solid waste generated out of State, but does not
25 include any agreement to pay host community fees

1 for receipt of waste unless additional express author-
2 ization to receive out-of-State municipal solid waste
3 is also included. For purposes of a host community
4 agreement entered into before March 10, 1995, such
5 agreement may use a term other than 'out-of-State',
6 provided that any alternative term or terms evidence
7 the approval or consent of the affected local govern-
8 ment for receipt of municipal solid waste from
9 sources or locations outside the State in which the
10 landfill or incinerator is located or is proposed to be
11 located.

12 “(3) The term 'out-of-State municipal solid
13 waste' means, with respect to any State, municipal
14 solid waste generated outside of the State. To the
15 extent that the President determines it is consistent
16 with the North American Free Trade Agreement
17 and the General Agreement on Tariffs and Trade,
18 the term shall include municipal solid waste gen-
19 erated outside of the United States.

20 “(4) The term 'municipal solid waste' means
21 refuse (and refuse-derived fuel) generated by the
22 general public or from a residential, commercial, in-
23 stitutional, or industrial source (or any combination
24 thereof), consisting of paper, wood, yard wastes,
25 plastics, leather, rubber, or other combustible or

1 noncombustible materials such as metal or glass (or
2 any combination thereof). The term ‘municipal solid
3 waste’ does not include—

4 “(A) any solid waste identified or listed as
5 a hazardous waste under section 3001, or any
6 solid waste containing polychlorinated biphenyls
7 regulated under the Toxic Substances Control
8 Act (15 U.S.C. 2601 et seq.);

9 “(B) any solid waste, including contami-
10 nated soil and debris, resulting from a response
11 action taken under section 104 or 106 of the
12 Comprehensive Environmental Response, Com-
13 pensation, and Liability Act of 1980 (42 U.S.C.
14 9604 or 9606) or a corrective action taken
15 under this Act;

16 “(C) any metal, pipe, glass, plastic, paper,
17 textile, or other material that has been sepa-
18 rated or diverted from municipal solid waste (as
19 otherwise defined in this paragraph) and has
20 been transported into a State for the purpose of
21 recycling or reclamation;

22 “(D) any solid waste that is—

23 “(i) generated by an industrial facil-
24 ity; and

1 “(ii) transported for the purpose of
2 treatment, storage, or disposal to a facility
3 that is owned or operated by the generator
4 of the waste, or is located on property
5 owned by the generator of the waste, or is
6 located on property owned by a company
7 with which the generator is affiliated;

8 “(E) any solid waste generated incident to
9 the provision of service in interstate, intrastate,
10 foreign, or overseas air transportation;

11 “(F) any industrial waste that is not iden-
12 tical to municipal solid waste (as otherwise de-
13 fined in this paragraph) with respect to the
14 physical and chemical state of the industrial
15 waste, and composition, including construction
16 and demolition debris;

17 “(G) any medical waste that is segregated
18 from or not mixed with municipal solid waste
19 (as otherwise defined in this paragraph); or

20 “(H) any material or product returned
21 from a dispenser or distributor to the manufac-
22 turer for credit, evaluation, or possible reuse.

23 “(5) The term ‘compliance’ means a pattern or
24 practice of adhering to and satisfying standards and
25 requirements promulgated by the Federal or a State

1 government for the purpose of preventing significant
 2 harm to human health and the environment. Actions
 3 undertaken in accordance with compliance schedules
 4 for remediation established by Federal or State en-
 5 forcement authorities shall be considered compliance
 6 for purposes of this section.”.

7 (b) TABLE OF CONTENTS AMENDMENT.—The table
 8 of contents in section 1001 of the Solid Waste Disposal
 9 Act (42 U.S.C. prec. 6901) is amended by adding at the
 10 end of the items relating to subtitle D the following new
 11 item:

“Sec. 4011. Interstate transportation of municipal solid waste.”.

12 **TITLE II—FLOW CONTROL**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Municipal Solid Waste
 15 Flow Control Act of 1995”.

16 **SEC. 202. STATE AND LOCAL GOVERNMENT CONTROL OF** 17 **MOVEMENT OF MUNICIPAL SOLID WASTE** 18 **AND RECYCLABLE MATERIAL.**

19 Subtitle D of the Solid Waste Disposal Act is amend-
 20 ed by adding after section 4010 the following new section:

21 **“SEC. 4011. STATE AND LOCAL GOVERNMENT CONTROL OF** 22 **MOVEMENT OF MUNICIPAL SOLID WASTE** 23 **AND RECYCLABLE MATERIAL.**

24 “(a) DEFINITIONS.—In this section:

1 ~~“(1) DESIGNATE; DESIGNATION.—The terms~~
2 ~~‘designate’ and ‘designation’ refer to a requirement~~
3 ~~by a State or political subdivision, and the act of a~~
4 ~~State or political subdivision in requiring, that all or~~
5 ~~any portion of the municipal solid waste or recycla-~~
6 ~~ble material that is generated within the boundaries~~
7 ~~of the State or political subdivision be delivered to~~
8 ~~a waste management facility or facility for recyclable~~
9 ~~material identified by the State or political subdivi-~~
10 ~~sion.~~

11 ~~“(2) FLOW CONTROL AUTHORITY.—The term~~
12 ~~‘flow control authority’ means the authority to con-~~
13 ~~trol the movement of solid waste or recyclable mate-~~
14 ~~rial and direct such solid waste or recyclable mate-~~
15 ~~rial to a designated waste management facility or fa-~~
16 ~~cility for recyclable material.~~

17 ~~“(3) MUNICIPAL SOLID WASTE.—The term~~
18 ~~‘municipal solid waste’ means—~~

19 ~~“(A) solid waste generated by the general~~
20 ~~public or from a residential, commercial, insti-~~
21 ~~tutional, or industrial source, consisting of~~
22 ~~paper, wood, yard waste, plastics, leather, rub-~~
23 ~~ber, and other combustible material and~~
24 ~~noncombustible material such as metal and~~
25 ~~glass, including residue remaining after recycla-~~

1 ble material has been separated from waste des-
2 tined for disposal, and including waste material
3 removed from a septic tank, septage pit, or
4 cesspool (other than from portable toilets); but

5 “(B) does not include—

6 “(i) waste identified or listed as a
7 hazardous waste under section 3001 of this
8 Act or waste regulated under the Toxic
9 Substances Control Act (15 U.S.C. 2601
10 et seq.);

11 “(ii) waste, including contaminated
12 soil and debris, resulting from a response
13 action taken under section 104 or 106 of
14 the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9604, 9606) or any cor-
17 rective action taken under this Act;

18 “(iii) medical waste listed in section
19 11002;

20 “(iv) industrial waste generated by
21 manufacturing or industrial processes, in-
22 cluding waste generated during scrap proc-
23 essing and scrap recycling;

24 “(v) recyclable material; or

25 “(vi) sludge.

