

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2345**

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**AN ACT**

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.

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## AN ACT

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 1994”.

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

3 Subtitle D of the Solid Waste Disposal Act (42  
4 U.S.C. 6941 et seq.) is amended by adding at the end  
5 the following new section:

6 “INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID  
7 WASTE

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

17 “(2) Except as provided in paragraph (4), imme-  
18 diately upon the date of publication of the list required  
19 in paragraph (6)(D) and notwithstanding the absence of  
20 a request in writing by the affected local government, a  
21 Governor, in accordance with paragraph (5), may limit the  
22 quantity of out-of-State municipal solid waste received for  
23 disposal at each landfill or incinerator covered by the ex-  
24 ceptions provided in subsection (b) that is subject to the  
25 jurisdiction of the Governor, to an annual amount equal  
26 to the quantity of out-of-State municipal solid waste re-

1 ceived for disposal at such landfill or incinerator during  
2 calendar year 1993.

3 “(3)(A) Except as provided in paragraph (4), imme-  
4 diately upon the date of publication of the list required  
5 in paragraph (6)(E), and notwithstanding the absence of  
6 a request in writing by the affected local government, a  
7 Governor, in accordance with paragraph (5), may prohibit  
8 the disposal of out-of-State municipal solid waste, at any  
9 landfill or incinerator covered by the exceptions in sub-  
10 section (b) that is subject to the jurisdiction of the Gov-  
11 ernor, generated in any State that is determined by the  
12 Administrator under paragraph (6)(E) as having ex-  
13 ported, to landfills or incinerators not covered by host  
14 community agreements, more than—

15 “(i) 3.5 million tons of municipal solid waste in  
16 calendar year 1995;

17 “(ii) 3.0 million tons of municipal solid waste in  
18 each of calendar years 1996 and 1997;

19 “(iii) 2.5 million tons of municipal solid waste  
20 in each of calendar years 1998 and 1999;

21 “(iv) 1.5 million tons of municipal solid waste  
22 in each of calendar years 2000 and 2001; and

23 “(v) 1.0 million tons of municipal solid waste in  
24 calendar year 2002 and each year thereafter.

1       “(B) No State may export more than 1.4 million tons  
2 of municipal solid waste to any one State in calendar year  
3 1995 or 90 percent of the 1993 levels exported to a State,  
4 whichever is greater, 1.3 million tons in 1996 or 90 per-  
5 cent of the 1995 levels exported to a State, whichever is  
6 greater, 1.2 million tons in 1997 or 90 percent of the 1996  
7 levels exported to a State, whichever is greater, 1.1 million  
8 tons in 1998 or 90 percent of the 1997 levels exported  
9 to a State, whichever is greater, 1 million tons in 1999,  
10 800,000 tons in 2000, and 600,000 tons in 2001 and each  
11 year thereafter, to landfills or incinerators not covered by  
12 host community agreements. Governors of importing  
13 States may restrict levels of imports to reflect the appro-  
14 priate level of out-of-State municipal solid waste imports  
15 if—

16           “(i) the Governor of the importing State has  
17 notified the Governor of the exporting State and the  
18 Administrator 12 months prior to enforcement of  
19 the importing State’s intention to impose the re-  
20 quirements of this section;

21           “(ii) the Governor of the importing State has  
22 notified the Governor of the exporting State and the  
23 Administrator of the violation by the exporting State  
24 of this section at least 90 days prior to the enforce-  
25 ment of this section; and

1           “(iii) the restrictions imposed by the Governor  
2           of the importing State must be uniform at all facili-  
3           ties.

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

8           “(4)(A) A Governor may not exercise the authority  
9           granted under this section if such action would result in  
10          the violation of, or would otherwise be inconsistent with,  
11          the terms of a host community agreement or a permit is-  
12          sued from the State to receive out-of-State municipal solid  
13          waste.

