

108TH CONGRESS
1ST SESSION

S. 431

To amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2003

Mr. VOINOVICH 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 impose certain limits on the receipt of out-of-State municipal solid waste.

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 “Municipal Solid Waste
5 Interstate Transportation and Local Authority Act of
6 2003”.

1 **SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF**
2 **OUT-OF-STATE MUNICIPAL SOLID WASTE AT**
3 **EXISTING FACILITIES.**

4 (a) IN GENERAL.—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:

7 **“SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT**
8 **OF OUT-OF-STATE MUNICIPAL SOLID WASTE**
9 **AT EXISTING FACILITIES.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) AFFECTED LOCAL GOVERNMENT.—The
12 term ‘affected local government’, with respect to a
13 facility, means—

14 “(A) the public body authorized by State
15 law to plan for the management of municipal
16 solid waste for the area in which the facility is
17 located or proposed to be located, a majority of
18 the members of which public body are elected
19 officials;

20 “(B) in a case in which there is no public
21 body described in subparagraph (A), the elected
22 officials of the city, town, township, borough,
23 county, or parish selected by the Governor and
24 exercising primary responsibility over municipal
25 solid waste management or the use of land in

1 the jurisdiction in which the facility is located
 2 or proposed to be located; or

3 “(C) in a case in which there is in effect
 4 an agreement or compact under section 105(b),
 5 contiguous units of local government located in
 6 each of 2 or more adjoining States that are
 7 parties to the agreement, for purposes of pro-
 8 viding authorization under subsection (b), (c),
 9 or (d) for municipal solid waste generated in
 10 the jurisdiction of 1 of those units of local gov-
 11 ernment and received in the jurisdiction of an-
 12 other of those units of local government.

13 “(2) AUTHORIZATION TO RECEIVE OUT-OF-
 14 STATE MUNICIPAL SOLID WASTE.—

15 “(A) IN GENERAL.—The term ‘authoriza-
 16 tion to receive out-of-State municipal solid
 17 waste’ means a provision contained in a host
 18 community agreement or permit that specifi-
 19 cally authorizes a facility to receive out-of-State
 20 municipal solid waste.

21 “(B) SPECIFIC AUTHORIZATION.—

22 “(i) SUFFICIENT FORMULATIONS.—
 23 For the purposes of subparagraph (A),
 24 only the following, shall be considered to

1 specifically authorize a facility to receive
2 out-of-State municipal solid waste:

3 “(I) an authorization to receive
4 municipal solid waste from any place
5 within a fixed radius surrounding the
6 facility that includes an area outside
7 the State;

8 “(II) an authorization to receive
9 municipal solid waste from any place
10 of origin in the absence of any provi-
11 sion limiting those places of origin to
12 places inside the State;

13 “(III) an authorization to receive
14 municipal solid waste from a specifi-
15 cally identified place or places outside
16 the State; or

17 “(IV) a provision that uses such
18 a phrase as ‘regardless of origin’ or
19 ‘outside the State’ in reference to mu-
20 nicipal solid waste.

21 “(ii) INSUFFICIENT FORMULA-
22 TIONS.—For the purposes of subparagraph
23 (A), either of the following, by itself, shall
24 not be considered to specifically authorize

1 a facility to receive out-of-State municipal
2 solid waste:

3 “(I) A general reference to the
4 receipt of municipal solid waste from
5 outside the jurisdiction of the affected
6 local government.

7 “(II) An agreement to pay a fee
8 for the receipt of out-of-State munic-
9 ipal solid waste.

10 “(C) FORM OF AUTHORIZATION.—To qual-
11 ify as an authorization to receive out-of-State
12 municipal solid waste, a provision need not be
13 in any particular form; a provision shall so
14 qualify so long as the provision clearly and af-
15 firmatively states the approval or consent of the
16 affected local government or State for receipt of
17 municipal solid waste from places of origin out-
18 side the State.

19 “(3) DISPOSAL.—The term ‘disposal’ includes
20 incineration.

21 “(4) EXISTING HOST COMMUNITY AGREE-
22 MENT.—The term ‘existing host community agree-
23 ment’ means a host community agreement entered
24 into before January 1, 2003.

1 “(5) FACILITY.—The term ‘facility’ means a
2 landfill, incinerator, or other enterprise that received
3 municipal solid waste before the date of enactment
4 of this section.

5 “(6) GOVERNOR.—The term ‘Governor’, with
6 respect to a facility, means the chief executive officer
7 of the State in which a facility is located or proposed
8 to be located or any other officer authorized under
9 State law to exercise authority under this section.

10 “(7) HOST COMMUNITY AGREEMENT.—The
11 term ‘host community agreement’ means a written,
12 legally binding agreement, lawfully entered into be-
13 tween an owner or operator of a facility and an af-
14 fected local government that contains an authoriza-
15 tion to receive out-of-State municipal solid waste.

16 “(8) MUNICIPAL SOLID WASTE.—

17 “(A) IN GENERAL.—The term ‘municipal
18 solid waste’ means—

19 “(i) material discarded for disposal
20 by—

21 “(I) households (including single
22 and multifamily residences); and

23 “(II) public lodgings such as ho-
24 tels and motels; and

1 “(ii) material discarded for disposal
2 that was generated by commercial, institu-
3 tional, and industrial sources, to the extent
4 that the material—

5 “(I) is essentially the same as
6 material described in clause (i); or

7 “(II) is collected and disposed of
8 with material described in clause (i)
9 as part of a normal municipal solid
10 waste collection service.

11 “(B) INCLUSIONS.—The term ‘municipal
12 solid waste’ includes—

13 “(i) appliances;

14 “(ii) clothing;

15 “(iii) consumer product packaging;

16 “(iv) cosmetics;

17 “(v) disposable diapers;

18 “(vi) food containers made of glass or
19 metal;

20 “(vii) food waste;

21 “(viii) household hazardous waste;

22 “(ix) office supplies;

23 “(x) paper; and

24 “(xi) yard waste.

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

3 “(i) solid waste identified or listed as
4 a hazardous waste under section 3001, ex-
5 cept for household hazardous waste;

6 “(ii) solid waste resulting from—

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

12 “(II) a response action taken
13 under a State law with authorities
14 comparable to the authorities con-
15 tained in either of those sections; or

16 “(III) a corrective action taken
17 under this Act;

18 “(iii) recyclable material—

19 “(I) that has been separated, at
20 the source of the material, from waste
21 destined for disposal; or

22 “(II) that has been managed sep-
23 arately from waste destined for dis-
24 posal, including scrap rubber to be
25 used as a fuel source;

1 “(iv) a material or product returned
2 from a dispenser or distributor to the man-
3 ufacturer or an agent of the manufacturer
4 for credit, evaluation, and possible poten-
5 tial reuse;

6 “(v) solid waste that is—

7 “(I) generated by an industrial
8 facility; and

9 “(II) transported for the purpose
10 of treatment, storage, or disposal to a
11 facility (which facility is in compliance
12 with applicable State and local land
13 use and zoning laws and regulations)
14 or facility unit—

15 “(aa) that is owned or oper-
16 ated by the generator of the
17 waste;

18 “(bb) that is located on
19 property owned by the generator
20 of the waste or a company with
21 which the generator is affiliated;
22 or

23 “(cc) the capacity of which
24 is contractually dedicated exclu-
25 sively to a specific generator;

1 “(vi) medical waste that is segregated
2 from or not mixed with solid waste;

3 “(vii) sewage sludge or residuals from
4 a sewage treatment plant; or

5 “(viii) combustion ash generated by a
6 resource recovery facility or municipal in-
7 cinerator.

8 “(9) NEW HOST COMMUNITY AGREEMENT.—
9 The term ‘new host community agreement’ means a
10 host community agreement entered into on or after
11 the date of enactment of this section.