1 ~~“(4) RECYCLABLE MATERIAL.—~~The term ‘recy-
2 clable material’ means—

3 ~~“(A) material that has been separated~~
4 ~~from waste otherwise destined for disposal (at~~
5 ~~the source of the waste or at a processing facil-~~
6 ~~ity) or has been managed separately from waste~~
7 ~~destined for disposal, for the purpose of recy-~~
8 ~~cling, reclamation, composting of organic mate-~~
9 ~~rial such as food and yard waste, or reuse~~
10 ~~(other than for the purpose of incineration); but~~

11 ~~“(B) for the purpose of subsection (b), in-~~
12 ~~cludes material described in subparagraph (A)~~
13 ~~only if the generator or owner of the material~~
14 ~~voluntarily made the material available to the~~
15 ~~State or political subdivision (or the designee of~~
16 ~~the State or political subdivision) and relin-~~
17 ~~quished any rights to, or ownership of, the ma-~~
18 ~~terial, and the State or political subdivision (or~~
19 ~~designee) assumes such rights to, or ownership~~
20 ~~of, the material.~~

21 ~~“(5) WASTE MANAGEMENT FACILITY.—~~The
22 ~~term ‘waste management facility’ means a facility~~
23 ~~that collects, separates, stores, transports, transfers,~~
24 ~~treats, processes, combusts, or disposes of municipal~~
25 ~~solid waste.~~

1 “(b) AUTHORITY.—

2 “(1) IN GENERAL.—Each State and each politi-
3 cal subdivision of a State may exercise flow control
4 authority for municipal solid waste and for recycla-
5 ble material voluntarily relinquished by the owner or
6 generator of the material that is generated within its
7 jurisdiction by directing the municipal solid waste or
8 recyclable material to a waste management facility
9 or facility for recyclable material, if such flow con-
10 trol authority—

11 “(A) is imposed pursuant to a law, ordi-
12 nance, regulation, or other legally binding provi-
13 sion or official act of the State or political sub-
14 division in effect on May 15, 1994; and

15 “(B) has been implemented by designating
16 before May 15, 1994, the particular waste man-
17 agement facilities to which the municipal solid
18 waste or recyclable material is to be delivered,
19 the substantial construction of which facilities
20 was performed after the effective date of that
21 legally binding provision or official act and
22 which facilities were in operation as of May 15,
23 1994.

24 “(2) LIMITATION.—The authority of this sec-
25 tion extends only to the specific classes or categories

1 of municipal solid waste to which flow control au-
2 thority requiring a movement to a waste manage-
3 ment facility was actually applied on or before May
4 15, 1994 (or, in the case of a State or political sub-
5 division that qualifies under subsection (c), to the
6 specific classes or categories of municipal solid waste
7 for which the State or political subdivision prior to
8 May 15, 1994, had committed to the designation of
9 a waste management facility).

10 “(3) LACK OF CLEAR IDENTIFICATION.—With
11 regard to facilities granted flow control authority
12 under subsection (c), if the specific classes or cat-
13 egories of municipal solid waste are not clearly iden-
14 tified, the authority of this section shall apply only
15 to municipal solid waste generated by households.

16 “(4) DURATION OF AUTHORITY.—With respect
17 to each designated waste management facility, the
18 authority of this section shall be effective until the
19 later of—

20 “(A) the end of the remaining life of a con-
21 tract between the State or political subdivision
22 and any other person regarding the movement
23 or delivery of municipal solid waste or recycla-
24 ble material (as in effect May 15, 1994);

1 ~~“(B) completion of the schedule for pay-~~
2 ~~ment of the capital costs of the facility con-~~
3 ~~cerned (as in effect May 15, 1994); or~~

4 ~~“(C) the end of the remaining useful life of~~
5 ~~the original facility, as that remaining life may~~
6 ~~be extended by—~~

7 ~~“(i) retrofitting of equipment or the~~
8 ~~making of other significant modifications~~
9 ~~to meet applicable environmental require-~~
10 ~~ments or safety requirements;~~

11 ~~“(ii) routine repair or scheduled re-~~
12 ~~placement of equipment or components~~
13 ~~that does not add to the capacity of a~~
14 ~~waste management facility; or~~

15 ~~“(iii) expansion of the facility on land~~
16 ~~that is—~~

17 ~~“(I) legally or equitably owned,~~
18 ~~or under option to purchase or lease,~~
19 ~~by the owner or operator of the facil-~~
20 ~~ity; and~~

21 ~~“(II) covered by the permit for~~
22 ~~the facility (as in effect May 15,~~
23 ~~1994).~~

24 ~~“(c) COMMITMENT TO CONSTRUCTION.—~~

1 ~~“(1) IN GENERAL.—~~Notwithstanding subsection
 2 ~~(b)(1) (A) and (B),~~ any political subdivision of a
 3 State may exercise flow control authority under sub-
 4 section ~~(b),~~ if—

5 ~~“(A) the law, ordinance, regulation, or~~
 6 ~~other legally binding provision specifically pro-~~
 7 ~~vides for flow control authority for municipal~~
 8 ~~solid waste generated within its boundaries and~~
 9 ~~was in effect prior to May 15, 1994; and~~

10 ~~“(B) the political subdivision took action~~
 11 ~~prior to May 15, 1994, to commit to the des-~~
 12 ~~ignation of a waste management facility to~~
 13 ~~which municipal solid waste is to be transported~~
 14 ~~or at which municipal solid waste is to be dis-~~
 15 ~~posed of under that law, ordinance, regulation,~~
 16 ~~plan, or legally binding provision.~~

17 ~~“(2) FACTORS DEMONSTRATING COMMIT-~~
 18 ~~MENT.—~~A commitment to the designation of a waste
 19 management facility is demonstrated by 1 or more
 20 of the following factors:

21 ~~“(A) CONSTRUCTION PERMITS.—~~All per-
 22 mits required for the substantial construction of
 23 the facility were obtained prior to May 15,
 24 1994.

1 “(B) CONTRACTS.—All contracts for the
2 substantial construction of the facility were in
3 effect prior to May 15, 1994.

4 “(C) REVENUE BONDS.—Prior to May 15,
5 1994, revenue bonds were presented for sale to
6 specifically provide revenue for the construction
7 of the facility.

8 “(D) CONSTRUCTION AND OPERATING
9 PERMITS.—The State or political subdivision
10 submitted to the appropriate regulatory agency
11 or agencies, on or before May 16, 1994, sub-
12 stantially complete permit applications for the
13 construction and operation of the facility.

14 “(d) RETAINED AUTHORITY.—

15 “(1) REQUEST.—On the request of a generator
16 of municipal solid waste affected by this section, a
17 State or political subdivision may authorize the di-
18 version of all or a portion of the solid waste gen-
19 erated by the generator making the request to an al-
20 ternative solid waste treatment or disposal facility, if
21 the purpose of the request is to provide a higher
22 level of protection for human health and the environ-
23 ment or reduce potential future liability of the gen-
24 erator under Federal or State law for the manage-
25 ment of such waste, unless the State or political sub-

1 division determines that the facility to which the mu-
2 nicipal solid waste is proposed to be diverted does
3 not provide a higher level of protection for human
4 health and the environment or does not reduce the
5 potential future liability of the generator under Fed-
6 eral or State law for the management of such waste.

7 “(2) CONTENTS.—A request under paragraph
8 (1) shall include information on the environmental
9 suitability of the proposed alternative treatment or
10 disposal facility and method, compared to that of the
11 designated facility and method.

12 “(e) LIMITATIONS ON REVENUE.—A State or politi-
13 cal subdivision may exercise flow control authority under
14 subsection (b) or (c) only if the State or political subdivi-
15 sion certifies that the use of any of its revenues derived
16 from the exercise of that authority will be used solely for
17 solid waste management services.

18 “(f) REASONABLE REGULATION OF COMMERCE.—A
19 law, ordinance, regulation, or other legally binding provi-
20 sion or official act of a State or political subdivision, de-
21 scribed in subsection (b) or (c), that implements flow con-
22 trol authority in compliance with this section shall be con-
23 sidered to be a reasonable regulation of commerce and
24 shall not be considered to be an undue burden on or other-

1 wise considered as impairing, restraining, or discriminat-
 2 ing against interstate commerce.

