

104TH CONGRESS
1ST SESSION

S. 485

To amend the Solid Waste Disposal Act to provide and clarify the authority for certain municipal solid waste flow control arrangements.

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, FEBRUARY 22), 1995

Mrs. HUTCHISON 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 and clarify the authority for certain municipal solid waste flow control arrangements.

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 Waste Flow
5 Control Transition Act of 1995”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE AND**
2 **LOCAL GOVERNMENT CONTROL OVER MOVE-**
3 **MENT OF MUNICIPAL SOLID WASTE AND RE-**
4 **CYCLABLE MATERIALS.**

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

7 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**
8 **AND LOCAL GOVERNMENT CONTROL OVER**
9 **MOVEMENT OF MUNICIPAL SOLID WASTE**
10 **AND RECYCLABLE MATERIALS.**

11 “(a) **AUTHORITY.**—Each State and each political
12 subdivision thereof is authorized to exercise flow control
13 authority for municipal solid waste, and recyclable mate-
14 rials voluntarily relinquished by the owner or generator
15 of such materials, generated within its jurisdiction direct-
16 ing such municipal solid waste or recyclable materials to
17 one or more waste management facilities or facilities for
18 recyclable materials, if such flow control authority—

19 “(1) is imposed pursuant to a law, ordinance,
20 regulation, or other legally binding provision or offi-
21 cial act of the State or political subdivision in effect
22 on May 15, 1994; and

23 “(2) has been implemented by designating be-
24 fore May 15, 1994, the particular waste manage-
25 ment facilities in operation as of May 15, 1994, to

1 which the municipal solid waste or recyclable mate-
2 rials must be delivered.

3 The authority of this section shall only extend to the spe-
4 cific classes, categories, volumes or sources of municipal
5 solid waste to which flow control authority requiring a
6 movement to one or more waste management facilities was
7 actually applied on May 15, 1994 (or, in the case of a
8 State or political subdivision that qualifies under sub-
9 section (b), to the specific classes or categories of munici-
10 pal solid waste for which the State or political subdivision
11 prior to May 15, 1994, had committed to the designation
12 of one or more waste management facilities). With regard
13 to facilities granted flow control authority pursuant to
14 subsection "b", if the specific classes or categories of mu-
15 nicipal solid waste are not clearly identified, the authority
16 of this section shall apply only to municipal solid waste
17 generated by households. With respect to each designated
18 facility, the authority of subsections (a) and (b) shall be
19 effective for the remaining life of a contract between the
20 State or political subdivision and any other person for the
21 movement or delivery of such waste or recyclable materials
22 (as in effect May 15, 1994), or until completion of the
23 original schedule for payment of the capital costs of the
24 facility concerned (as in effect May 15, 1994). With re-
25 spect to any facility to which a local government was di-

1 recting waste as of May 15, 1994, pursuant to a law or
2 ordinance of the State or political subdivision in effect on
3 May 15, 1994, the authority of this section shall be effec-
4 tive for the remaining life of a contract between the State
5 or political subdivision and any other person for the move-
6 ment or delivery of such waste or recyclable materials (as
7 in effect May 15, 1994) or until completion of the original
8 schedule for payment of the capital costs of the facility
9 concerned (as in effect May 15, 1994).

10 “(b) COMMITMENT TO CONSTRUCTION.—Notwith-
11 standing the restrictions in subsection (a) (1) and (2), any
12 political subdivision of a State may be granted the flow
13 control authority in subsection (a), if—

14 “(1) the law, ordinance, regulation, or other le-
15 gally binding provision specifically provides for flow
16 control authority for municipal solid waste generated
17 within its boundaries and was in effect as of May
18 15, 1994; and

19 “(2) such political subdivision has taken action
20 prior to May 15, 1994, to commit to the designation
21 of one or more waste management facilities for such
22 method of transportation or disposal of municipal
23 solid waste selected under such law, ordinance, regu-
24 lation, plan, or legally binding provision. Such a
25 commitment to the designation of one or more waste

1 management facilities is demonstrated by one or
2 more of the following factors:

3 “(A) All required permits for the construc-
4 tion of such facility were trained prior to May
5 15, 1994.