12 “(10) OUT-OF-STATE MUNICIPAL SOLID
13 WASTE.—

14 “(A) IN GENERAL.—The term ‘out-of-
15 State municipal solid waste’, with respect to a
16 State, means municipal solid waste generated
17 outside the State.

18 “(B) INCLUSION.—The term ‘out-of-State
19 municipal solid waste’ includes municipal solid
20 waste generated outside the United States.

21 “(11) RECEIVE.—The term ‘receive’ means re-
22 ceive for disposal.

23 “(12) RECYCLABLE MATERIAL.—

24 “(A) IN GENERAL.—The term ‘recyclable
25 material’ means a material that may feasibly be

1 used as a raw material or feedstock in place of
2 or in addition to, virgin material in the manu-
3 facture of a usable material or product.

4 “(B) VIRGIN MATERIAL.—In subparagraph
5 (A), the term ‘virgin material’ includes petro-
6 leum.

7 “(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF
8 OUT-OF-STATE WASTE.—No facility may receive for dis-
9 posal out-of-State municipal solid waste except as provided
10 in subsections (c), (d), and (e).

11 “(c) EXISTING HOST COMMUNITY AGREEMENTS.—

12 “(1) IN GENERAL.—Subject to subsection (f), a
13 facility operating under an existing host community
14 agreement may receive for disposal out-of-State mu-
15 nicipal solid waste if—

16 “(A) the owner or operator of the facility
17 has complied with paragraph (2); and

18 “(B) the owner or operator of the facility
19 is in compliance with all of the terms and con-
20 ditions of the host community agreement.

21 “(2) PUBLIC INSPECTION OF AGREEMENT.—

22 Not later than 90 days after the date of enactment
23 of this section, the owner or operator of a facility de-
24 scribed in paragraph (1) shall—

1 “(A) provide a copy of the existing host
2 community agreement to the State and affected
3 local government; and

4 “(B) make a copy of the existing host com-
5 munity agreement available for inspection by
6 the public in the local community.

7 “(d) NEW HOST COMMUNITY AGREEMENTS.—

8 “(1) IN GENERAL.—Subject to subsection (f), a
9 facility operating under a new host community
10 agreement may receive for disposal out-of-State mu-
11 nicipal solid waste if—

12 “(A) the agreement meets the require-
13 ments of paragraphs (2) through (5); and

14 “(B) the owner or operator of the facility
15 is in compliance with all of the terms and con-
16 ditions of the host community agreement.

17 “(2) REQUIREMENTS FOR AUTHORIZATION.—

18 “(A) IN GENERAL.—Authorization to re-
19 ceive out-of-State municipal solid waste under a
20 new host community agreement shall—

21 “(i) be granted by formal action at a
22 meeting;

23 “(ii) be recorded in writing in the offi-
24 cial record of the meeting; and

1 “(iii) remain in effect according to the
2 terms of the new host community agree-
3 ment.

4 “(B) SPECIFICATIONS.—An authorization
5 to receive out-of-State municipal solid waste
6 shall specify terms and conditions, including—

7 “(i) the quantity of out-of-State mu-
8 nicipal solid waste that the facility may re-
9 ceive; and

10 “(ii) the duration of the authorization.

11 “(3) INFORMATION.—Before seeking an author-
12 ization to receive out-of-State municipal solid waste
13 under a new host community agreement, the owner
14 or operator of the facility seeking the authorization
15 shall provide (and make readily available to the
16 State, each contiguous local government and Indian
17 tribe, and any other interested person for inspection
18 and copying) the following:

19 “(A) A brief description of the facility, in-
20 cluding, with respect to the facility and any
21 planned expansion of the facility, a description
22 of—

23 “(i) the size of the facility;

24 “(ii) the ultimate municipal solid
25 waste capacity of the facility; and

1 “(iii) the anticipated monthly and
2 yearly volume of out-of-State municipal
3 solid waste to be received at the facility.

4 “(B) A map of the facility site that indi-
5 cates—

6 “(i) the location of the facility in rela-
7 tion to the local road system;

8 “(ii) topographical and general
9 hydrogeological features;

10 “(iii) any buffer zones to be acquired
11 by the owner or operator; and

12 “(iv) all facility units.

13 “(C) A description of—

14 “(i) the environmental characteristics
15 of the site, as of the date of application for
16 authorization;

17 “(ii) ground water use in the area, in-
18 cluding identification of private wells and
19 public drinking water sources; and

20 “(iii) alterations that may be neces-
21 sitated by, or occur as a result of, oper-
22 ation of the facility.

23 “(D) A description of—

1 “(i) environmental controls required
2 to be used on the site (under permit re-
3 quirements), including—

4 “(I) run-on and run off manage-
5 ment;

6 “(II) air pollution control devices;

7 “(III) source separation proce-
8 dures;

9 “(IV) methane monitoring and
10 control;

11 “(V) landfill covers;

12 “(VI) landfill liners or leachate
13 collection systems; and

14 “(VII) monitoring programs; and

15 “(ii) any waste residuals (including
16 leachate and ash) that the facility will gen-
17 erate, and the planned management of the
18 residuals.

19 “(E) A description of site access controls
20 to be employed by the owner or operator and
21 road improvements to be made by the owner or
22 operator, including an estimate of the timing
23 and extent of anticipated local truck traffic.

24 “(F) A list of all required Federal, State,
25 and local permits.

1 “(G) Estimates of the personnel require-
2 ments of the facility, including—

3 “(i) information regarding the prob-
4 able skill and education levels required for
5 job positions at the facility; and

6 “(ii) to the extent practicable, a dis-
7 tinction between preoperational and
8 postoperational employment statistics of
9 the facility.

10 “(H) Any information that is required by
11 State or Federal law to be provided with re-
12 spect to—

13 “(i) any violation of environmental
14 law (including regulations) by the owner or
15 operator or any subsidiary of the owner or
16 operator;

17 “(ii) the disposition of any enforce-
18 ment proceeding taken with respect to the
19 violation; and

20 “(iii) any corrective action and reha-
21 bilitation measures taken as a result of the
22 proceeding.

23 “(I) Any information that is required by
24 Federal or State law to be provided with re-

1 spect to compliance by the owner or operator
2 with the State solid waste management plan.

3 “(J) Any information that is required by
4 Federal or State law to be provided with re-
5 spect to gifts and contributions made by the
6 owner or operator.

7 “(4) ADVANCE NOTIFICATION.—Before taking
8 formal action to grant or deny authorization to re-
9 ceive out-of-State municipal solid waste under a new
10 host community agreement, an affected local govern-
11 ment shall—

12 “(A) notify the State, contiguous local gov-
13 ernments, and any contiguous Indian tribes;

14 “(B) publish notice of the proposed action
15 in a newspaper of general circulation at least
16 15 days before holding a hearing under sub-
17 paragraph (C), except where State law provides
18 for an alternate form of public notification; and

19 “(C) provide an opportunity for public
20 comment in accordance with State law, includ-
21 ing at least 1 public hearing.

22 “(5) SUBSEQUENT NOTIFICATION.—Not later
23 than 90 days after an authorization to receive out-
24 of-State municipal solid waste is granted under a
25 new host community agreement, the affected local

1 government shall give notice of the authorization
2 to—

3 “(A) the Governor;

4 “(B) contiguous local governments; and

5 “(C) any contiguous Indian tribes.

6 “(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MU-
7 NICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO
8 HOST COMMUNITY AGREEMENTS.—

9 “(1) PERMIT.—

10 “(A) IN GENERAL.—Subject to subsection
11 (f), a facility for which, before the date of en-
12 actment of this section, the State issued a per-
13 mit containing an authorization may receive
14 out-of-State municipal solid waste if—

15 “(i) not later than 90 days after the
16 date of enactment of this section, the
17 owner or operator of the facility notifies
18 the affected local government of the exist-
19 ence of the permit; and

20 “(ii) the owner or operator of the fa-
21 cility complies with all of the terms and
22 conditions of the permit after the date of
23 enactment of this section.