3 ~~“(g) EFFECT ON EXISTING LAWS AND CON-~~
 4 ~~TRACTS.—~~

5 ~~“(1) ENVIRONMENTAL LAWS.—Nothing in this~~
 6 ~~section shall be construed to have any effect on any~~
 7 ~~other law relating to the protection of human health~~
 8 ~~and the environment or the management of municipi-~~
 9 ~~pal solid waste or recyclable material.~~

10 ~~“(2) STATE LAW.—Nothing in this section shall~~
 11 ~~be construed to authorize a political subdivision of a~~
 12 ~~State to exercise the flow control authority granted~~
 13 ~~by this section in a manner that is inconsistent with~~
 14 ~~State law.~~

15 ~~“(3) OWNERSHIP OF RECYCLABLE MATERIAL.—~~
 16 ~~Nothing in this section—~~

17 ~~“(A) authorizes a State or political subdivi-~~
 18 ~~sion of a State to require a generator or owner~~
 19 ~~of recyclable material to transfer recyclable ma-~~
 20 ~~terial to the State or political subdivision; or~~

21 ~~“(B) prohibits a generator or owner of re-~~
 22 ~~cyclable material from selling, purchasing, ac-~~
 23 ~~cepting, conveying, or transporting recyclable~~
 24 ~~material for the purpose of transformation or~~
 25 ~~remanufacture into usable or marketable mate-~~

1 rial, unless the generator or owner voluntarily
 2 made the recyclable material available to the
 3 State or political subdivision and relinquished
 4 any right to, or ownership of, the recyclable
 5 material.”.

6 **SEC. 203. TABLE OF CONTENTS AMENDMENT.**

7 The table of contents for subtitle D in section 1001
 8 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901),
 9 as amended by section 101(b), is amended by adding after
 10 the item relating to section 4010 the following new item:

 “Sec. 4011. State and local government control of movement of municipal solid
 waste and recyclable material.”.

11 **SEC. 204. REPEAL.**

12 Section 4011 of the Solid Waste Disposal Act, as
 13 added by section 202, and the item relating to that section
 14 in the table of contents for subtitle D of the Solid Waste
 15 Disposal Act, as added by section 203, are repealed effec-
 16 tive as of the date that is 30 years after the date of enact-
 17 ment of this Act.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Interstate Transpor-*
 20 *tation of Municipal Solid Waste Act of 1995”.*

1 **TITLE I—INTERSTATE WASTE**

2 **SEC. 101. INTERSTATE TRANSPORTATION OF MUNICIPAL**
3 **SOLID WASTE.**

4 (a) *AMENDMENT.*—*Subtitle D of the Solid Waste Dis-*
5 *posal Act (42 U.S.C. 6941 et seq.) is amended by adding*
6 *at the end the following new section:*

7 **“SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL**
8 **SOLID WASTE.**

9 “(a) *AUTHORITY TO RESTRICT OUT-OF-STATE MUNIC-*
10 *IPAL SOLID WASTE.*—(1) *Except as provided in paragraph*
11 *(4), immediately upon the date of enactment of this section*
12 *if requested in writing by an affected local government, a*
13 *Governor may prohibit the disposal of out-of-State munici-*
14 *pal solid waste in any landfill or incinerator that is not*
15 *covered by the exceptions provided in subsection (b) and*
16 *that is subject to the jurisdiction of the Governor and the*
17 *affected local government.*

18 “(2) *Except as provided in paragraph (4), imme-*
19 *diately upon the date of publication of the list required in*
20 *paragraph (6)(D) and notwithstanding the absence of a re-*
21 *quest in writing by the affected local government, a Gov-*
22 *ernor, in accordance with paragraph (5), may limit the*
23 *quantity of out-of-State municipal solid waste received for*
24 *disposal at each landfill or incinerator covered by the excep-*
25 *tions provided in subsection (b) that is subject to the juris-*

1 *diction of the Governor, to an annual amount equal to or*
2 *greater than the quantity of out-of-State municipal solid*
3 *waste received for disposal at such landfill or incinerator*
4 *during calendar year 1993.*

5 “(3)(A) *Except as provided in paragraph (4), imme-*
6 *diately upon the date of publication of the list required in*
7 *paragraph (6)(E), and notwithstanding the absence of a re-*
8 *quest in writing by the affected local government, a Gov-*
9 *ernor, in accordance with paragraph (5), may prohibit or*
10 *limit the amount of out-of-State municipal solid waste dis-*
11 *posed of at any landfill or incinerator covered by the excep-*
12 *tions in subsection (b) that is subject to the jurisdiction of*
13 *the Governor, generated in any State that is determined*
14 *by the Administrator under paragraph (6)(E) as having*
15 *exported, to landfills or incinerators not covered by host*
16 *community agreements or permits authorizing receipt of*
17 *out-of-State municipal solid waste, more than—*

18 “(i) *3,500,000 tons of municipal solid waste in*
19 *calendar year 1996;*

20 “(ii) *3,000,000 tons of municipal solid waste in*
21 *each of calendar years 1997 and 1998;*

22 “(iii) *2,500,000 tons of municipal solid waste in*
23 *each of calendar years 1999 and 2000;*

24 “(iv) *1,500,000 tons of municipal solid waste in*
25 *each of calendar years 2001 and 2002; and*

1 “(v) 1,000,000 tons of municipal solid waste in
2 calendar year 2003 and each year thereafter.

3 “(B)(i) No State may export to landfills or inciner-
4 ators in any 1 State that are not covered by host commu-
5 nity agreements more than the following amounts of munic-
6 ipal solid waste:

7 “(I) In calendar year 1996, the greater of
8 1,400,000 tons or 90 percent of the amount exported
9 to the State in calendar year 1993.

10 “(II) In calendar year 1997, the greater of
11 1,300,000 tons or 90 percent of the amount exported
12 to the State in calendar year 1996.

13 “(III) In calendar year 1998, the greater of
14 1,200,000 tons or 90 percent of the amount exported
15 to the State in calendar year 1997.

16 “(IV) In calendar year 1999, the greater of
17 1,100,000 tons or 90 percent of the amount exported
18 to the State in calendar year 1998.

19 “(V) In calendar year 2000, 1,000,000 tons.

20 “(VI) In calendar year 2001, 800,000 tons.

21 “(VII) In calendar year 2002 or any calendar
22 year thereafter, 600,000 tons.

23 “(ii) The Governor of an importing State may take
24 action to restrict levels of imports to reflect the appropriate
25 level of out-of-State municipal solid waste imports if—

1 “(I) the Governor of the importing State has no-
2 tified the Governor of the exporting State and the Ad-
3 ministrators, 12 months prior to taking any such ac-
4 tion, of the importing State’s intention to impose the
5 requirements of this section;

6 “(II) the Governor of the importing State has
7 notified the Governor of the exporting State and the
8 Administrator of the violation by the exporting State
9 of this section at least 90 days prior to taking any
10 such action; and

11 “(III) the restrictions imposed by the Governor
12 of the importing State are uniform at all facilities.

13 “(C) The authority provided by subparagraphs (A)
14 and (B) shall apply for as long as a State exceeds the per-
15 missible levels as determined by the Administrator under
16 paragraph (6)(E).

17 “(4)(A) A Governor may not exercise the authority
18 granted under this section if such action would result in
19 the violation of, or would otherwise be inconsistent with,
20 the terms of a host community agreement or a permit issued
21 from the State to receive out-of-State municipal solid waste.