6 “(B) Contracts for the construction of
7 such facility were ratified and executed in effect
8 prior to May 15, 1994.

9 “(C) Revenue bonds were presented for
10 sale to specifically provide revenue for the con-
11 struction of such facility prior to May 15, 1994.

12 “(D) The State or political subdivision
13 submitted to the appropriate regulatory agency
14 or agencies, on or before May 16, 1994, admin-
15 istratively complete permit applications for the
16 construction and operation of the waste man-
17 agement facility.

18 “(c) RETAINED AUTHORITY.—Upon the request of
19 any generator of municipal solid waste affected by this
20 section, the State or political subdivision shall authorize
21 the diversion of all or a portion of the solid wastes gen-
22 erated by the generator making such request to a solid
23 waste facility, other than the facility or facilities originally
24 designated by the political subdivision, where the purpose
25 of such request is to provide a higher level of protection

1 for human health and the environment or to indemnify
2 or reduce potential future liability under Federal or State
3 law of such generator for the management of such wastes,
4 unless the state or political subdivision determines that the
5 facility to which the municipal solid waste is being diverted
6 does not provide a higher level of protection for human
7 health and the environment or does not indemnify or re-
8 duce the potential future liability under Federal or State
9 law of such generator for the management of such wastes.
10 Requests shall include information on the environmental
11 suitability of the proposed alternative treatment or dis-
12 posal facility and method, compared to that of the des-
13 igned facility and method.

14 “(d) REASONABLE REGULATION OF COMMERCE.—A
15 law, ordinance, regulation, or other legally binding provi-
16 sion or official act of a State or political subdivision, de-
17 scribed in subsection (a) or (b), that implements flow con-
18 trol authority in compliance with this section shall be con-
19 sidered to be a reasonable regulation of commerce and
20 shall not be considered to be an undue burden on or other-
21 wise as impairing, restraining, or discriminating against
22 interstate commerce.

23 “(e) FLOW CONTROL STUDY.—The Administrator, in
24 cooperation with the National Academy of Public Adminis-
25 tration and the Secretary of the Treasury, shall conduct

1 a study of the extent to which the decision of the United
2 States Supreme Court in *C&A Carbone v Clarkstown, New*
3 *York* has affected the ability of public and private agencies
4 and entities to secure or retain financing for solid waste
5 management facilities or services. Such study shall ad-
6 dress whether such decision is likely to interfere with the
7 implementation of State solid waste management plans,
8 and whether such decision is likely to affect recycling or
9 composting. The Administrator shall submit a report on
10 such study to the Congress, together with recommenda-
11 tions for needed legislation, if any, not later than March
12 31, 1996.

13 “(f) EFFECT ON EXISTING LAWS AND CON-
14 TRACTS.—

15 “(1) ENVIRONMENTAL LAWS.—Nothing in this
16 section shall be interpreted or construed to have any
17 effect on any other law relating to the protection of
18 human health and the environment, or the manage-
19 ment of municipal solid waste or recyclable mate-
20 rials.

21 “(2) STATE LAW.—Nothing in this section shall
22 be interpreted to authorize a political subdivision to
23 exercise the flow control authority granted by this
24 section in a manner inconsistent with State law.

1 “(3) OWNERSHIP OF RECYCLABLE MATE-
2 RIALS.—Nothing in this section shall authorize any
3 State or political subdivision to require any genera-
4 tor or owner of recyclable materials to transfer any
5 recyclable materials to such State or political sub-
6 division, nor shall prohibit any generator or owner
7 of recyclable materials from selling, purchasing, ac-
8 cepting, conveying, or transporting any recyclable
9 materials for purposes of transformation or remanu-
10 facture into usable or marketable materials, unless
11 the generator or owner voluntarily made such recy-
12 clable materials available to the State or political
13 subdivision and relinquished any rights to, or owner-
14 ship of, such recyclable materials.