24 “(B) DENIED OR REVOKED PERMITS.—A
25 facility may not receive out-of-State municipal

1 solid waste under subparagraph (A) if the oper-
2 ating permit for the facility (or any renewal of
3 the operating permit) was denied or revoked by
4 the appropriate State agency before the date of
5 enactment of this section unless the permit or
6 renewal was granted, renewed, or reinstated be-
7 fore that date.

8 “(2) DOCUMENTED RECEIPT DURING 1993.—

9 “(A) IN GENERAL.—Subject to subsection
10 (f), a facility that, during 1993, received out-of-
11 State municipal solid waste may receive out-of-
12 State municipal solid waste if the owner or op-
13 erator of the facility submits to the State and
14 to the affected local government documentation
15 of the receipt of out-of-State municipal solid
16 waste during 1993, including information
17 about—

18 “(i) the date of receipt of the out-of-
19 State municipal solid waste;

20 “(ii) the volume of out-of-State munic-
21 ipal solid waste received in 1993;

22 “(iii) the place of origin of the out-of-
23 State municipal solid waste received; and

24 “(iv) the type of out-of-State munic-
25 ipal solid waste received.

1 “(B) FALSE OR MISLEADING INFORMA-
 2 TION.—Documentation submitted under sub-
 3 paragraph (A) shall be made under penalty of
 4 perjury under State law for the submission of
 5 false or misleading information.

6 “(C) AVAILABILITY OF DOCUMENTA-
 7 TION.—The owner or operator of a facility that
 8 receives out-of-State municipal solid waste
 9 under subparagraph (A)—

10 “(i) shall make available for inspec-
 11 tion by the public in the local community
 12 a copy of the documentation submitted
 13 under subparagraph (A); but

14 “(ii) may omit any proprietary infor-
 15 mation contained in the documentation.

16 “(3) BI-STATE METROPOLITAN STATISTICAL
 17 AREAS.—

18 “(A) IN GENERAL.—A facility in a State
 19 may receive out-of-State municipal solid waste
 20 if the out-of-State municipal solid waste is gen-
 21 erated in, and the facility is located in, the
 22 same bi-State level A metropolitan statistical
 23 area (as defined and listed by the Director of
 24 the Office of Management and Budget as of the
 25 date of enactment of this section) that contains

1 2 contiguous major cities, each of which is in
2 a different State.

3 “(B) GOVERNOR AGREEMENT.—A facility
4 described in subparagraph (A) may receive out-
5 of-State municipal solid waste only if the Gov-
6 ernor of each State in the bi-State metropolitan
7 statistical area agrees that the facility may re-
8 ceive out-of-State municipal solid waste.

9 “(f) REQUIRED COMPLIANCE.—A facility may not re-
10 ceive out-of-State municipal solid waste under subsection
11 (c), (d), or (e) at any time at which the State has deter-
12 mined that—

13 “(1) the facility is not in compliance with appli-
14 cable Federal and State laws (including regulations)
15 relating to—

16 “(A) facility design and operation; and

17 “(B)(i) in the case of a landfill—

18 “(I) facility location standards;

19 “(II) leachate collection standards;

20 “(III) ground water monitoring stand-
21 ards; and

22 “(IV) standards for financial assur-
23 ance and for closure, postclosure, and cor-
24 rective action; and

1 “(ii) in the case of an incinerator, the ap-
 2 plicable requirements of section 129 of the
 3 Clean Air Act (42 U.S.C. 7429); and

4 “(2) the noncompliance constitutes a threat to
 5 human health or the environment.

6 “(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-
 7 STATE MUNICIPAL SOLID WASTE.—

8 “(1) LIMITS ON QUANTITY OF WASTE RE-
 9 CEIVED.—

10 “(A) LIMIT FOR ALL FACILITIES IN THE
 11 STATE.—

12 “(i) IN GENERAL.—A State may limit
 13 the quantity of out-of-State municipal solid
 14 waste received annually at each facility in
 15 the State to the quantity described in
 16 paragraph (2).

17 “(ii) NO CONFLICT.—

18 “(I) IN GENERAL.—A limit under
 19 clause (i) shall not conflict with—

20 “(aa) an authorization to re-
 21 ceive out-of-State municipal solid
 22 waste contained in a permit; or

23 “(bb) a host community
 24 agreement entered into between
 25 the owner or operator of a facil-

1 ity and the affected local govern-
2 ment.

3 “(II) CONFLICT.—A limit shall
4 be treated as conflicting with a permit
5 or host community agreement if the
6 permit or host community agreement
7 establishes a higher limit, or if the
8 permit or host community agreement
9 does not establish a limit, on the
10 quantity of out-of-State municipal
11 solid waste that may be received an-
12 nually at the facility.

13 “(B) LIMIT FOR PARTICULAR FACILI-
14 TIES.—

15 “(i) IN GENERAL.—An affected local
16 government that has not executed a host
17 community agreement with a particular fa-
18 cility may limit the quantity of out-of-State
19 municipal solid waste received annually at
20 the facility to the quantity specified in
21 paragraph (2).

22 “(ii) NO CONFLICT.—A limit under
23 clause (i) shall not conflict with an author-
24 ization to receive out-of-State municipal
25 solid waste contained in a permit.

1 “(C) EFFECT ON OTHER LAWS.—Nothing
2 in this subsection supersedes any State law re-
3 lating to contracts.

4 “(2) LIMIT ON QUANTITY.—

5 “(A) IN GENERAL.—For any facility that
6 commenced receiving documented out-of-State
7 municipal solid waste before the date of enact-
8 ment of this section, the quantity referred to in
9 paragraph (1) for any year shall be equal to the
10 quantity of out-of-State municipal solid waste
11 received at the facility during calendar year
12 1993.

13 “(B) DOCUMENTATION.—

14 “(i) CONTENTS.—Documentation sub-
15 mitted under subparagraph (A) shall in-
16 clude information about—

17 “(I) the date of receipt of the
18 out-of-State municipal solid waste;

19 “(II) the volume of out-of-State
20 municipal solid waste received in
21 1993;

22 “(III) the place of origin of the
23 out-of-State municipal solid waste re-
24 ceived; and

1 “(IV) the type of out-of-State
2 municipal solid waste received.

3 “(ii) FALSE OR MISLEADING INFOR-
4 MATION.—Documentation submitted under
5 subparagraph (A) shall be made under
6 penalty of perjury under State law for the
7 submission of false or misleading informa-
8 tion.

9 “(3) NO DISCRIMINATION.—In establishing a
10 limit under this subsection, a State shall act in a
11 manner that does not discriminate against any ship-
12 ment of out-of-State municipal solid waste on the
13 basis of State of origin.

14 “(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-
15 STATE MUNICIPAL SOLID WASTE TO DECLINING PER-
16 CENTAGES OF QUANTITIES RECEIVED DURING 1993.—

17 “(1) IN GENERAL.—A State in which facilities
18 received more than 650,000 tons of out-of-State mu-
19 nicipal solid waste in calendar year 1993 may estab-
20 lish a limit on the quantity of out-of-State municipal
21 solid waste that may be received at all facilities in
22 the State described in subsection (e)(2) in the fol-
23 lowing quantities:

24 “(A) In calendar year 2004, 95 percent of
25 the quantity received in calendar year 1993.

1 “(B) In each of calendar years 2005
2 through 2008, 95 percent of the quantity re-
3 ceived in the previous year.

4 “(C) In each calendar year after calendar
5 year 2008, 65 percent of the quantity received
6 in calendar year 1993.