22 “(B) Except as provided in paragraph (3), a Governor
23 may not exercise the authority granted under this section
24 in a manner that would require any owner or operator of
25 a landfill or incinerator covered by the exceptions provided

1 *in subsection (b) to reduce the amount of out-of-State mu-*
2 *nicipal solid waste received from any State for disposal at*
3 *such landfill or incinerator to an annual quantity less than*
4 *the amount received from such State for disposal at such*
5 *landfill or incinerator during calendar year 1993.*

6 “(5) Any limitation imposed by a Governor under
7 paragraph (2) or (3)—

8 “(A) shall be applicable throughout the State;

9 “(B) shall not directly or indirectly discriminate
10 *against any particular landfill or incinerator within*
11 *the State; and*

12 “(C) shall not directly or indirectly discriminate
13 *against any shipments of out-of-State municipal solid*
14 *waste on the basis of place of origin and all such lim-*
15 *itations shall be applied to all States in violation of*
16 *paragraph (3).*

17 “(6) ANNUAL STATE REPORT.—

18 “(A) IN GENERAL.—*Within 90 days after enact-*
19 *ment of this section and on April 1 of each year*
20 *thereafter the owner or operator of each landfill or in-*
21 *cinerator receiving out-of-State municipal solid waste*
22 *shall submit to the affected local government and to*
23 *the Governor of the State in which the landfill or in-*
24 *cinerator is located, information specifying the*
25 *amount and State of origin of out-of-State municipal*

1 *solid waste received for disposal during the preceding*
2 *calendar year. Within 120 days after enactment of*
3 *this section and on July 1 of each year thereafter each*
4 *State shall publish and make available to the Admin-*
5 *istrator, the Governor of the State of origin and the*
6 *public, a report containing information on the*
7 *amount of out-of-State municipal solid waste received*
8 *for disposal in the State during the preceding cal-*
9 *endar year.*

10 *“(B) CONTENTS.—Each submission referred to*
11 *in this section shall be such as would result in crimi-*
12 *nal penalties in case of false or misleading informa-*
13 *tion. Such information shall include the amount of*
14 *waste received, the State of origin, the identity of the*
15 *generator, the date of the shipment, and the type of*
16 *out-of-State municipal solid waste.*

17 *“(C) LIST.—The Administrator shall publish a*
18 *list of States that the Administrator has determined*
19 *have exported out-of-State in any of the following cal-*
20 *endar years an amount of municipal solid waste in*
21 *excess of—*

22 *“(i) 3,500,000 tons in 1996;*

23 *“(ii) 3,000,000 tons in 1997;*

24 *“(iii) 3,000,000 tons in 1998;*

25 *“(iv) 2,500,000 tons in 1999;*

1 “(v) 2,500,000 tons in 2000;

2 “(vi) 1,500,000 tons in 2001;

3 “(vii) 1,500,000 tons in 2002;

4 “(viii) 1,000,000 tons in 2003; and

5 “(ix) 1,000,000 tons in each calendar year
6 after 2003.

7 *The list for any calendar year shall be published by*
8 *June 1 of the following calendar year.*

9 “(D) *SAVINGS PROVISION.*—*Nothing in this sub-*
10 *section shall be construed to preempt any State re-*
11 *quirement that requires more frequent reporting of in-*
12 *formation.*

13 “(7) *Any affected local government that intends to sub-*
14 *mit a request under paragraph (1) or take formal action*
15 *to enter into a host community agreement after the date*
16 *of enactment of this subsection shall, prior to taking such*
17 *action—*

18 “(A) *notify the Governor, contiguous local gov-*
19 *ernments, and any contiguous Indian tribes;*

20 “(B) *publish notice of the action in a newspaper*
21 *of general circulation at least 30 days before taking*
22 *such action;*

23 “(C) *provide an opportunity for public comment;*
24 *and*

1 “(D) following notice and comment, take formal
2 action on any proposed request or action at a public
3 meeting.

4 “(8) Any owner or operator seeking a host community
5 agreement after the date of enactment of this subsection
6 shall provide to the affected local government the following
7 information, which shall be made available to the public
8 from the affected local government:

9 “(A) A brief description of the planned facility,
10 including a description of the facility size, ultimate
11 waste capacity, and anticipated monthly and yearly
12 waste quantities to be handled.

13 “(B) A map of the facility site that indicates the
14 location of the facility in relation to the local road
15 system and topographical and hydrological features
16 and any buffer zones and facility units to be acquired
17 by the owner or operator of the facility.

18 “(C) A description of the existing environmental
19 conditions at the site, and any violations of applica-
20 ble laws or regulations.

21 “(D) A description of environmental controls to
22 be utilized at the facility.

23 “(E) A description of the site access controls to
24 be employed, and roadway improvements to be made,
25 by the owner or operator, and an estimate

1 *of the timing and extent of increased local truck*
2 *traffic.*

3 “(F) *A list of all required Federal, State, and*
4 *local permits.*

5 “(G) *Any information that is required by State*
6 *or Federal law to be provided with respect to any vio-*
7 *lations of environmental laws (including regulations)*
8 *by the owner and operator, the disposition of enforce-*
9 *ment proceedings taken with respect to the violations,*
10 *and corrective measures taken as a result of the*
11 *proceedings.*

12 “(H) *Any information that is required by State*
13 *or Federal law to be provided with respect to compli-*
14 *ance by the owner or operator with the State solid*
15 *waste management plan.*

16 “(b) *EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-*
17 *OF-STATE MUNICIPAL SOLID WASTE.—(1) The authority to*
18 *prohibit the disposal of out-of-State municipal solid waste*
19 *provided under subsection (a)(1) shall not apply to landfills*
20 *and incinerators in operation on the date of enactment of*
21 *this section that—*

22 “(A) *received during calendar year 1993 docu-*
23 *mented shipments of out-of-State municipal solid*
24 *waste; and*

1 “(B)(i) in the case of landfills, are in compliance
2 with all applicable Federal and State laws and regu-
3 lations relating to operation, design and location
4 standards, leachate collection, ground water monitor-
5 ing, and financial assurance for closure and post-clo-
6 sure and corrective action; or

7 “(ii) in the case of incinerators, are in compli-
8 ance with the applicable requirements of section 129
9 of the Clean Air Act (42 U.S.C. 7429) and applicable
10 State laws and regulations relating to facility design
11 and operations.

12 “(2) A Governor may not prohibit the disposal of out-
13 of-State municipal solid waste pursuant to subsection
14 (a)(1) at facilities described in this subsection that are not
15 in compliance with applicable Federal and State laws and
16 regulations unless disposal of municipal solid waste gen-
17 erated within the State at such facilities is also prohibited.

18 “(c) *ADDITIONAL AUTHORITY TO LIMIT OUT-OF-*
19 *STATE MUNICIPAL SOLID WASTE.—(1) In any case in*
20 *which an affected local government is considering entering*
21 *into, or has entered into, a host community agreement and*
22 *the disposal or incineration of out-of-State municipal solid*
23 *waste under such agreement would preclude the use of mu-*
24 *nicipal solid waste management capacity described in*
25 *paragraph (2), the Governor of the State in which the af-*

1 *ected local government is located may prohibit the execu-*
2 *tion of such host community agreement with respect to that*
3 *capacity.*

4 “(2) *The municipal solid waste management capacity*
5 *referred to in paragraph (1) is that capacity—*

6 “(A) *that is permitted under Federal or State*
7 *law;*

8 “(B) *that is identified under the State plan; and*

9 “(C) *for which a legally binding commitment be-*
10 *tween the owner or operator and another party has*
11 *been made for its use for disposal or incineration of*
12 *municipal solid waste generated within the region*
13 *(identified under section 4006(a)) in which the local*
14 *government is located.*

15 “(d) *COST RECOVERY SURCHARGE.—*

16 “(1) *AUTHORITY.—A State described in para-*
17 *graph (2) may adopt a law and impose and collect*
18 *a cost recovery charge on the processing or disposal*
19 *of out-of-State municipal solid waste in the State in*
20 *accordance with this subsection.*

