

106TH CONGRESS
1ST SESSION

S. 533

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State municipal solid waste, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1999

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

A BILL

To amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Interstate Transpor-
5 tation of Municipal Solid Waste Control Act of 1999”.

1 **SEC. 2. INTERSTATE TRANSPORTATION AND DISPOSAL OF**
 2 **MUNICIPAL SOLID WASTE.**

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

6 **“SEC. 4011. INTERSTATE TRANSPORTATION AND DISPOSAL**
 7 **OF MUNICIPAL SOLID WASTE.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) AFFECTED LOCAL GOVERNMENT.—The
 10 term ‘affected local government’, with respect to a
 11 landfill or incinerator, means—

12 “(A) the public body created by State law
 13 for the area in which the facility is located or
 14 proposed to be located—

15 “(i) having the responsibility to plan
 16 for municipal solid waste management; and

17 “(ii) a majority of the members of
 18 which are elected officials;

19 “(B) the elected officials of the city, town,
 20 township, borough, county, or parish exercising
 21 primary responsibility over municipal solid
 22 waste management, land, or land use in the ju-
 23 risdiction in which the facility is located or is
 24 proposed to be located; or

25 “(C) with respect to a facility that is the
 26 subject of a host community agreement entered

1 into before the date of enactment of this sec-
 2 tion, the entity described in subparagraph (B)
 3 or (C) that is a party to the host community
 4 agreement.

5 “(2) AFFECTED LOCAL SOLID WASTE PLAN-
 6 NING UNIT.—The term ‘affected local solid waste
 7 planning unit’ means a planning unit, established
 8 under State law, that has—

9 “(A) jurisdiction over the geographic area
 10 in which a facility for the treatment, inciner-
 11 ation, or disposal of municipal waste is located;
 12 and

13 “(B) authority relating to solid waste man-
 14 agement planning.

15 “(3) DOCUMENTED SHIPMENT OF MUNICIPAL
 16 SOLID WASTE.—The term ‘documented shipment of
 17 municipal solid waste’ means a shipment of munici-
 18 pal solid waste with respect to which information
 19 is—

20 “(A) compiled by the owner or operator of
 21 a landfill that received out-of-State municipal
 22 solid waste, including—

23 “(i) the quantity of municipal solid
 24 waste;

25 “(ii) the time of the shipment; and

1 “(iii) the origin of the shipment; and

2 “(B) submitted to the State in which the
3 landfill is located.

4 “(4) HOST COMMUNITY AGREEMENT.—The
5 term ‘host community agreement’ means a written,
6 legally binding document or documents executed by
7 officials of an affected local government that specifi-
8 cally authorizes a landfill or incinerator to receive
9 out-of-State municipal solid waste.

10 “(5) INTERSTATE MSW LIST.—The term ‘inter-
11 state MSW list’ means a list published under sub-
12 section (e)(2)(d).

13 “(6) MUNICIPAL SOLID WASTE.—

14 “(A) IN GENERAL.—The term ‘municipal
15 solid waste’ means refuse (and refuse-derived
16 fuel) generated by—

17 “(i) the general public; or

18 “(ii) a residential, commercial, institu-
19 tional, or industrial source.

20 “(B) INCLUSIONS.—The term ‘municipal
21 solid waste’ includes—

22 “(i) combustible material such as
23 leather, paper, plastic, rubber, wood, yard
24 waste; and

1 “(ii) noncombustible material such as
2 glass or metal.

3 “(C) EXCLUSIONS.—The term ‘municipal
4 solid waste’ does not include—

5 “(i) solid waste identified or listed as
6 a hazardous waste under section 3001;

7 “(ii) solid waste, including contami-
8 nated soil and debris, resulting from—

9 “(I) a response action taken
10 under section 104 or 106 of the Com-
11 prehensive Environmental Response,
12 Compensation, and Liability Act of
13 1980 (42 U.S.C. 9604, 9606); or

14 “(II) a corrective action taken
15 under this Act;

16 “(iii) metal, pipe, glass, plastic, paper,
17 textile, or other material that has been
18 separated or diverted from municipal solid
19 waste (as otherwise defined in this para-
20 graph) and has been transported into a
21 State for the purpose of recycling or rec-
22 lamation;