14          “(B) Except as provided in paragraph (3), a Gov-  
15          ernor may not exercise the authority granted under this  
16          section in a manner that would require any owner or oper-  
17          ator of a landfill or incinerator covered by the exceptions  
18          provided in subsection (b) to reduce the amount of out-  
19          of-State municipal solid waste received from any State for  
20          disposal at such landfill or incinerator to an annual quan-  
21          tity less than the amount received from such State for dis-  
22          posal at such landfill or incinerator during calendar year  
23          1993.

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

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

2           “(B) shall not directly or indirectly discriminate  
3 against any particular landfill or incinerator within  
4 the State; and

5           “(C) shall not directly or indirectly discriminate  
6 against any shipments of out-of-State municipal  
7 solid waste on the basis of State of origin and all  
8 such limitations shall be applied to all States in vio-  
9 lation of paragraph (3).

10          “(6)(A)(i) Any Governor who intends to exercise the  
11 authority provided in paragraph (2) or (3) shall, within  
12 120 days after the date of enactment of this section, and  
13 on the same day of each year thereafter, submit to the  
14 Administrator information documenting the State of ori-  
15 gin and the quantity of out-of-State municipal solid waste  
16 received for disposal at landfills and incinerators covered  
17 by the exceptions provided in subsection (b) in the State  
18 of such Governor during calendar year 1993.

19          “(ii) The Administrator is authorized and directed to  
20 collect such additional information in addition to what is  
21 submitted under clause (i) as may be necessary to deter-  
22 mine if the level of exports of municipal solid waste by  
23 any State exceeds the level established in subparagraph  
24 (A) or (B) of paragraph (3).

1       “(B) On receipt of the information submitted or col-  
2 lected pursuant to subparagraph (A), the Administrator  
3 shall notify the Governor of each such State and the Gov-  
4 ernors of States with exports that exceed the level of ex-  
5 ports of municipal solid waste established in subparagraph  
6 (A) or (B) of paragraph (3) and shall publish notice and  
7 shall provide a comment period of not less than 30 days.

8       “(C) Not later than 60 days after receipt of informa-  
9 tion from a Governor, and any additional information ob-  
10 tained by the Administrator, under subparagraph (A), the  
11 Administrator shall determine the quantity of out-of-State  
12 municipal solid waste that was received for disposal in the  
13 State during calendar year 1993, the State of origin and  
14 the total amount of municipal solid waste exports from  
15 each State that exceeds the level established in subpara-  
16 graph (A) or (B) of paragraph (3), and the quantity of  
17 out-of-State municipal solid waste received for disposal at  
18 landfills and incinerators covered by the exceptions pro-  
19 vided in subsection (b) in the State of such Governor dur-  
20 ing calendar year 1993. The Administrator shall publish  
21 a public notice and shall provide direct notification to each  
22 of the Governors of all States affected by this determina-  
23 tion, for each such State for which the determination is  
24 made. A determination by the Administrator under this

1 subparagraph shall be final and not subject to judicial re-  
2 view.

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

12       “(E) Not later than March 1, 1996, and on March  
13 1 of each year thereafter, the Administrator shall publish  
14 a list of States that the Administrator has determined  
15 have exported out of State an amount of municipal solid  
16 waste in excess of 3.5 million tons in calendar year 1995,  
17 3.0 million tons in each of calendar years 1996 and 1997,  
18 2.5 million tons in each of calendar years 1998 and 1999,  
19 1.5 million tons in each of calendar years 2000 and 2001,  
20 and 1.0 million tons in calendar year 2002 and each year  
21 thereafter, as determined in accordance with subpara-  
22 graph (C).

23       “(F) Not later than March 1 of each year after the  
24 date of enactment of this section, or as required by State  
25 law, the owner or operator of each landfill or incinerator

1 receiving out-of-State municipal solid waste shall submit  
2 to the Governor of the State in which the landfill or incin-  
3 erator is located information specifying, by State of origin,  
4 the amount of out-of-State municipal solid waste received  
5 for disposal during the preceding year. Each year the Gov-  
6 ernor of a State who intends to exercise the authority pro-  
7 vided in paragraph (2) or (3) shall publish and make avail-  
8 able to the public a report containing information on the  
9 amount of out-of-State municipal solid waste received for  
10 disposal in the State during the preceding year.