21 “(2) *APPLICABILITY.—The authority to impose a*
22 *cost recovery surcharge under this subsection applies*
23 *to any State that on or before April 3, 1994, imposed*
24 *and collected a special fee on the processing or dis-*

1 *posal of out-of-State municipal solid waste pursuant*
2 *to a State law.*

3 “(3) *LIMITATION.*—No such State may impose or
4 *collect a cost recovery surcharge from a facility on*
5 *any out-of-State municipal solid waste that is being*
6 *received at the facility under 1 or more contracts en-*
7 *tered into after April 3, 1994, and before the date of*
8 *enactment of this section.*

9 “(4) *AMOUNT OF SURCHARGE.*—The amount of
10 *the cost recovery surcharge may be no greater than*
11 *the amount necessary to recover those costs deter-*
12 *mined in conformance with paragraph (6) and in no*
13 *event may exceed \$1.00 per ton of waste.*

14 “(5) *USE OF SURCHARGE COLLECTED.*—All cost
15 *recovery surcharges collected by a State covered by*
16 *this subsection shall be used to fund those solid waste*
17 *management programs administered by the State or*
18 *its political subdivision that incur costs for which the*
19 *surcharge is collected.*

20 “(6) *CONDITIONS.*—(A) *Subject to subparagraphs*
21 *(B) and (C), a State covered by this subsection may*
22 *impose and collect a cost recovery surcharge on the*
23 *processing or disposal within the State of out-of-State*
24 *municipal solid waste if—*

1 “(i) the State demonstrates a cost to the
2 State arising from the processing or disposal
3 within the State of a volume of municipal solid
4 waste from a source outside the State;

5 “(ii) the surcharge is based on those costs to
6 the State demonstrated under clause (i) that, if
7 not paid for through the surcharge, would other-
8 wise have to be paid or subsidized by the State;
9 and

10 “(iii) the surcharge is compensatory and is
11 not discriminatory.

12 “(B) In no event shall a cost recovery surcharge
13 be imposed by a State to the extent that the cost for
14 which recovery is sought is otherwise paid, recovered,
15 or offset by any other fee or tax assessed against or
16 voluntarily paid to the State or its political subdivi-
17 sion in connection with the generation, transpor-
18 tation, treatment, processing, or disposal of solid
19 waste.

20 “(C) The grant of a subsidy by a State with re-
21 spect to entities disposing of waste generated within
22 the State does not constitute discrimination for pur-
23 poses of subparagraph (A)(iii).

24 “(7) DEFINITIONS.—As used in this subsection:

1 “(A) The term ‘costs’ means the costs in-
2 curred by the State for the implementation of its
3 laws governing the processing or disposal of mu-
4 nicipal solid waste, limited to the issuance of
5 new permits and renewal of or modification of
6 permits, inspection and compliance monitoring,
7 enforcement, and costs associated with technical
8 assistance, data management, and collection of
9 fees.

10 “(B) The term ‘processing’ means any ac-
11 tivity to reduce the volume of solid waste or alter
12 its chemical, biological or physical state, through
13 processes such as thermal treatment, bailing,
14 composting, crushing, shredding, separation, or
15 compaction.

16 “(e) SAVINGS CLAUSE.—Nothing in this section shall
17 be interpreted or construed—

18 “(1) to have any effect on State law relating to
19 contracts; or

20 “(2) to affect the authority of any State or local
21 government to protect public health and the environ-
22 ment through laws, regulations, and permits, includ-
23 ing the authority to limit the total amount of municipi-
24 pal solid waste that landfill or incinerator owners or
25 operators within the jurisdiction of a State may ac-

1 *cept during a prescribed period, provided that such*
2 *limitations do not discriminate between in-State and*
3 *out-of-State municipal solid waste, except to the ex-*
4 *tent authorized by this section.*

5 *“(f) DEFINITIONS.—As used in this section:*

6 *“(1)(A) The term ‘affected local government’,*
7 *used with respect to a landfill or incinerator,*
8 *means—*

9 *“(i) the public body created by State law*
10 *with responsibility to plan for municipal solid*
11 *waste management, a majority of the members of*
12 *which are elected officials, for the area in which*
13 *the facility is located or proposed to be located;*
14 *or*

15 *“(ii) the elected officials of the city, town,*
16 *township, borough, county, or parish exercising*
17 *primary responsibility over municipal solid*
18 *waste management or the use of land in the ju-*
19 *risdiction in which the facility is located or is*
20 *proposed to be located.*

21 *“(B)(i) Within 90 days after the date of enact-*
22 *ment of this section, a Governor may designate and*
23 *publish notice of which entity listed in clause (i) or*
24 *(ii) of subparagraph (A) shall serve as the affected*

1 *local government for actions taken under this section*
2 *and after publication of such notice.*

3 *“(ii) If a Governor fails to make and publish no-*
4 *tice of such a designation, the affected local govern-*
5 *ment shall be the elected officials of the city, town,*
6 *township, borough, county, parish, or other public*
7 *body created pursuant to State law with primary ju-*
8 *risdiction over the land or the use of land on which*
9 *the facility is located or is proposed to be located.*

10 *“(C) For purposes of host community agreements*
11 *entered into before the date of publication of the no-*
12 *tice, the term means either a public body described in*
13 *subparagraph (A)(i) or the elected officials of any of*
14 *the public bodies described in subparagraph (A)(ii).*

15 *“(2) HOST COMMUNITY AGREEMENT.—The term*
16 *‘host community agreement’ means a written, legally*
17 *binding document or documents executed by duly au-*
18 *thorized officials of the affected local government that*
19 *specifically authorizes a landfill or incinerator to re-*
20 *ceive municipal solid waste generated out of State,*
21 *but does not include any agreement to pay host com-*
22 *munity fees for receipt of waste unless additional ex-*
23 *press authorization to receive out-of-State waste is*
24 *also included.*

1 “(3) The term ‘out-of-State municipal solid
2 waste’ means, with respect to any State, municipal
3 solid waste generated outside of the State. To the ex-
4 tent that the President determines it is consistent
5 with the North American Free Trade Agreement and
6 the General Agreement on Tariffs and Trade, the term
7 shall include municipal solid waste generated outside
8 of the United States.

9 “(4) The term ‘municipal solid waste’ means
10 refuse (and refuse-derived fuel) generated by the gen-
11 eral public or from a residential, commercial, institu-
12 tional, or industrial source (or any combination
13 thereof), consisting of paper, wood, yard wastes, plas-
14 tics, leather, rubber, or other combustible or
15 noncombustible materials such as metal or glass (or
16 any combination thereof). The term ‘municipal solid
17 waste’ does not include—

18 “(A) any solid waste identified or listed as
19 a hazardous waste under section 3001;

20 “(B) any solid waste, including contami-
21 nated soil and debris, resulting from a response
22 action taken under section 104 or 106 of the
23 Comprehensive Environmental Response, Com-
24 pensation, and Liability Act of 1980 (42 U.S.C.

1 9604 or 9606) or a corrective action taken under
2 this Act;

3 “(C) any metal, pipe, glass, plastic, paper,
4 textile, or other material that has been separated
5 or diverted from municipal solid waste (as other-
6 wise defined in this paragraph) and has been
7 transported into a State for the purpose of recy-
8 cling or reclamation;

9 “(D) any solid waste that is—

10 “(i) generated by an industrial facil-
11 ity; and

12 “(ii) transported for the purpose of
13 treatment, storage, or disposal to a facility
14 that is owned or operated by the generator
15 of the waste, or is located on property
16 owned by the generator of the waste, or is
17 located on property owned by a company
18 with which the generator is affiliated;

19 “(E) any solid waste generated incident to
20 the provision of service in interstate, intrastate,
21 foreign, or overseas air transportation;

22 “(F) any industrial waste that is not iden-
23 tical to municipal solid waste (as otherwise de-
24 fined in this paragraph) with respect to the
25 physical and chemical state of the industrial

1 waste, and composition, including construction
2 and demolition debris;

3 “(G) any medical waste that is segregated
4 from or not mixed with municipal solid waste
5 (as otherwise defined in this paragraph); or

6 “(H) any material or product returned
7 from a dispenser or distributor to the manufac-
8 turer for credit, evaluation, or possible reuse.