23 “(iv) solid waste that is—

24 “(I) generated by an industrial
25 facility; and

1 “(II) transported for the purpose
2 of treatment, storage, or disposal to a
3 facility that is owned or operated by
4 the generator of the waste, or is lo-
5 cated on property owned by the gener-
6 ator of the waste, or is located on
7 property owned by a company in
8 which the generator of the waste has
9 an ownership interest;

10 “(v) solid waste generated incident to
11 the provision of service in interstate, intra-
12 state, foreign, or overseas air transpor-
13 tation;

14 “(vi) industrial waste that is not iden-
15 tical to municipal solid waste (as otherwise
16 defined in this paragraph) with respect to
17 the physical and chemical state and com-
18 position of the industrial waste;

19 “(vii) construction and demolition de-
20 bris;

21 “(viii) medical waste that is seg-
22 regated from or not mixed with municipal
23 solid waste (as otherwise defined in this
24 paragraph);

1 “(ix) a material or product returned
 2 from a dispenser or distributor to the man-
 3 ufacturer for credit, evaluation, or possible
 4 reuse; and

5 “(x) incinerator ash.

6 “(7) OUT-OF-STATE MUNICIPAL SOLID
 7 WASTE.—The term ‘out-of-State municipal solid
 8 waste’ means—

9 “(A) with respect to any State, municipal
 10 solid waste generated outside the State; and

11 “(B) municipal solid waste generated out-
 12 side the United States, unless the President de-
 13 termines that treatment of the municipal solid
 14 waste as out-of-State municipal solid waste
 15 under this section would be inconsistent with
 16 the North American Free Trade Agreement or
 17 the Uruguay Round Agreements (as defined in
 18 section 2 of the Uruguay Round Agreements
 19 Act (19 U.S.C. 3501)).

20 “(8) OWNER OR OPERATOR.—The term ‘owner
 21 or operator’, with respect to a landfill or incinerator,
 22 does not include—

23 “(A) a State or affected local government
 24 that owns or operates the landfill or incinerator,

1 if the facility is located within the jurisdiction
 2 of the State or the affected local government; or

3 “(B) a person that owns or operates a fa-
 4 cility, if the facility receives only waste gen-
 5 erated by the person.

6 “(9) SUPER EXPORTING STATE.—The term
 7 ‘super exporting State’ means a State that, during
 8 a calendar year, exports to other States in the ag-
 9 gregate 6,000,000 tons or more of municipal solid
 10 waste, as determined through reporting require-
 11 ments under subsection (e).

12 “(b) AUTHORITY TO REGULATE OUT-OF-STATE MU-
 13 NICIPAL SOLID WASTE.—

14 “(1) FREEZE AUTHORITY.—

15 “(A) IMMEDIATE AUTHORITY.—On or
 16 after the date of enactment of this section, a
 17 Governor of a State that imported more than
 18 1,000,000 tons of municipal solid waste during
 19 calendar year 1998 may restrict the quantity of
 20 out-of-State municipal solid waste received for
 21 disposal at each landfill during a calendar year
 22 to the quantity of out-of-State municipal solid
 23 waste received for disposal at the landfill during
 24 1998.

1 “(B) FUTURE AUTHORITY.—If a State
 2 first imports more than 1,000,000 tons of mu-
 3 nicipal solid waste in calendar year 1999, or
 4 any calendar year thereafter, the Governor of a
 5 State may restrict the quantity of out-of-State
 6 municipal solid waste received for disposal at
 7 each landfill during the following calendar year
 8 and calendar years thereafter to the quantity of
 9 out-of-State municipal solid waste received for
 10 disposal at the landfill during the calendar year
 11 in which the State first imported 1,000,000
 12 tons.

13 “(2) PROHIBITION OF OUT-OF-STATE MUNICI-
 14 PAL SOLID WASTE FROM SUPER EXPORTING
 15 STATES.—Beginning in calendar year 2001, the
 16 Governor of a State may establish a prohibition on
 17 the importation of municipal solid waste during a
 18 calendar year from a super exporting State.

19 “(3) EXCEPTIONS.—The Governor of a State
 20 shall not take action under this subsection—

21 “(A) except as provided in paragraphs (2)
 22 and (4), if the action—

23 “(i) would discriminate against any
 24 particular landfill in the State; or

1 “(ii) would discriminate against the
 2 shipment of out-of-State municipal solid
 3 waste on the basis of the State of origin;
 4 or

5 “(B) if the action would be inconsistent
 6 with State law.