7 “(2) UNIFORM APPLICABILITY.—A limit under
8 paragraph (1) shall apply uniformly—

9 “(A) to the quantity of out-of-State munic-
10 ipal solid waste that may be received at all fa-
11 cilities in the State that received out-of-State
12 municipal solid waste in calendar year 1993;
13 and

14 “(B) for each facility described in clause
15 (i), to the quantity of out-of-State municipal
16 solid waste that may be received from each
17 State that generated out-of-State municipal
18 solid waste received at the facility in calendar
19 year 1993.

20 “(3) NOTICE.—Not later than 90 days before
21 establishing a limit under paragraph (1), a State
22 shall provide notice of the proposed limit to each
23 State from which municipal solid waste was received
24 in calendar year 1993.

1 “(4) ALTERNATIVE AUTHORITIES.—If a State
2 exercises authority under this subsection, the State
3 may not thereafter exercise authority under sub-
4 section (g).

5 “(i) COST RECOVERY SURCHARGE.—

6 “(1) DEFINITIONS.—In this subsection:

7 “(A) COST.—The term ‘cost’ means a cost
8 incurred by the State for the implementation of
9 State laws governing the processing, combus-
10 tion, or disposal of municipal solid waste, lim-
11 ited to—

12 “(i) the issuance of new permits and
13 renewal of or modification of permits;

14 “(ii) inspection and compliance moni-
15 toring;

16 “(iii) enforcement; and

17 “(iv) costs associated with technical
18 assistance, data management, and collec-
19 tion of fees.

20 “(B) PROCESSING.—The term ‘processing’
21 means any activity to reduce the volume of mu-
22 nicipal solid waste or alter the chemical, biologi-
23 cal or physical state of municipal solid waste,
24 through processes such as thermal treatment,

1 bailing, composting, crushing, shredding, sepa-
2 ration, or compaction.

3 “(2) AUTHORITY.—A State may authorize, im-
4 pose, and collect a cost recovery charge on the proc-
5 essing or disposal of out-of-State municipal solid
6 waste in the State in accordance with this sub-
7 section.

8 “(3) AMOUNT OF SURCHARGE.—The amount of
9 a cost recovery surcharge—

10 “(A) may be no greater than the amount
11 necessary to recover those costs determined in
12 conformance with paragraph (5); and

13 “(B) in no event may exceed \$3.00 per ton
14 of waste.

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

21 “(5) CONDITIONS.—

22 “(A) IN GENERAL.—Subject to subpara-
23 graphs (B) and (C), a State may impose and
24 collect a cost recovery surcharge on the proc-

1 essing or disposal within the State of out-of-
2 State municipal solid waste if—

3 “(i) the State demonstrates a cost to
4 the State arising from the processing or
5 disposal within the State of a volume of
6 municipal solid waste from a source out-
7 side the State;

8 “(ii) the surcharge is based on those
9 costs to the State demonstrated under sub-
10 paragraph (A) that, if not paid for through
11 the surcharge, would otherwise have to be
12 paid or subsidized by the State; and

13 “(iii) the surcharge is compensatory
14 and is not discriminatory.

15 “(B) PROHIBITION OF SURCHARGE.—In
16 no event shall a cost recovery surcharge be im-
17 posed by a State to the extent that—

18 “(i) the cost for which recovery is
19 sought is otherwise paid, recovered, or off-
20 set by any other fee or tax paid to the
21 State or a political subdivision of the
22 State; or

23 “(ii) to the extent that the amount of
24 the surcharge is offset by voluntary pay-
25 ments to a State or a political subdivision

1 of the State, in connection with the gen-
2 eration, transportation, treatment, proc-
3 essing, or disposal of solid waste.

4 “(C) SUBSIDY; NON-DISCRIMINATION.—

5 The grant of a subsidy by a State with respect
6 to entities disposing of waste generated within
7 the State does not constitute discrimination for
8 purposes of subparagraph (A).

9 “(j) IMPLEMENTATION AND ENFORCEMENT.—A

10 State may adopt such laws (including regulations), not in-
11 consistent with this section, as are appropriate to imple-
12 ment and enforce this section, including provisions for
13 penalties.

14 “(k) ANNUAL STATE REPORT.—

15 “(1) FACILITIES.—On February 1, 2004, and
16 on February 1 of each subsequent year, the owner
17 or operator of each facility that receives out-of-State
18 municipal solid waste shall submit to the State infor-
19 mation specifying—

20 “(A) the quantity of out-of-State municipal
21 solid waste received during the preceding cal-
22 endar year; and

23 “(B) the State of origin of the out-of-State
24 municipal solid waste received during the pre-
25 ceding calendar year.

1 “(2) TRANSFER STATIONS.—

2 “(A) DEFINITION OF RECEIVE FOR TRANS-
3 FER.—In this paragraph, the term ‘receive for
4 transfer’ means receive for temporary storage
5 pending transfer to another State or facility.

6 “(B) REPORT.—On February 1, 2004, and
7 on February 1 of each subsequent year, the
8 owner or operator of each transfer station that
9 receives for transfer out-of-State municipal
10 solid waste shall submit to the State a report
11 describing—

12 “(i) the quantity of out-of-State mu-
13 nicipal solid waste received for transfer
14 during the preceding calendar year;

15 “(ii) each State of origin of the out-
16 of-State municipal solid waste received for
17 transfer during the preceding calendar
18 year; and

19 “(iii) each State of destination of the
20 out-of-State municipal solid waste trans-
21 ferred from the transfer station during the
22 preceding calendar year.

23 “(3) NO PRECLUSION OF STATE REQUIRE-
24 MENTS.—The requirements of paragraphs (1) and

1 (2) do not preclude any State requirement for more
2 frequent reporting.

3 “(4) FALSE OR MISLEADING INFORMATION.—
4 Documentation submitted under paragraphs (1) and
5 (2) shall be made under penalty of perjury under
6 State law for the submission of false or misleading
7 information.

8 “(5) REPORT.—On March 1, 2004, and on
9 March 1 of each year thereafter, each State to which
10 information is submitted under paragraphs (1) and
11 (2) shall publish and make available to the public a
12 report containing information on the quantity of out-
13 of-State municipal solid waste received for disposal
14 and received for transfer in the State during the
15 preceding calendar year.”.

16 (b) CONFORMING AMENDMENT.—The table of con-
17 tents of the Solid Waste Disposal Act (42 U.S.C. prec.
18 6901) is amended by adding after the item relating to sec-
19 tion 4010 the following:

“Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid
waste at existing facilities.”.

1 **SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE**
 2 **PERCENTAGE LIMITS ON RECEIPT OF OUT-**
 3 **OF-STATE MUNICIPAL SOLID WASTE AT NEW**
 4 **FACILITIES.**

5 (a) AMENDMENT.—Subtitle D of the Solid Waste
 6 Disposal Act (42 U.S.C. 6941 et seq.) (as amended by
 7 section 2(a)), is amended by adding after section 4011 the
 8 following:

9 **“SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE**
 10 **PERCENTAGE LIMITS ON RECEIPT OF OUT-**
 11 **OF-STATE MUNICIPAL SOLID WASTE AT NEW**
 12 **FACILITIES.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) TERMS DEFINED IN SECTION 4011.—The
 15 terms ‘authorization to receive out-of-State munic-
 16 ipal solid waste’, ‘disposal’, ‘existing host community
 17 agreement’, ‘host community agreement’, ‘municipal
 18 solid waste’, ‘out-of-State municipal solid waste’, and
 19 ‘receive’ have the meaning given those terms, respec-
 20 tively, in section 4011.

21 “(2) OTHER TERMS.—The term ‘facility’ means
 22 a landfill, incinerator, or other enterprise that re-
 23 ceives out-of-State municipal solid waste on or after
 24 the date of enactment of this section.

