

104TH CONGRESS
1ST SESSION

S. 534

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

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

24 “(iv) 1.5 million tons of municipal solid waste
25 in each of calendar years 2001 and 2002; and

1 “(v) 1.0 million tons of municipal solid waste in
2 calendar year 2003 and each year thereafter.

3 “(B) The conditions stated in this subparagraph are
4 that—

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

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

15 “(iii) the restrictions imposed by the Governor
16 of the importing State are uniform at all facilities.

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

21 “(4)(A) A Governor may not exercise the authority
22 granted under this section if such action would result in
23 the violation of, or would otherwise be inconsistent with,
24 the terms of a host community agreement or a permit is-

1 sued from the State to receive out-of-State municipal solid
2 waste.

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

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

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

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

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

24 “(6)(A)(i) Any Governor who intends to exercise the
25 authority provided in paragraph (2) or (3) shall, within

1 120 days after the date of enactment of this section, and
2 on the same day of each year thereafter, submit to the
3 Administrator information documenting the State of ori-
4 gin and the quantity of out-of-State municipal solid waste
5 received for disposal at landfills and incinerators covered
6 by the exceptions provided in subsection (b) in the State
7 of such Governor during calendar year 1993.

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

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

20 “(C) Not later than 60 days after receipt of informa-
21 tion from a Governor, and any additional information ob-
22 tained by the Administrator, under subparagraph (A), the
23 Administrator shall determine the quantity of out-of-State
24 municipal solid waste that was received for disposal in the
25 State during calendar year 1993, the State of origin and

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

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

22 “(E) Not later than March 1, 1997, and on March
23 1 of each year thereafter, the Administrator shall publish
24 a list of States that the Administrator has determined
25 have exported out of State an amount of municipal solid

1 waste in excess of 3.5 million tons in calendar year 1996,
2 3.0 million tons in each of calendar years 1997 and 1998,
3 2.5 million tons in each of calendar years 1999 and 2000,
4 1.5 million tons in each of calendar years 2000 and 2001,
5 and 1.0 million tons in calendar year 2002 and each year
6 thereafter, as determined in accordance with subpara-
7 graph (C).

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

21 “(7) Any affected local government that intends to
22 submit a request under paragraph (1) or take formal ac-
23 tion on a host community agreement shall, prior to taking
24 such action—

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

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

6 “(C) provide an opportunity for public com-
7 ment; and

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

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

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

19 “(B) A map of the facility site that indicates
20 the location of the facility in relation to the local
21 road system and topographical and hydrological fea-
22 tures and any buffer zones and facility units to be
23 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 fected 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.

○

S 534 IS—2

S 534 IS—3