7 “(4) INCREASED RECEIPT OF WASTE.—

8 “(A) INCREASES OVER RESTRICTION ES-
 9 TABLISHED UNDER PARAGRAPH (1).—

10 “(i) INCREASED QUANTITY.—The
 11 Governor of a State described in paragraph
 12 (1) may increase the annual quantity of
 13 out-of-State waste to be received for dis-
 14 posal at a landfill to a quantity that is
 15 greater than the quantity of out-of-State
 16 municipal solid waste to be imported under
 17 a restriction under paragraph (1) if the
 18 Governor receives a written request from
 19 the affected local government to increase
 20 the annual quantity of out-of-State munici-
 21 pal solid waste to be disposed of at the
 22 landfill that includes—

23 “(I) specific information outlin-
 24 ing increases in the volume of out-of-

1 State municipal solid waste to be re-
2 ceived;

3 “(II) documentation that there
4 has been opportunity for public com-
5 ment;

6 “(III) a description of the im-
7 pacts that the increase in volume
8 would have on local traffic patterns
9 and road capacity, including programs
10 to mitigate impact; and

11 “(IV) a description of benefits to
12 the affected local government that
13 would result from the increase in vol-
14 ume.

15 “(ii) FAILURE OF GOVERNOR TO RE-
16 SPOND.—The failure of a Governor to re-
17 spond to a request under this subpara-
18 graph within 60 days after the date of re-
19 ceipt of the request shall be deemed to be
20 an answer in the affirmative.

21 “(B) TERMINATION OF PROHIBITION OF
22 OUT-OF-STATE MUNICIPAL SOLID WASTE FROM
23 SUPER EXPORTING STATES.—

24 “(i) IN GENERAL.—The Governor of a
25 State that receives municipal solid waste

1 from a super exporting State may termi-
 2 nate a prohibition established under sub-
 3 section (b)(2) if the Governor receives a
 4 written request from an affected local gov-
 5 ernment to continue receiving waste from a
 6 super exporting State that contains—

7 “(I) documentation that there
 8 has been an opportunity for public
 9 comment; and

10 “(II) information on any impact
 11 on the affected local government that
 12 could result from leaving the prohibi-
 13 tion in place.

14 “(ii) RESPONSE.—Not later than 60
 15 days after the receipt of a request de-
 16 scribed in clause (i), the Governor of a
 17 State shall respond to the request.

18 “(C) AGREEMENT.—The Governor of a
 19 State described in subparagraph (A) or (B)
 20 may establish a higher restriction under para-
 21 graph (1) or terminate a prohibition under
 22 paragraph (2) if the owner or operator of the
 23 landfill enters into a legally binding agreement
 24 with the State that establishes a daily restric-

1 tion on the quantity of out-of-State municipal
2 solid waste to be disposed of at the landfill.

3 “(5) BAN ON RECEIPT OF OUT-OF-STATE
4 WASTE.—No landfill may receive for disposal any
5 out-of-State municipal solid waste unless the out-of-
6 State municipal solid waste is received under—

7 “(A) an exemption under subsection (c); or

8 “(B) a host community agreement in ac-
9 cordance with subsection (d).

10 “(c) EXEMPTIONS.—The Governor of a State shall
11 not exercise the authority provided in subsection (b) with
12 respect to a facility if—

13 “(1) the out-of-State municipal solid waste is
14 generated in, and the landfill is located in, the same
15 bi-State level A metropolitan statistical area (as de-
16 fined and as listed by the Director of the Office of
17 Management and Budget as of the date of enact-
18 ment of this section); or

19 “(2) the quantity of out-of-State municipal solid
20 waste that is disposed of at the landfill does not ex-
21 ceed 10,000 tons per calendar year.

22 “(d) HOST COMMUNITY AGREEMENTS.—

23 “(1) IN GENERAL.—

24 “(A) AUTHORIZATION.—Beginning on the
25 date of enactment of this section, the owner or

operator of a landfill may not receive for disposal any out-of-State municipal solid waste unless—

“(i) the owner or operator applies for and is granted authorization to receive the waste from the affected local government; or

“(ii) before the date of enactment of this section, the owner or operator—

“(I) entered into a host community agreement; or

“(II) otherwise obtained documented, legally binding authorization from the affected local government to receive out-of-State municipal solid waste.

“(B) REQUIREMENTS FOR AUTHORIZATION.—An authorization under subparagraph (A) shall—

“(i) be granted by the affected local government by formal action at a public meeting; and

“(ii) be recorded in writing in the official record of the meeting.