25 “(b) AUTHORITY TO DENY PERMITS OR IMPOSE
 26 PERCENTAGE LIMITS.—

1 “(1) ALTERNATIVE AUTHORITIES.—In any cal-
2 endar year, a State may exercise the authority under
3 either paragraph (2) or paragraph (3), but may not
4 exercise the authority under both paragraphs (2)
5 and (3).

6 “(2) AUTHORITY TO DENY PERMITS.—A State
7 may deny a permit for the construction or operation
8 of or a major modification to a facility if—

9 “(A) the State has approved a State or
10 local comprehensive municipal solid waste man-
11 agement plan developed under Federal or State
12 law; and

13 “(B) the denial is based on a determina-
14 tion, under a State law authorizing the denial,
15 that there is not a local or regional need for the
16 facility in the State.

17 “(3) AUTHORITY TO IMPOSE PERCENTAGE
18 LIMIT.—A State may provide by law that a State
19 permit for the construction, operation, or expansion
20 of a facility shall include the requirement that not
21 more than a specified percentage (which shall be not
22 less than 20 percent) of the total quantity of munic-
23 ipal solid waste received annually at the facility shall
24 be out-of-State municipal solid waste.

25 “(c) NEW HOST COMMUNITY AGREEMENTS.—

1 “(1) IN GENERAL.—Notwithstanding subsection
2 (b)(3), a facility operating under an existing host
3 community agreement that contains an authorization
4 to receive out-of-State municipal solid waste in a
5 specific quantity annually may receive that quantity.

6 “(2) NO EFFECT ON STATE PERMIT DENIAL.—
7 Nothing in paragraph (1) authorizes a facility de-
8 scribed in that paragraph to receive out-of-State mu-
9 nicipal solid waste if the State has denied a permit
10 to the facility under subsection (b)(2).

11 “(d) UNIFORM AND NONDISCRIMINATORY APPLICA-
12 TION.—A law under subsection (b) or (c)—

13 “(1) shall be applicable throughout the State;

14 “(2) shall not directly or indirectly discriminate
15 against any particular facility; and

16 “(3) shall not directly or indirectly discriminate
17 against any shipment of out-of-State municipal solid
18 waste on the basis of place of origin.”.

19 (b) CONFORMING AMENDMENT.—The table of con-
20 tents in section 1001 of the Solid Waste Disposal Act (42
21 U.S.C. prec. 6901) (as amended by section 1(b)) is
22 amended by adding at the end of the items relating to
23 subtitle D the following:

“Sec. 4012. Authority to deny permits for or impose percentage limits on new
facilities.”.

1 **SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.**

2 (a) AMENDMENT.—Subtitle D of the Solid Waste
3 Disposal Act (42 U.S.C. 6941 et seq.) (as amended by
4 section 3(a)), is amended by adding after section 4012 the
5 following:

6 **“SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) TERMS DEFINED IN SECTION 4011.—The
9 terms ‘affected local government’, ‘Governor’, and
10 ‘receive’ have the meanings given those terms, re-
11 spectively, in section 4011.

12 “(2) OTHER TERMS.—

13 “(A) BASE YEAR QUANTITY.—The term
14 ‘base year quantity’ means—

15 “(i) the annual quantity of out-of-
16 State construction and demolition debris
17 received at a State in calendar year 2004,
18 as determined under subsection
19 (c)(2)(B)(i); or

20 “(ii) in the case of an expedited imple-
21 mentation under subsection (c)(5), the an-
22 nual quantity of out-of-State construction
23 and demolition debris received in a State
24 in calendar year 2003.

25 “(B) CONSTRUCTION AND DEMOLITION
26 WASTE.—

1 “(i) IN GENERAL.—The term ‘con-
2 struction and demolition waste’ means de-
3 bris resulting from the construction, ren-
4 ovation, repair, or demolition of or similar
5 work on a structure.

6 “(ii) EXCLUSIONS.—The term ‘con-
7 struction and demolition waste’ does not
8 include debris that—

9 “(I) is commingled with munic-
10 ipal solid waste; or

11 “(II) is contaminated, as deter-
12 mined under subsection (b).

13 “(C) FACILITY.—The term ‘facility’ means
14 any enterprise that receives construction and
15 demolition waste on or after the date of enact-
16 ment of this section, including landfills.

17 “(D) OUT-OF-STATE CONSTRUCTION AND
18 DEMOLITION WASTE.—The term ‘out-of-State
19 construction and demolition waste’ means—

20 “(i) with respect to any State, con-
21 struction and demolition debris generated
22 outside the State; and

23 “(ii) construction and demolition de-
24 bris generated outside the United States,
25 unless the President determines that treat-

1 ment of the construction and demolition
2 debris as out-of-State construction and
3 demolition waste under this section would
4 be inconsistent with the North American
5 Free Trade Agreement or the Uruguay
6 Round Agreements (as defined in section 2
7 of the Uruguay Round Agreements Act (19
8 U.S.C. 3501)).

9 “(b) CONTAMINATED CONSTRUCTION AND DEMOLI-
10 TION DEBRIS.—

11 “(1) IN GENERAL.—For the purpose of deter-
12 mining whether debris is contaminated, the gener-
13 ator of the debris shall conduct representative sam-
14 pling and analysis of the debris.

15 “(2) SUBMISSION OF RESULTS.—Unless not re-
16 quired by the affected local government, the results
17 of the sampling and analysis under paragraph (1)
18 shall be submitted to the affected local government
19 for recordkeeping purposes only.

20 “(3) DISPOSAL OF CONTAMINATED DEBRIS.—
21 Any debris described in subsection (a)(2)(B)(i) that
22 is determined to be contaminated shall be disposed
23 of in a landfill that meets the requirements of this
24 Act.

1 “(c) LIMIT ON CONSTRUCTION AND DEMOLITION
2 WASTE.—

3 “(1) IN GENERAL.—A State may establish a
4 limit on the annual amount of out-of-State construc-
5 tion and demolition waste that may be received at
6 landfills in the State.

7 “(2) REQUIRED ACTION BY THE STATE.—A
8 State that seeks to limit the receipt of out-of-State
9 construction and demolition waste received under
10 this section shall—

11 “(A) not later than January 1, 2004, es-
12 tablish and implement reporting requirements
13 to determine the quantity of construction and
14 demolition waste that is—

15 “(i) disposed of in the State; and

16 “(ii) imported into the State; and

17 “(B) not later than March 1, 2005—

18 “(i) establish the annual quantity of
19 out-of-State construction and demolition
20 waste received during calendar year 2004;
21 and

22 “(ii) report the tonnage received dur-
23 ing calendar year 2004 to the Governor of
24 each exporting State.

25 “(3) REPORTING BY FACILITIES.—

1 “(A) IN GENERAL.—Each facility that re-
2 ceives out-of-State construction and demolition
3 debris shall report to the State in which the fa-
4 cility is located the quantity and State of origin
5 of out-of-State construction and demolition de-
6bris received—

7 “(i) in calendar year 2003, not later
8 than February 1, 2004; and

9 “(ii) in each subsequent calendar
10 year, not later than February 1 of the cal-
11endar year following that year.

12 “(B) NO PRECLUSION OF STATE REQUIRE-
13MENTS.—The requirement of subparagraph (A)
14 does not preclude any State requirement for
15 more frequent reporting.

16 “(C) PENALTY.—Each submission under
17 this paragraph shall be made under penalty of
18 perjury under State law.

19 “(4) LIMIT ON DEBRIS RECEIVED.—

20 “(A) RATCHET.—A State in which facili-
21 ties receive out-of-State construction and demo-
22 lition debris may decrease the quantity of con-
23 struction and demolition debris that may be re-
24 ceived at each facility to an annual percentage

1 of the base year quantity specified in subpara-
2 graph (B).