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

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

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

20 “(C) provide an opportunity for public com-  
21 ment; and

22 “(D) following notice and comment, take formal  
23 action on any proposed request or action at a public  
24 meeting.

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

5           “(A) A brief description of the planned facility,  
6 including a description of the facility size, ultimate  
7 waste capacity, and anticipated monthly and yearly  
8 waste quantities to be handled.

9           “(B) A map of the facility site that indicates  
10 the location of the facility in relation to the local  
11 road system and topographical and hydrological fea-  
12 tures and any buffer zones and facility units to be  
13 acquired by the owner or operator of the facility.

14           “(C) A description of the existing environ-  
15 mental conditions at the site, and any violations of  
16 applicable laws or regulations.

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

19           “(E) A description of the site access controls to  
20 be employed, and roadway improvements to be  
21 made, by the owner or operator, and an estimate of  
22 the timing and extent of increased local truck traf-  
23 fic.

24       “(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT  
25 OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The au-

1 thority to prohibit the disposal of out-of-State municipal  
2 solid waste provided under subsection (a)(1) shall not  
3 apply to landfills and incinerators in operation on the date  
4 of enactment of this section that—

5           “(A) received during calendar year 1993 docu-  
6           mented shipments of out-of-State municipal solid  
7           waste; and

8           “(B)(i) in the case of landfills, are in compli-  
9           ance with all applicable Federal and State laws and  
10          regulations relating to operation, design and location  
11          standards, leachate collection, ground water monitor-  
12          ing, and financial assurance for closure and post-clo-  
13          sure and corrective action; or

14          “(ii) in the case of incinerators, are in compli-  
15          ance with the applicable requirements of section 129  
16          of the Clean Air Act (42 U.S.C. 7429) and applica-  
17          ble State laws and regulations relating to facility de-  
18          sign and operations.

19          “(2) A Governor may not prohibit the disposal of out-  
20          of-State municipal solid waste pursuant to subsection  
21          (a)(1) at facilities described in this subsection that are not  
22          in compliance with applicable Federal and State laws and  
23          regulations unless disposal of municipal solid waste gen-  
24          erated within the State at such facilities is also prohibited.

1       “(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-  
2 STATE MUNICIPAL SOLID WASTE.—(1) In any case in  
3 which an affected local government is considering entering  
4 into, or has entered into, a host community agreement and  
5 the disposal or incineration of out-of-State municipal solid  
6 waste under such agreement would preclude the use of  
7 municipal solid waste management capacity described in  
8 paragraph (2), the Governor of the State in which the af-  
9 fected local government is located may prohibit the execu-  
10 tion of such host community agreement with respect to  
11 that capacity.

12       “(2) The municipal solid waste management capacity  
13 referred to in paragraph (1) is that capacity—

14               “(A) that is permitted under Federal or State  
15 law;

16               “(B) that is identified under the State plan;  
17 and

18               “(C) for which a legally binding commitment  
19 between the owner or operator and another party  
20 has been made for its use for disposal or inciner-  
21 ation of municipal solid waste generated within the  
22 region (identified under section 4006(a)) in which  
23 the local government is located.

24       “(d) SAVINGS CLAUSE.—Nothing in this section shall  
25 be interpreted or construed—

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

3           “(2) to affect the authority of any State or local  
4 government to protect public health and the environ-  
5 ment through laws, regulations, and permits, includ-  
6 ing the authority to limit the total amount of munic-  
7 ipal solid waste that landfill or incinerator owners or  
8 operators within the jurisdiction of a State may ac-  
9 cept during a prescribed period, provided that such  
10 limitations do not discriminate between in-State and  
11 out-of-State municipal solid waste, except to the ex-  
12 tent authorized by this section.