1 “(2) INFORMATION.—Before taking formal ac-
2 tion with respect to granting authorization under
3 this subsection, the affected local government shall
4 require the owner or operator of the facility seeking
5 the authorization to submit to the affected local gov-
6 ernment the following information:

7 “(A) A brief description of the landfill, in-
8 cluding the size of, ultimate waste capacity of,
9 and the anticipated daily and yearly volume of
10 waste to be disposed of at the landfill, including
11 any planned expansion.

12 “(B) A map of the landfill site depicting—

13 “(i) the location of the landfill in rela-
14 tion to the local transportation facilities;

15 “(ii) topography and hydrogeological
16 features of the site on which the landfill is
17 located;

18 “(iii) buffer zones to be acquired and
19 preserved by the owner or operator; and

20 “(iv) all units of the landfill.

21 “(C) A description of the environmental
22 characteristics of the site, as in existence on the
23 date on which the information is submitted,
24 including—

1 “(i) information regarding ground
2 water sources; and

3 “(ii) a description of alterations in the
4 characteristics of the site that may be ne-
5 cessitated by or occur as a result of the
6 landfill.

7 “(D) A description of appropriate environ-
8 mental controls to be used at the landfill,
9 including—

10 “(i) run-on and run-off management;

11 “(ii) air pollution control devices;

12 “(iii) source separation procedures;

13 “(iv) methane monitoring and control;

14 “(v) landfill covers, liners, or leachate
15 collection systems; and

16 “(vi) monitoring programs, including
17 programs to screen incoming waste for
18 waste described in subsection (a)(5)(C).

19 “(E) A description of—

20 “(i) any waste residuals generated by
21 the landfill, including leachate or ash; and

22 “(ii) the planned management of the
23 residuals.

24 “(F) A description of site access controls
25 to be employed, including—

1 “(i) transportation improvements to
2 be made by the owner or operator;

3 “(ii) an estimate of the timing and ex-
4 tent of increased local truck traffic, based
5 on the expected tonnage to be received at
6 the landfill on a daily basis; and

7 “(iii) a description of methods to be
8 employed to prevent queuing of waste de-
9 livery vehicles on public transportation fa-
10 cilities.

11 “(G) A list of all required Federal, State,
12 and local permits.

13 “(H) Any information that is required by
14 State law to be provided with respect to any
15 violation of environmental laws by the owner or
16 operator (including any subsidiary of the owner
17 or operator), including—

18 “(i) the disposition of enforcement
19 proceedings taken with respect to the viola-
20 tions; and

21 “(ii) corrective action and rehabilita-
22 tion measures taken as a result of the pro-
23 ceedings.

24 “(3) NOTIFICATION BEFORE FORMAL AC-
25 TION.—Before taking formal action with respect to

1 an application for authorization under this sub-
2 section, an affected local government shall—

3 “(A) notify the Governor, adjoining local
4 governments in the State, and any adjoining In-
5 dian tribes of the proposed action;

6 “(B) make available to the Governor of the
7 State, each adjoining local government and In-
8 dian tribe within the State, and any other inter-
9 ested person the information submitted by an
10 owner or operator under paragraph (2);

11 “(C) inform the public of the action—

12 “(i) by publishing notice of the action
13 in a newspaper of general circulation at
14 least 30 days before holding a hearing and
15 again at least 15 days before taking formal
16 action at a public meeting; or

17 “(ii) if State law provides for an alter-
18 native form of public notification, by pro-
19 viding that alternative public notification
20 concerning the action; and

21 “(D) provide an opportunity for public
22 comment on the action, including at least 1
23 public hearing, in accordance with State law.

1 “(4) NOTICE OF ACTION.—The affected local
2 government shall provide notice of an authorization
3 granted under this subsection to—

4 “(A) the Governor of the State;

5 “(B) adjoining local governments in the
6 State; and

7 “(C) any adjoining Indian tribes.

8 “(e) ADMINISTRATIVE PROVISIONS.—

9 “(1) REPORTS BY OWNERS AND OPERATORS.—

10 “(A) IN GENERAL.—Not later than 90
11 days after the date of enactment of this section
12 and on April 1 of each year thereafter, the
13 owner or operator of each landfill receiving out-
14 of-State municipal solid waste shall submit to
15 the affected local government, and to the Gov-
16 ernor of the State in which the landfill is lo-
17 cated, information specifying the quantity and
18 the State of origin of out-of-State municipal
19 solid waste received for disposal during the pre-
20 ceding calendar year.