3 “(B) REDUCED ANNUAL PERCENTAGES.—
4 A limit on out-of-State construction and demoli-
5 tion debris imposed by a State under subpara-
6 graph (A) shall be equal to—

7 “(i) in calendar year 2005, 95 percent
8 of the base year quantity;

9 “(ii) in calendar year 2006, 90 per-
10 cent of the base year quantity;

11 “(iii) in calendar year 2007, 85 per-
12 cent of the base year quantity;

13 “(iv) in calendar year 2008, 80 per-
14 cent of the base year quantity;

15 “(v) in calendar year 2009, 75 per-
16 cent of the base year quantity;

17 “(vi) in calendar year 2010, 70 per-
18 cent of the base year quantity;

19 “(vii) in calendar year 2011, 65 per-
20 cent of the base year quantity;

21 “(viii) in calendar year 2012, 60 per-
22 cent of the base year quantity;

23 “(ix) in calendar year 2013, 55 per-
24 cent of the base year quantity; and

1 “(x) in calendar year 2014 and in
2 each subsequent year, 50 percent of the
3 base year quantity.

4 “(5) EXPEDITED IMPLEMENTATION.—

5 “(A) RATCHET.—A State in which facili-
6 ties receive out-of-State construction and demo-
7 lition debris may decrease the quantity of con-
8 struction and demolition debris that may be re-
9 ceived at each facility to an annual percentage
10 of the base year quantity specified in subpara-
11 graph (B) if—

12 “(i) on the date of enactment of this
13 section, the State has determined the
14 quantity of construction and demolition
15 waste received in the State in calendar
16 year 2003; and

17 “(ii) the State complies with para-
18 graphs (2) and (3).

19 “(B) EXPEDITED REDUCED ANNUAL PER-
20 CENTAGES.—An expedited implementation of a
21 limit on the receipt of out-of-State construction
22 and demolition debris imposed by a State under
23 subparagraph (A) shall be equal to—

24 “(i) in calendar year 2004, 95 percent
25 of the base year quantity;

1 “(ii) in calendar year 2005, 90 per-
2 cent of the base year quantity;

3 “(iii) in calendar year 2006, 85 per-
4 cent of the base year quantity;

5 “(iv) in calendar year 2007, 80 per-
6 cent of the base year quantity;

7 “(v) in calendar year 2008, 75 per-
8 cent of the base year quantity;

9 “(vi) in calendar year 2009, 70 per-
10 cent of the base year quantity;

11 “(vii) in calendar year 2010, 65 per-
12 cent of the base year quantity;

13 “(viii) in calendar year 2011, 60 per-
14 cent of the base year quantity;

15 “(ix) in calendar year 2012, 55 per-
16 cent of the base year quantity; and

17 “(x) in calendar year 2013 and in
18 each subsequent year, 50 percent of the
19 base year quantity.”.

20 (b) CONFORMING AMENDMENT.—The table of con-
21 tents in section 1001 of the Solid Waste Disposal Act (42
22 U.S.C. prec. 6901) (as amended by section 3(b)), is
23 amended by adding at the end of the items relating to
24 subtitle D the following:

“Sec. 4013. Construction and demolition debris.”.

1 **SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND**
2 **LOCAL MUNICIPAL SOLID WASTE FLOW CON-**
3 **TROL.**

4 (a) AMENDMENT OF SUBTITLE D.—Subtitle D of the
5 Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as
6 amended by section 4(a)) is amended by adding after sec-
7 tion 4013 the following:

8 **“SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE**
9 **AND LOCAL GOVERNMENT CONTROL OVER**
10 **MOVEMENT OF MUNICIPAL SOLID WASTE**
11 **AND RECYCLABLE MATERIALS.**

12 “(a) FLOW CONTROL AUTHORITY FOR FACILITIES
13 PREVIOUSLY DESIGNATED.—Any State or political sub-
14 division thereof is authorized to exercise flow control au-
15 thority to direct the movement of municipal solid waste
16 and recyclable materials voluntarily relinquished by the
17 owner or generator thereof to particular waste manage-
18 ment facilities, or facilities for recyclable materials, des-
19 igned as of the suspension date, if each of the following
20 conditions are met:

21 “(1) The waste and recyclable materials are
22 generated within the jurisdictional boundaries of
23 such State or political subdivision, as such jurisdic-
24 tion was in effect on the suspension date.

25 “(2) Such flow control authority is imposed
26 through the adoption or execution of a law, ordi-

1 nance, regulation, resolution, or other legally binding
2 provision or official act of the State or political sub-
3 division that—

4 “(A) was in effect on the suspension date;

5 “(B) was in effect prior to the issuance of
6 an injunction or other order by a court based
7 on a ruling that such law, ordinance, regula-
8 tion, resolution, or other legally binding provi-
9 sion or official act violated the Commerce
10 Clause of the United States Constitution; or

11 “(C) was in effect immediately prior to
12 suspension or partial suspension thereof by leg-
13 islative or official administrative action of the
14 State or political subdivision expressly because
15 of the existence of an injunction or other court
16 order of the type described in subparagraph (B)
17 issued by a court of competent jurisdiction.

18 “(3) The State or a political subdivision thereof
19 has, for one or more of such designated facilities—

20 “(A) on or before the suspension date, pre-
21 sented eligible bonds for sale;

22 “(B) on or before the suspension date,
23 issued a written public declaration or regulation
24 stating that bonds would be issued and held
25 hearings regarding such issuance, and subse-

1 quently presented eligible bonds for sale within
2 180 days of the declaration or regulation; or

3 “(C) on or before the suspension date, exe-
4 cuted a legally binding contract or agreement
5 that—

6 “(i) was in effect as of the suspension
7 date;

8 “(ii) obligates the delivery of a min-
9 imum quantity of municipal solid waste or
10 recyclable materials to one or more such
11 designated waste management facilities or
12 facilities for recyclable materials; and

13 “(iii) either—

14 “(I) obligates the State or polit-
15 ical subdivision to pay for that min-
16 imum quantity of waste or recyclable
17 materials even if the stated minimum
18 quantity of such waste or recyclable
19 materials is not delivered within a re-
20 quired timeframe; or

21 “(II) otherwise imposes liability
22 for damages resulting from such fail-
23 ure.

24 “(b) WASTE STREAM SUBJECT TO FLOW CON-
25 TROL.—Subsection (a) authorizes only the exercise of flow

1 control authority with respect to the flow to any des-
2 ignated facility of the specific classes or categories of mu-
3 nicipal solid waste and voluntarily relinquished recyclable
4 materials to which such flow control authority was applica-
5 ble on the suspension date and—

6 “(1) in the case of any designated waste man-
7 agement facility or facility for recyclable materials
8 that was in operation as of the suspension date, only
9 if the facility concerned received municipal solid
10 waste or recyclable materials in those classes or cat-
11 egories on or before the suspension date; and

12 “(2) in the case of any designated waste man-
13 agement facility or facility for recyclable materials
14 that was not yet in operation as of the suspension
15 date, only of the classes or categories that were
16 clearly identified by the State or political subdivision
17 as of the suspension date to be flow controlled to
18 such facility.

19 “(c) DURATION OF FLOW CONTROL AUTHORITY.—
20 Flow control authority may be exercised pursuant to this
21 section with respect to any facility or facilities only until
22 the later of the following:

23 “(1) The final maturity date of the bond re-
24 ferred to in subsection (a)(3)(A) or (B).

1 “(2) The expiration date of the contract or
2 agreement referred to in subsection (a)(3)(C).

3 “(3) The adjusted expiration date of a bond
4 issued for a qualified environmental retrofit.