9 “(5) The term ‘compliance’ means a pattern or
10 practice of adhering to and satisfying standards and
11 requirements promulgated by the Federal or a State
12 government for the purpose of preventing significant
13 harm to human health and the environment. Actions
14 undertaken in accordance with compliance schedules
15 for remediation established by Federal or State en-
16 forcement authorities shall be considered compliance
17 for purposes of this section.

18 “(6) The terms ‘specifically authorized’ and ‘spe-
19 cifically authorizes’ refer to an explicit authorization,
20 contained in a host community agreement or permit,
21 to import waste from outside the State. Such author-
22 ization may include a reference to a fixed radius sur-
23 rounding the landfill or incinerator that includes an
24 area outside the State or a reference to any place of
25 origin, reference to specific places outside the State, or

1 *use of such phrases as ‘regardless of origin’ or ‘outside*
 2 *the State’. The language for such authorization may*
 3 *vary as long as it clearly and affirmatively states the*
 4 *approval or consent of the affected local government*
 5 *or State for receipt of municipal solid waste from*
 6 *sources outside the State.’.*

7 *(b) TABLE OF CONTENTS AMENDMENT.—The table of*
 8 *contents in section 1001 of the Solid Waste Disposal Act*
 9 *(42 U.S.C. prec. 6901) is amended by adding at the end*
 10 *of the items relating to subtitle D the following new item:*
 “Sec. 4011. Interstate transportation of municipal solid waste.”.

11 **TITLE II—FLOW CONTROL**

12 **SEC. 201. SHORT TITLE.**

13 *This title may be cited as the “Municipal Solid Waste*
 14 *Flow Control Act of 1995”.*

15 **SEC. 202. STATE AND LOCAL GOVERNMENT CONTROL OF**
 16 **MOVEMENT OF MUNICIPAL SOLID WASTE AND**
 17 **RECYCLABLE MATERIAL.**

18 *Subtitle D of the Solid Waste Disposal Act (42 U.S.C.*
 19 *6941 et seq.), as amended by section 101, is amended by*
 20 *adding after section 4011 the following new section:*

21 **“SEC. 4012. STATE AND LOCAL GOVERNMENT CONTROL OF**
 22 **MOVEMENT OF MUNICIPAL SOLID WASTE AND**
 23 **RECYCLABLE MATERIAL.**

24 *“(a) DEFINITIONS.—In this section:*

1 “(1) *DESIGNATE; DESIGNATION.*—The terms ‘des-
2 *ignate*’ and ‘*designation*’ refer to an authorization by
3 *a State or political subdivision, and the act of a State*
4 *or political subdivision in requiring or contractually*
5 *committing, that all or any portion of the municipal*
6 *solid waste or recyclable material that is generated*
7 *within the boundaries of the State or political sub-*
8 *division be delivered to waste management facilities*
9 *or facilities for recyclable material or a public service*
10 *authority identified by the State or political subdivi-*
11 *sion.*

12 “(2) *FLOW CONTROL AUTHORITY.*—The term
13 ‘*flow control authority*’ means the authority to control
14 *the movement of municipal solid waste or voluntarily*
15 *relinquished recyclable material and direct such solid*
16 *waste or voluntarily relinquished recyclable material*
17 *to a designated waste management facility or facility*
18 *for recyclable material.*

19 “(3) *MUNICIPAL SOLID WASTE.*—The term ‘*mu-*
20 *nicipal solid waste*’ means—

21 “(A) *solid waste generated by the general*
22 *public or from a residential, commercial, institu-*
23 *tional, or industrial source, consisting of paper,*
24 *wood, yard waste, plastics, leather, rubber, and*
25 *other combustible material and noncombustible*

1 *material such as metal and glass, including resi-*
2 *due remaining after recyclable material has been*
3 *separated from waste destined for disposal, and*
4 *including waste material removed from a septic*
5 *tank, septage pit, or cesspool (other than from*
6 *portable toilets); but*

7 “(B) does not include—

8 “(i) waste identified or listed as a haz-
9 ardous waste under section 3001 of this Act
10 or waste regulated under the Toxic Sub-
11 stances Control Act (15 U.S.C. 2601 et seq.);

12 “(ii) waste, including contaminated
13 soil and debris, resulting from a response
14 action taken under section 104 or 106 of the
15 Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980
17 (42 U.S.C. 9604, 9606) or any corrective
18 action taken under this Act;

19 “(iii) medical waste listed in section
20 11002;

21 “(iv) industrial waste generated by
22 manufacturing or industrial processes, in-
23 cluding waste generated during scrap proc-
24 essing and scrap recycling;

25 “(v) recyclable material; or

1 “(vi) *sludge*.

2 “(4) *PUBLIC SERVICE AUTHORITY*.—The term
3 ‘*public service authority*’ means—

4 “(A) *an authority or authorities created*
5 *pursuant to State legislation to provide individ-*
6 *ually or in combination solid waste management*
7 *services to political subdivisions; or*

8 “(B) *an authority that was issued a certifi-*
9 *cate of incorporation by a State corporation*
10 *commission established by a State constitution.*

11 “(5) *RECYCLABLE MATERIAL*.—The term ‘*recy-*
12 *clable material*’ means *material that has been sepa-*
13 *rated from waste otherwise destined for disposal (at*
14 *the source of the waste or at a processing facility) or*
15 *has been managed separately from waste destined for*
16 *disposal, for the purpose of recycling, reclamation,*
17 *composting of organic material such as food and yard*
18 *waste, or reuse (other than for the purpose of inciner-*
19 *ation).*

20 “(6) *WASTE MANAGEMENT FACILITY*.—The term
21 ‘*waste management facility*’ means *a facility that col-*
22 *lects, separates, stores, transports, transfers, treats,*
23 *processes, combusts, or disposes of municipal solid*
24 *waste.*

25 “(b) *AUTHORITY*.—

1 “(1) *IN GENERAL.*—*Each State and each political*
2 *subdivision of a State may exercise flow control*
3 *authority for municipal solid waste and for recyclable*
4 *material voluntarily relinquished by the owner or*
5 *generator of the material that is generated within its*
6 *jurisdiction by directing the municipal solid waste or*
7 *recyclable material to a waste management facility or*
8 *facility for recyclable material, if such flow control*
9 *authority—*

10 “(A) *is imposed pursuant to a law, ordi-*
11 *nance, regulation, or other legally binding provi-*
12 *sion of the State or political subdivision in effect*
13 *on May 15, 1994; and*

14 “(B) *has been implemented by designating*
15 *before May 15, 1994, the particular waste man-*
16 *agement facilities or public service authority to*
17 *which the municipal solid waste or recyclable*
18 *material is to be delivered, the substantial con-*
19 *struction of which facilities was performed after*
20 *the effective date of that law, ordinance, regula-*
21 *tion, or other legally binding provision and*
22 *which facilities were in operation as of May 15,*
23 *1994.*

24 “(2) *LIMITATION.*—*The authority of this section*
25 *extends only to the specific classes or categories of mu-*