21 “(B) PENALTY.—An owner or an operator
22 that submits a report under this paragraph con-
23 tains false or misleading information shall be
24 subject to criminal penalties.

25 “(2) REPORTS BY THE STATES.—

1 “(A) IN GENERAL.—Not later than 120
 2 days after the date of enactment of this section
 3 and on May 1 of each year thereafter, each
 4 State shall publish and make available to the
 5 Administrator and the public, a report that
 6 discloses—

7 “(i) the quantity of out-of-State mu-
 8 nicipal solid waste received for disposal in
 9 the State during the preceding calendar
 10 year; and

11 “(ii) the quantity of municipal solid
 12 waste exported for disposal during the pre-
 13 ceding calendar year.

14 “(B) CONTENTS.—Each report under this
 15 subparagraph (A) shall contain information
 16 on—

17 “(i) the quantity of municipal solid
 18 waste received or exported;

19 “(ii) the State of origin of the munici-
 20 pal solid waste;

21 “(iii) the State receiving the munici-
 22 pal solid waste;

23 “(iv) the identity of the generator of
 24 the municipal solid waste; and

1 “(v) the date of the shipment of the
2 municipal solid waste.

3 “(C) INTERSTATE MSW LIST.—

4 “(i) IN GENERAL.—Not later than
5 June 1 of each year, the Administrator
6 shall publish a list that discloses, for each
7 State—

8 “(I) the quantity of out-of-State
9 municipal solid waste received at fa-
10 cilities in each State during the pre-
11 ceding calendar year; and

12 “(II) the quantities of municipal
13 solid waste exported from each State
14 in the preceding calendar year.

15 “(ii) RELIANCE ON REPORTS BY THE
16 STATES.—In preparing the interstate
17 MSW list—

18 “(I) the Administrator shall col-
19 late and publish only the information
20 contained in reports submitted by
21 States under paragraph (2); and

22 “(II) the Administrator shall not
23 be required to—

24 “(aa) gather additional in-
25 formation;

1 “(bb) verify data provided
2 by the States; or

3 “(cc) arbitrate or otherwise
4 entertain or resolve disputes be-
5 tween States or other parties
6 concerning interstate shipments
7 of municipal solid waste.

8 “(D) NO JUDICIAL REVIEW.—The contents
9 of an interstate MSW list or process of prepar-
10 ing an interstate MSW list shall not be subject
11 to judicial review.

12 “(3) SAVINGS PROVISION.—Nothing in this sub-
13 section preempts any State requirement that re-
14 quires more frequent reporting of information.

15 “(f) STATE IMPORT FEE.—

16 “(1) AUTHORITY.—Beginning in calendar year
17 2001, a State that imports municipal solid waste
18 may impose and collect a fee on the importation of
19 out-of-State municipal solid waste for disposal in a
20 landfill in the State.

21 “(2) AMOUNT OF STATE IMPORT FEE.—

22 “(A) IN GENERAL.—The amount of a
23 State import fee charged under this paragraph
24 shall not be greater than \$3 per ton of municipi-
25 pal solid waste.

1 “(B) EXCEPTION.—Beginning in 2002, a
 2 State that allows continued importation of
 3 waste from a super exporting State may charge
 4 additional fees on that imported municipal solid
 5 waste as follows:

6 “(i) In calendar year 2002, \$25 per
 7 ton.

8 “(ii) In calendar year 2003, \$50 per
 9 ton.

10 “(iii) In calendar year 2004 and in
 11 each succeeding calendar year, \$100 per
 12 ton.

13 “(g) APPLICABILITY.—

14 “(1) IN GENERAL.—Except as provided in para-
 15 graph (2), this section applies in and to each State.

16 “(2) REJECTION OF APPLICABILITY.—A State
 17 may exercise the option to become exempt from the
 18 requirements of this section if the State—

19 “(A) notifies the Administrator (in a man-
 20 ner prescribed by the Administrator) that the
 21 State is exercising the option; and

22 “(B) in taking any appropriate action to
 23 reject the applicability of this section, makes
 24 specific reference to this section.”.

1 (b) TABLE OF CONTENTS AMENDMENT.—The table
2 of contents of the Solid Waste Disposal Act (42 U.S.C.
3 prec. 6901) is amended by adding at the end of the items
4 relating to subtitle D the following:

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

○