15 “(g) DEFINITIONS.—For the purposes of this sec-
16 tion—

17 “(1) MUNICIPAL SOLID WASTE.—The term
18 ‘municipal solid waste’ means, subject to the limita-
19 tions of subsection (a), any solid waste generated by
20 the general public or by households (including single
21 residences and multifamily residences of up to 4
22 units) and from commercial, institutional, and in-
23 dustrial sources, consisting of paper, wood, yard
24 waste, plastics, leather, rubber, and other combus-
25 tible materials and noncombustible materials such as

1 metal and glass, including residue remaining after
2 recyclable materials have been separated from waste
3 destined for disposal, and including waste material
4 removed from a septic tank, septage pit, or cesspool
5 (other than from portable toilets), except that the
6 term does not include—

7 “(A) any waste identified or listed as a
8 hazardous waste under section 3001 of this Act
9 or waste regulated under the Toxic Substances
10 and Control Act;

11 “(B) any waste, including contaminated
12 soil and debris, resulting from response taken
13 under section 104 or 106 of the Comprehensive
14 Environmental Response, Compensation, and
15 Liability Act of 1980 or any corrective action
16 taken under this Act;

17 “(C) construction and demolition debris;

18 “(D) medical waste listed in section 11002
19 of this Act;

20 “(E) industrial waste generated by manu-
21 facturing or industrial processes, including
22 waste generated during scrap processing and
23 scrap recycling;

24 “(F) recyclable materials; or

25 “(G) sludge.

1 “(2) RECYCLABLE MATERIALS.—The term ‘re-
2 cyclable materials’ means any materials that have
3 been separated from waste otherwise destined for
4 disposal (either at the source of the waste or at
5 processing facilities) or that have been managed sep-
6 arately from waste destined for disposal, for the pur-
7 pose of recycling, reclamation, composting of organic
8 materials such as food and yard waste, or reuse
9 (other than for the purpose of incineration). Mate-
10 rials shall be deemed ‘recyclable materials’ for the
11 purpose of subsection (a) only if the generator or
12 owner of the materials voluntarily made the mate-
13 rials available to the State or political subdivision
14 (or the designee of the State or political subdivision)
15 and relinquished any rights to, or ownership of, such
16 materials, and the State or political subdivision (or
17 such designee) assumes such rights to, or ownership
18 of, such materials.

19 “(3) WASTE MANAGEMENT FACILITY.—The
20 term ‘waste management facility’ means any facility
21 collecting, separating, storing, transporting, trans-
22 ferring, treating, processing, combusting, or dispos-
23 ing of municipal solid waste.

24 “(4) FLOW CONTROL AUTHORITY.—The term
25 ‘flow control authority’ means the authority to con-

1 trol the movement of solid waste or recyclable mate-
2 rials and direct such solid waste or recyclable mate-
3 rials to one or more designated waste management
4 facilities or facilities for recyclable materials.

5 (5) DESIGNATE; DESIGNATION.—The terms
6 ‘designate’, ‘designated’, ‘designating’, and ‘designa-
7 tion’ mean a requirement of a State or political sub-
8 division, and the act of a State or political subdivi-
9 sion, to require that all or any portion of the municipi-
10 pal solid waste or recyclable materials that is gen-
11 erated within the boundaries of the State or political
12 subdivision be delivered to a waste management fa-
13 cility or facility for recyclable materials identified by
14 the State or political subdivision.”.

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

16 The table of contents for Subtitle D of the Solid
17 Waste Disposal Act is amended by adding the following
18 new item after the item relating to section 4010:

“Sec. 4011. Congressional authorization of State and local government control
over movement of municipal solid waste and recyclable mate-
rials.”

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