1 *municipal solid waste to which flow control authority re-*
2 *quiring a movement to a waste management facility*
3 *was actually applied on or before May 15, 1994 (or,*
4 *in the case of a State or political subdivision that*
5 *qualifies under subsection (c), to the specific classes or*
6 *categories of municipal solid waste for which the*
7 *State or political subdivision prior to May 15, 1994,*
8 *had committed to the designation of a waste manage-*
9 *ment facility).*

10 “(3) *LACK OF CLEAR IDENTIFICATION.*—*With re-*
11 *gard to facilities granted flow control authority under*
12 *subsection (c), if the specific classes or categories of*
13 *municipal solid waste are not clearly identified, the*
14 *authority of this section shall apply only to municip-*
15 *pal solid waste generated by households.*

16 “(4) *DURATION OF AUTHORITY.*—*With respect to*
17 *each designated waste management facility, the au-*
18 *thority of this section shall be effective until the later*
19 *of—*

20 “(A) *the end of the remaining life of a con-*
21 *tract between the State or political subdivision*
22 *and any other person regarding the movement or*
23 *delivery of municipal solid waste or voluntarily*
24 *relinquished recyclable material to a designated*
25 *facility (as in effect May 15, 1994);*

1 “(B) completion of the schedule for payment
2 of the capital costs of the facility concerned (as
3 in effect May 15, 1994); or

4 “(C) the end of the remaining useful life of
5 the original facility, as that remaining life may
6 be extended by—

7 “(i) retrofitting of equipment or the
8 making of other significant modifications to
9 meet applicable environmental requirements
10 or safety requirements;

11 “(ii) routine repair or scheduled re-
12 placement of equipment or components that
13 does not add to the capacity of a waste
14 management facility; or

15 “(iii) expansion of the facility on land
16 that is—

17 “(I) legally or equitably owned, or
18 under option to purchase or lease, by
19 the owner or operator of the facility;
20 and

21 “(II) covered by the permit for the
22 facility (as in effect May 15, 1994).

23 “(5) ADDITIONAL AUTHORITY.—Notwithstanding
24 anything to the contrary in this section, but subject
25 to subsection (j), a State or political subdivision of a

1 *State that, on or before January 1, 1984, adopted reg-*
2 *ulations under State law that required or directed the*
3 *transportation, management, or disposal of solid*
4 *waste from residential, commercial, institutional, or*
5 *industrial sources (as defined under State law) to*
6 *specifically identified waste management facilities*
7 *and applied those regulations to every political sub-*
8 *division of the State may—*

9 *“(A) designate any waste management fa-*
10 *cility in the State that—*

11 *“(i) was designated prior to May 15,*
12 *1994, and meets the requirements of sub-*
13 *section (c); or*

14 *“(ii) meets the requirements of para-*
15 *graph (1); and*

16 *“(B) continue to exercise flow control au-*
17 *thority for the remaining useful life of that facil-*
18 *ity over all classes and categories of solid waste*
19 *that were subject to flow control on May 15,*
20 *1994.*

21 *“(c) COMMITMENT TO CONSTRUCTION.—*

22 *“(1) IN GENERAL.—Notwithstanding subsection*
23 *(b)(1) (A) and (B), any political subdivision of a*
24 *State may exercise flow control authority under sub-*
25 *section (b), if—*

1 “(A) *the law, ordinance, regulation, or other*
2 *legally binding provision specifically provides for*
3 *flow control authority for municipal solid waste*
4 *generated within its boundaries and was in effect*
5 *prior to May 15, 1994; and*

6 “(B) *prior to May 15, 1994, the political*
7 *subdivision committed to the designation of a*
8 *waste management facility to which municipal*
9 *solid waste is to be transported or at which mu-*
10 *nicipal solid waste is to be disposed of under*
11 *that law, ordinance, regulation, plan, or legally*
12 *binding provision.*

13 “(2) *FACTORS DEMONSTRATING COMMITMENT.—*
14 *A commitment to the designation of a waste manage-*
15 *ment facility is demonstrated by 1 or more of the fol-*
16 *lowing factors:*

17 “(A) *CONSTRUCTION PERMITS.—All permits*
18 *required for the substantial construction of the*
19 *facility were obtained prior to May 15, 1994.*

20 “(B) *CONTRACTS.—All contracts for the*
21 *substantial construction of the facility were in*
22 *effect prior to May 15, 1994.*

23 “(C) *REVENUE BONDS.—Prior to May 15,*
24 *1994, revenue bonds were presented for sale to*

1 *specifically provide revenue for the construction*
2 *of the facility.*

3 “(D) *CONSTRUCTION AND OPERATING PER-*
4 *MITS.—The State or political subdivision sub-*
5 *mitted to the appropriate regulatory agency or*
6 *agencies, on or before May 15, 1994, substan-*
7 *tially complete permit applications for the con-*
8 *struction and operation of the facility.*

9 “(d) *CONSTRUCTED AND OPERATED.—*

10 “(1) *IN GENERAL.—A political subdivision of a*
11 *State may exercise flow control authority for municipi-*
12 *pal solid waste and for recyclable material volun-*
13 *tarily relinquished by the owner or generator of the*
14 *material that is generated within its jurisdiction if—*

15 “(A) *prior to May 15, 1994, the political*
16 *subdivision—*

17 “(i) *contracted with a public service*
18 *authority or with its operator to deliver or*
19 *cause to be delivered to the public service*
20 *authority substantially all of the disposable*
21 *municipal solid waste that is generated or*
22 *collected by or is within or under the con-*
23 *trol of the political subdivision, in order to*
24 *support revenue bonds issued by and in the*

1 *name of the public service authority for*
2 *waste management facilities; or*

3 “(ii) entered into contracts with a pub-
4 lic service authority to deliver or cause to be
5 delivered to the public service authority sub-
6 stantially all of the disposable municipal
7 solid waste that is generated or collected by
8 or within the control of the political sub-
9 division, which imposed flow control pursu-
10 ant to a law, ordinance, regulation, or other
11 legally binding provision and where out-
12 standing revenue bonds were issued in the
13 name of public service authorities for waste
14 management facilities; and

15 “(B) prior to May 15, 1994, the public serv-
16 ice authority—

17 “(i) issued the revenue bonds for the
18 construction of municipal solid waste facili-
19 ties to which the political subdivision’s mu-
20 nicipal solid waste is transferred or dis-
21 posed; and

22 “(ii) commenced operation of the fa-
23 cilities.

24 “(2) DURATION OF AUTHORITY.—Authority
25 under this subsection may be exercised by a political

1 *subdivision qualifying under paragraph (1)(A)(ii)*
2 *only until the expiration of the contract or the life of*
3 *the bond, whichever is earlier.*

4 *“(e) STATE-MANDATED DISPOSAL SERVICES.—A po-*
5 *litical subdivision of a State may exercise flow control au-*
6 *thority for municipal solid waste and for recyclable mate-*
7 *rial voluntarily relinquished by the owner or generator of*
8 *the material that is generated within its jurisdiction if,*
9 *prior to May 15, 1994, the political subdivision—*

10 *“(1) was mandated by State law to provide for*
11 *the operation of solid waste facilities to serve the dis-*
12 *posal needs of all incorporated and unincorporated*
13 *areas of the county;*

14 *“(2) is currently required to initiate a recyclable*
15 *materials recycling program in order to meet a mu-*
16 *nicipal solid waste reduction goal of at least 30 per-*
17 *cent;*

18 *“(3) has been authorized by State statute to exer-*
19 *cise flow control authority and had implemented the*
20 *authority through a law, ordinance, regulation, con-*
21 *tract, or other legally binding provision; and*

22 *“(4) had incurred significant financial expendi-*
23 *tures to comply with the mandates under State law*
24 *and to repay outstanding revenue bonds that were is-*
25 *sued for the construction of solid waste management*