5 The dates referred to in paragraphs (1) and (2) shall be
6 determined based upon the terms and provisions of the
7 bond or contract or agreement. In the case of a contract
8 or agreement described in subsection (a)(3)(C) that has
9 no specified expiration date, for purposes of paragraph (2)
10 of this subsection the expiration date shall be the first date
11 that the State or political subdivision that is a party to
12 the contract or agreement can withdraw from its respon-
13 sibilities under the contract or agreement without being
14 in default thereunder and without substantial penalty or
15 other substantial legal sanction. The expiration date of a
16 contract or agreement referred to in subsection (a)(3)(C)
17 shall be deemed to occur at the end of the period of an
18 extension exercised during the term of the original con-
19 tract or agreement, if the duration of that extension was
20 specified by such contract or agreement as in effect on
21 the suspension date.

22 “(d) INDEMNIFICATION FOR CERTAIN TRANSPOR-
23 TATION.—Notwithstanding any other provision of this sec-
24 tion, no State or political subdivision may require any per-
25 son to transport municipal solid waste or recyclable mate-

1 rials, or to deliver such waste or materials for transpor-
2 tation, to any active portion of a municipal solid waste
3 landfill unit if contamination of such active portion is a
4 basis for listing of the municipal solid waste landfill unit
5 on the National Priorities List established under the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 unless such State or political subdivi-
8 sion or the owner or operator of such landfill unit has in-
9 demnified that person against all liability under that Act
10 with respect to such waste or materials.

11 “(e) OWNERSHIP OF RECYCLABLE MATERIALS.—
12 Nothing in this section shall authorize any State or polit-
13 ical subdivision to require any person to sell or transfer
14 any recyclable materials to such State or political subdivi-
15 sion.

16 “(f) LIMITATION ON REVENUE.—A State or political
17 subdivision may exercise the flow control authority grant-
18 ed in this section only if the State or political subdivision
19 limits the use of any of the revenues it derives from the
20 exercise of such authority to the payment of one or more
21 of the following:

22 “(1) Principal and interest on any eligible bond.

23 “(2) Principal and interest on a bond issued for
24 a qualified environmental retrofit.

1 “(3) Payments required by the terms of a con-
2 tract referred to in subsection (a)(3)(C).

3 “(4) Other expenses necessary for the operation
4 and maintenance and closure of designated facilities
5 and other integral facilities identified by the bond
6 necessary for the operation and maintenance of such
7 designated facilities.

8 “(5) To the extent not covered by paragraphs
9 (1) through (4), expenses for recycling, composting,
10 and household hazardous waste activities in which
11 the State or political subdivision was engaged before
12 the suspension date. The amount and nature of pay-
13 ments described in this paragraph shall be fully dis-
14 closed to the public annually.

15 “(g) INTERIM CONTRACTS.—A contract of the type
16 referred to in subsection (a)(3)(C) that was entered into
17 during the period—

18 “(1) before November 10, 1995, and after the
19 effective date of any applicable final court order no
20 longer subject to judicial review specifically invali-
21 dating the flow control authority of the applicable
22 State or political subdivision; or

23 “(2) after the applicable State or political sub-
24 division refrained pursuant to legislative or official
25 administrative action from enforcing flow control au-

1 thority expressly because of the existence of a court
2 order of the type described in subsection (a)(2)(B)
3 issued by a court of the same State or the Federal
4 judicial circuit within which such State is located
5 and before the effective date on which it resumes en-
6 forcement of flow control authority after enactment
7 of this section,

8 shall be fully enforceable in accordance with State law.

9 “(h) AREAS WITH PRE-1984 FLOW CONTROL.—

10 “(1) GENERAL AUTHORITY.—A State that on
11 or before January 1, 1984—

12 “(A) adopted regulations under a State
13 law that required or directed transportation,
14 management, or disposal of municipal solid
15 waste from residential, commercial, institu-
16 tional, or industrial sources (as defined under
17 State law) to specifically identified waste man-
18 agement facilities, and applied those regulations
19 to every political subdivision of the State; and

20 “(B) subjected such waste management fa-
21 cilities to the jurisdiction of a State public utili-
22 ties commission,

23 may exercise flow control authority over municipal
24 solid waste in accordance with the other provisions
25 of this section.

1 “(2) ADDITIONAL FLOW CONTROL AUTHOR-
2 ITY.—A State or any political subdivision of a State
3 that meets the requirements of paragraph (1) may
4 exercise flow control authority over all classes and
5 categories of municipal solid waste that were subject
6 to flow control by that State or political subdivision
7 on May 16, 1994, by directing municipal solid waste
8 from any waste management facility that was des-
9 ignated as of May 16, 1994 to any other waste man-
10 agement facility in the State without regard to
11 whether the political subdivision in which the munic-
12 ipal solid waste is generated had designated the par-
13 ticular waste management facility or had issued a
14 bond or entered into a contract referred to in sub-
15 paragraph (A) or (B) of subsection (a)(3), respec-
16 tively.

17 “(3) DURATION OF AUTHORITY.—The authority
18 to direct municipal solid waste to any facility pursu-
19 ant to this subsection shall terminate with regard to
20 such facility in accordance with subsection (c).

21 “(i) EFFECT ON AUTHORITY OF STATES AND POLIT-
22 ICAL SUBDIVISIONS.—Nothing in this section shall be in-
23 terpreted—

1 “(1) to authorize a political subdivision to exer-
2 cise the flow control authority granted by this sec-
3 tion in a manner inconsistent with State law;

4 “(2) to permit the exercise of flow control au-
5 thority over municipal solid waste and recyclable ma-
6 terials to an extent greater than the maximum vol-
7 ume authorized by State permit to be disposed at
8 the waste management facility or processed at the
9 facility for recyclable materials;

10 “(3) to limit the authority of any State or polit-
11 ical subdivision to place a condition on a franchise,
12 license, or contract for municipal solid waste or recy-
13 clable materials collection, processing, or disposal; or

14 “(4) to impair in any manner the authority of
15 any State or political subdivision to adopt or enforce
16 any law, ordinance, regulation, or other legally bind-
17 ing provision or official act relating to the movement
18 or processing of municipal solid waste or recyclable
19 materials which does not constitute discrimination
20 against or an undue burden upon interstate com-
21 merce.

22 “(j) EFFECTIVE DATE.—The provisions of this sec-
23 tion shall take effect with respect to the exercise by any
24 State or political subdivision of flow control authority on
25 or after the date of enactment of this section. Such provi-

1 sions, other than subsection (d), shall also apply to the
2 exercise by any State or political subdivision of flow con-
3 trol authority before such date of enactment, except that
4 nothing in this section shall affect any final judgment that
5 is no longer subject to judicial review as of the date of
6 enactment of this section insofar as such judgment award-
7 ed damages based on a finding that the exercise of flow
8 control authority was unconstitutional.

9 “(k) STATE SOLID WASTE DISTRICT AUTHORITY.—
10 In addition to any other flow control authority authorized
11 under this section a solid waste district or a political sub-
12 division of a State may exercise flow control authority for
13 a period of 20 years after the enactment of this section,
14 for municipal solid waste and for recyclable materials that
15 is generated within its jurisdiction if—

16 “(1) the solid waste district, or a political sub-
17 division within such district, is required through a
18 recyclable materials recycling program to meet a
19 municipal solid waste reduction goal of at least 30
20 percent by the year 2005, and uses revenues gen-
21 erated by the exercise of flow control authority
22 strictly to implement programs to manage municipal
23 solid waste and recyclable materials, other than in-
24 cineration programs; and

1 “(2) prior to the suspension date, the solid
2 waste district, or a political subdivision within such
3 district—

4 “(A) was responsible under State law for
5 the management and regulation of the storage,
6 collection, processing, and disposal of solid
7 wastes within its jurisdiction;

8 “(B) was authorized by State statute (en-
9 acted prior to January 1, 1992) to exercise flow
10 control authority, and subsequently adopted or
11 sought to exercise the authority through a law,
12 ordinance, regulation, regulatory proceeding,
13 contract, franchise, or other legally binding pro-
14 vision; and

15 “(C) was required by State statute (en-
16 acted prior to January 1, 1992) to develop and
17 implement a solid waste management plan con-
18 sistent with the State solid waste management
19 plan, and the district solid waste management
20 plan was approved by the appropriate State
21 agency prior to September 15, 1994.