13           “(e) DEFINITIONS.—As used in this section:

14           “(1)(A) The term ‘affected local government’,  
15 used with respect to a landfill or incinerator,  
16 means—

17           “(i) the public body created by State law  
18 with responsibility to plan for municipal solid  
19 waste management, a majority of the members  
20 of which are elected officials, for the area in  
21 which the facility is located or proposed to be  
22 located; or

23           “(ii) the elected officials of the city, town,  
24 township, borough, county, or parish exercising  
25 primary responsibility over municipal solid

1 waste management or the use of land in the ju-  
2 risdiction in which the facility is located or is  
3 proposed to be located.

4 “(B)(i) Within 90 days after the date of enact-  
5 ment of this section, a Governor may designate and  
6 publish notice of which entity listed in clause (i) or  
7 (ii) of subparagraph (A) shall serve as the affected  
8 local government for actions taken under this section  
9 and after publication of such notice.

10 “(ii) If a Governor fails to make such a des-  
11 ignation, the affected local government shall be the  
12 elected officials of the city, town, township, borough,  
13 county, parish, or other public body created pursu-  
14 ant to State law with primary jurisdiction over the  
15 land or the use of land on which the facility is lo-  
16 cated or is proposed to be located.

17 “(C) For purposes of host community agree-  
18 ments entered into before the date of publication of  
19 the notice, the term means either a public body de-  
20 scribed in subparagraph (A)(i) or the elected offi-  
21 cials of any of the public bodies described in sub-  
22 paragraph (A)(ii).

23 “(2)(A) The term ‘host community agreement’  
24 means, with respect to any agreement entered into  
25 on or after June 23, 1994, a written, legally binding

1 document or documents executed by duly authorized  
2 officials of the affected local government that ex-  
3 pressly authorizes a landfill or incinerator to receive  
4 specified amounts of municipal solid waste generated  
5 out of State.

6 “(B) The term ‘host community agreement’  
7 means, with respect to any agreement entered into  
8 before June 23, 1994, a written, legally binding doc-  
9 ument or documents executed by duly authorized of-  
10 ficials of the affected local government expressly au-  
11 thorizing a landfill or incinerator to receive municip-  
12 al solid waste generated out of State, but does not  
13 include any agreement to pay host community fees  
14 for receipt of waste unless additional express author-  
15 ization to receive out-of-State municipal solid waste  
16 is also included. For purposes of a host community  
17 agreement entered into before June 23, 1994, such  
18 agreement may use a term other than ‘out-of-State’,  
19 provided that any alternative term or terms evidence  
20 the approval or consent of the affected local govern-  
21 ment for receipt of municipal solid waste from  
22 sources or locations outside the State in which the  
23 landfill or incinerator is located or is proposed to be  
24 located.

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

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

18                   “(A) any solid waste identified or listed as  
19 a hazardous waste under section 3001, or any  
20 solid waste containing polychlorinated biphenyls  
21 regulated under the Toxic Substances Control  
22 Act (15 U.S.C. 2601 et seq.);

23                   “(B) any solid waste, including contami-  
24 nated soil and debris, resulting from a response  
25 action taken under section 104 or 106 of the

1 Comprehensive Environmental Response, Com-  
2 pensation, and Liability Act of 1980 (42 U.S.C.  
3 9604 or 9606) or a corrective action taken  
4 under this Act;

5 “(C) any metal, pipe, glass, plastic, paper,  
6 textile, or other material that has been sepa-  
7 rated or diverted from municipal solid waste (as  
8 otherwise defined in this paragraph) and has  
9 been transported into a State for the purpose of  
10 recycling or reclamation;

11 “(D) any solid waste that is—

12 “(i) generated by an industrial facil-  
13 ity; and

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

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

24 “(F) any industrial waste that is not iden-  
25 tical to municipal solid waste (as otherwise de-

1            fined in this paragraph) with respect to the  
2            physical and chemical state of the industrial  
3            waste, and composition, including construction  
4            and demolition debris;

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

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

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

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

2       The table of contents in section 1001 of the Solid  
3 Waste Disposal Act (42 U.S.C. prec. 6901) is amended  
4 by adding at the end of the items relating to subtitle D  
5 the following new item:

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

Passed the Senate September 30 (legislative day,  
September 12), 1994.

Attest:

*Secretary.*

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