1 *facilities to which the political subdivision's waste*
2 *was designated.*

3 *“(f) RETAINED AUTHORITY.—*

4 *“(1) REQUEST.—On the request of a generator of*
5 *municipal solid waste affected by this section, a State*
6 *or political subdivision may authorize the diversion*
7 *of all or a portion of the solid waste generated by the*
8 *generator making the request to an alternative solid*
9 *waste treatment or disposal facility, if the purpose of*
10 *the request is to provide a higher level of protection*
11 *for human health and the environment or reduce po-*
12 *tential future liability of the generator under Federal*
13 *or State law for the management of such waste, unless*
14 *the State or political subdivision determines that the*
15 *facility to which the municipal solid waste is pro-*
16 *posed to be diverted does not provide a higher level of*
17 *protection for human health and the environment or*
18 *does not reduce the potential future liability of the*
19 *generator under Federal or State law for the manage-*
20 *ment of such waste.*

21 *“(2) CONTENTS.—A request under paragraph (1)*
22 *shall include information on the environmental suit-*
23 *ability of the proposed alternative treatment or dis-*
24 *posal facility and method, compared to that of the*
25 *designated facility and method.*

1 “(g) *LIMITATIONS ON REVENUE.*—A State or political
2 subdivision may exercise flow control authority under sub-
3 section (b), (c), or (d) only if the State or political subdivi-
4 sion certifies that the use of any of its revenues derived from
5 the exercise of that authority will be used for solid waste
6 management services.

7 “(h) *REASONABLE REGULATION OF COMMERCE.*—A
8 law, ordinance, regulation, or other legally binding provi-
9 sion or official act of a State or political subdivision, as
10 described in subsection (b), (c), or (d), that implements flow
11 control authority in compliance with this section shall be
12 considered to be a reasonable regulation of commerce retro-
13 active to its date of enactment or effective date and shall
14 not be considered to be an undue burden on or otherwise
15 considered as impairing, restraining, or discriminating
16 against interstate commerce.

17 “(i) *EFFECT ON EXISTING LAWS AND CONTRACTS.*—

18 “(1) *ENVIRONMENTAL LAWS.*—Nothing in this
19 section shall be construed to have any effect on any
20 other law relating to the protection of human health
21 and the environment or the management of municipal
22 solid waste or recyclable material.

23 “(2) *STATE LAW.*—Nothing in this section shall
24 be construed to authorize a political subdivision of a
25 State to exercise the flow control authority granted by

1 *this section in a manner that is inconsistent with*
2 *State law.*

3 “(3) *OWNERSHIP OF RECYCLABLE MATERIAL.*—
4 *Nothing in this section—*

5 “(A) *authorizes a State or political subdivi-*
6 *sion of a State to require a generator or owner*
7 *of recyclable material to transfer recyclable ma-*
8 *terial to the State or political subdivision; or*

9 “(B) *prohibits a generator or owner of recy-*
10 *clable material from selling, purchasing, accept-*
11 *ing, conveying, or transporting recyclable mate-*
12 *rial for the purpose of transformation or re-*
13 *manufacture into usable or marketable material,*
14 *unless the generator or owner voluntarily made*
15 *the recyclable material available to the State or*
16 *political subdivision and relinquished any right*
17 *to, or ownership of, the recyclable material.*

18 “(j) *REPEAL.*—(1) *Notwithstanding any provision of*
19 *this title, authority to flow control by directing municipal*
20 *solid waste or recyclable materials to a waste management*
21 *facility shall terminate on the date that is 30 years after*
22 *the date of enactment of this Act.*

23 “(2) *This section and the item relating to this section*
24 *in the table of contents for subtitle D of the Solid Waste*

1 *Disposal Act are repealed effective as of the date that is*
 2 *30 years after the date of enactment of this Act.”.*

3 **SEC. 203. TABLE OF CONTENTS AMENDMENT.**

4 *The table of contents for subtitle D in section 1001 of*
 5 *the Solid Waste Disposal Act (42 U.S.C. prec. 6901), as*
 6 *amended by section 101(b), is amended by adding after the*
 7 *item relating to section 4011 the following new item:*

“Sec. 4012. State and local government control of movement of municipal solid waste and recyclable material.”.

8 **TITLE III—GROUND WATER MONITORING**

9 **SEC. 301. GROUND WATER MONITORING.**

10 *(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—*
 11 *Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C.*
 12 *6949a(c)) is amended—*

13 *(1) by striking “CRITERIA.—Not later” and in-*
 14 *serting the following: “CRITERIA.—*

15 *“(1) IN GENERAL.—Not later”; and*

16 *(2) by adding at the end the following new para-*
 17 *graph:*

18 *“(2) ADDITIONAL REVISIONS.—Subject to para-*
 19 *graph (2), the requirements of the criteria described*
 20 *in paragraph (1) relating to ground water monitor-*
 21 *ing shall not apply to an owner or operator of a new*
 22 *municipal solid waste landfill unit, an existing mu-*
 23 *nicipal solid waste landfill unit, or a lateral expan-*
 24 *sion of a municipal solid waste landfill unit, that dis-*

1 *poses of less than 20 tons of municipal solid waste*
2 *daily, based on an annual average, if—*

3 *“(A) there is no evidence of ground water*
4 *contamination from the municipal solid waste*
5 *landfill unit or expansion; and*

6 *“(B) the municipal solid waste landfill unit*
7 *or expansion serves—*

8 *“(i) a community that experiences an*
9 *annual interruption of at least 3 consecu-*
10 *tive months of surface transportation that*
11 *prevents access to a regional waste manage-*
12 *ment facility; or*

13 *“(ii) a community that has no prac-*
14 *ticable waste management alternative and*
15 *the landfill unit is located in an area that*
16 *annually receives less than or equal to 25*
17 *inches of precipitation.*

18 *“(3) PROTECTION OF GROUND WATER RE-*
19 *SOURCES.—*

20 *“(A) MONITORING REQUIREMENT.—A State*
21 *may require ground water monitoring of a solid*
22 *waste landfill unit that would otherwise be ex-*
23 *empt under paragraph (2) if necessary to protect*
24 *ground water resources and ensure compliance*

1 with a State ground water protection plan,
2 where applicable.

3 “(B) *METHODS.*—If a State requires
4 ground water monitoring of a solid waste land-
5 fill unit under subparagraph (A), the State may
6 allow the use of a method other than the use of
7 ground water monitoring wells to detect a release
8 of contamination from the unit.

9 “(C) *CORRECTIVE ACTION.*—If a State finds
10 a release from a solid waste landfill unit, the
11 State shall require corrective action as appro-
12 priate.

13 “(4) *REMOTE ALASKA NATIVE VILLAGES.*—Upon
14 certification by the Governor of the State of Alaska
15 that application of the requirements of the criteria de-
16 scribed in paragraph (1) to a solid waste landfill unit
17 of a Native village (as defined in section 3 of the
18 Alaska Native Claims Settlement Act (16 U.S.C.
19 1602)) would be infeasible, would not be cost-effective,
20 or is otherwise inappropriate because of the remote lo-
21 cation of the unit, the unit shall be exempt from those
22 requirements.”.

23 (b) *REINSTATEMENT OF REGULATORY EXEMPTION.*—
24 It is the intent of section 4010(c)(2) of the Solid Waste Dis-
25 posal Act, as added by subsection (a), to immediately rein-

1 *state subpart E of part 258 of title 40, Code of Federal*
2 *Regulations, as added by the final rule published at 56 Fed-*
3 *eral Register 50798 on October 9, 1991.*

S 534 RS—2

S 534 RS—3

S 534 RS—4

S 534 RS—5

S 534 RS—6