22 “(1) SPECIAL RULE FOR CERTAIN CONSORTIA.—For
23 purposes of this section, if—

24 “(1) two or more political subdivisions are
25 members of a consortium of political subdivisions es-

1 established to exercise flow control authority with re-
2 spect to any waste management facility or facility
3 for recyclable materials;

4 “(2) all of such members have either presented
5 eligible bonds for sale or executed contracts with the
6 owner or operator of the facility requiring use of
7 such facility;

8 “(3) the facility was designated as of the sus-
9 pension date by at least one of such members;

10 “(4) at least one of such members has met the
11 requirements of subsection (a)(2) with respect to
12 such facility; and

13 “(5) at least one of such members has pre-
14 sented eligible bonds for sale, or entered into a con-
15 tract or agreement referred to in subsection
16 (a)(3)(C), on or before the suspension date, for such
17 facility,

18 the facility shall be treated as having been designated, as
19 of May 16, 1994, by all members of such consortium, and
20 all such members shall be treated as meeting the require-
21 ments of subsection (a)(2) and (3) with respect to such
22 facility.

23 “(m) RECOVERY OF DAMAGES.—

24 “(1) PROHIBITION.—No damages, interest on
25 damages, costs, or attorneys’ fees may be recovered

1 in any claim against any State or local government,
2 or official or employee thereof, based on the exercise
3 of flow control authority on or before May 16, 1994.

4 “(2) APPLICABILITY.—Paragraph (1) shall
5 apply to cases commenced on or after the date of en-
6 actment of the Municipal Solid Waste Interstate
7 Transportation and Local Authority Act of 2003,
8 and shall apply to cases commenced before such date
9 except cases in which a final judgment no longer
10 subject to judicial review has been rendered.

11 “(n) DEFINITIONS.—For the purposes of this sec-
12 tion—

13 “(1) ADJUSTED EXPIRATION DATE.—The term
14 ‘adjusted expiration date’ means, with respect to a
15 bond issued for a qualified environmental retrofit,
16 the earlier of the final maturity date of such bond
17 or 15 years after the date of issuance of such bond.

18 “(2) BOND ISSUED FOR A QUALIFIED ENVIRON-
19 MENTAL RETROFIT.—The term ‘bond issued for a
20 qualified environmental retrofit’ means a bond de-
21 scribed in paragraph (4)(A) or (B), the proceeds of
22 which are dedicated to financing the retrofitting of
23 a resource recovery facility or a municipal solid
24 waste incinerator necessary to comply with section
25 129 of the Clean Air Act, provided that such bond

1 is presented for sale before the expiration date of
2 the bond or contract referred to in subsection
3 (a)(3)(A), (B), or (C) that is applicable to such fa-
4 cility and no later than December 31, 1999.

5 “(3) DESIGNATED.—The term ‘designated’
6 means identified by a State or political subdivision
7 for receipt of all or any portion of the municipal
8 solid waste or recyclable materials that is generated
9 within the boundaries of the State or political sub-
10 division. Such designation includes designation
11 through—

12 “(A) bond covenants, official statements,
13 or other official financing documents issued by
14 a State or political subdivision issuing an eligi-
15 ble bond; and

16 “(B) the execution of a contract of the
17 type described in subsection (a)(3)(C),
18 in which one or more specific waste management fa-
19 cilities are identified as the requisite facility or facili-
20 ties for receipt of municipal solid waste or recyclable
21 materials generated within the jurisdictional bound-
22 aries of that State or political subdivision.

23 “(4) ELIGIBLE BOND.—The term ‘eligible bond’
24 means—

1 “(A) a revenue bond or similar instrument
2 of indebtedness pledging payment to the bond-
3 holder or holder of the debt of identified reve-
4 nues; or

5 “(B) a general obligation bond,
6 the proceeds of which are used to finance one or
7 more designated waste management facilities, facili-
8 ties for recyclable materials, or specifically and di-
9 rectly related assets, development costs, or finance
10 costs, as evidenced by the bond documents.

11 “(5) FLOW CONTROL AUTHORITY.—The term
12 ‘flow control authority’ means the regulatory author-
13 ity to control the movement of municipal solid waste
14 or voluntarily relinquished recyclable materials and
15 direct such solid waste or recyclable materials to one
16 or more designated waste management facilities or
17 facilities for recyclable materials within the bound-
18 aries of a State or political subdivision.

19 “(6) MUNICIPAL SOLID WASTE.—The term
20 ‘municipal solid waste’ has the meaning given that
21 term in section 4011, except that such term—

22 “(A) includes waste material removed from
23 a septic tank, septage pit, or cesspool (other
24 than from portable toilets); and

25 “(B) does not include—

1 “(i) any substance the treatment and
2 disposal of which is regulated under the
3 Toxic Substances Control Act;

4 “(ii) waste generated during scrap
5 processing and scrap recycling; or

6 “(iii) construction and demolition de-
7 bris, except where the State or political
8 subdivision had on or before January 1,
9 1989, issued eligible bonds secured pursu-
10 ant to State or local law requiring the de-
11 livery of construction and demolition debris
12 to a waste management facility designated
13 by such State or political subdivision.

14 “(7) POLITICAL SUBDIVISION.—The term ‘polit-
15 ical subdivision’ means a city, town, borough, coun-
16 ty, parish, district, or public service authority or
17 other public body created by or pursuant to State
18 law with authority to present for sale an eligible
19 bond or to exercise flow control authority.

20 “(8) RECYCLABLE MATERIALS.—The term ‘re-
21 cyclable materials’ means any materials that have
22 been separated from waste otherwise destined for
23 disposal (either at the source of the waste or at
24 processing facilities) or that have been managed sep-
25 arately from waste destined for disposal, for the pur-

1 pose of recycling, reclamation, composting of organic
2 materials such as food and yard waste, or reuse
3 (other than for the purpose of incineration). Such
4 term includes scrap tires to be used in resource re-
5 covery.

6 “(9) SUSPENSION DATE.—The term ‘suspension
7 date’ means, with respect to a State or political sub-
8 division—

9 “(A) May 16, 1994;

10 “(B) the date of an injunction or other
11 court order described in subsection (a)(2)(B)
12 that was issued with respect to that State or
13 political subdivision; or

14 “(C) the date of a suspension or partial
15 suspension described in subsection (a)(2)(C)
16 with respect to that State or political subdivi-
17 sion.

18 “(10) WASTE MANAGEMENT FACILITY.—The
19 term ‘waste management facility’ means any facility
20 for separating, storing, transferring, treating, proc-
21 essing, combusting, or disposing of municipal solid
22 waste.”.

23 (b) TABLE OF CONTENTS.—The table of contents in
24 section 1001 of the Solid Waste Disposal Act (42 U.S.C.
25 prec. 6901) (as amended by section 4(b)), is amended by

1 adding at the end of the items relating to subtitle D the
2 following:

“Sec. 4014. Congressional authorization of State and local government control
over movement of municipal solid waste and recyclable mate-
rials.”.

3 **SEC. 6. EFFECT ON INTERSTATE COMMERCE.**

4 No action by a State or affected local government
5 under an amendment made by this Act shall be considered
6 to impose an undue burden on interstate commerce or to
7 otherwise impair, restrain, or discriminate against inter-
8 state commerce.

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