

105TH CONGRESS  
1ST SESSION

# S. 463

To amend the Solid Waste Disposal Act to permit a Governor to limit the disposal of out-of-State solid waste in the Governor's State, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 18, 1997

Mr. COATS 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 permit a Governor to limit the disposal of out-of-State solid waste in the Governor's State, 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 1997".

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:

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

8 “(a) DEFINITIONS.—In this section:

9 “(1) AFFECTED LOCAL GOVERNMENT.—The  
 10 term ‘affected local government’ means—

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

17 “(B) if there is not such a body created by  
 18 State law, the elected officials of the city, town,  
 19 township, borough, county, or parish selected by  
 20 the Governor and exercising primary respon-  
 21 sibility over municipal solid waste management  
 22 or the use of land in the jurisdiction in which  
 23 a landfill or incinerator is located or proposed  
 24 to be located.

25 “(2) DOCUMENTED SHIPMENTS.—The term  
 26 ‘documented shipment’ means a shipment of out-of-

1 State waste received by a landfill or incinerator that  
2 is documented—

3 “(A) to provide information on the quan-  
4 tity of waste received, the place of origin, the  
5 State in which the generator is located, and the  
6 type of waste; and

7 “(B) to facilitate criminal prosecution  
8 under State law if the documentation includes  
9 false or misleading information.

10 “(3) HOST COMMUNITY AGREEMENT.—

11 “(A) IN GENERAL.—The term ‘host com-  
12 munity agreement’ means a written, legally  
13 binding agreement, lawfully entered into be-  
14 tween an owner or operator of a landfill or in-  
15 cinerator and an affected local government that  
16 specifically authorizes the landfill or incinerator  
17 to receive out-of-State municipal solid waste.

18 “(B) HOST COMMUNITY AGREEMENT  
19 FEES.—The term ‘host community agreement’  
20 does not include an agreement to pay host com-  
21 munity agreement fees for receipt of waste un-  
22 less a specific authorization to receive out-of-  
23 State municipal solid waste is included in the  
24 agreement.

1           “(4) MUNICIPAL SOLID WASTE.—The term  
2           ‘municipal solid waste’—

3           “(A) means—

4           “(i) any waste material discarded for  
5           disposal by a household, including a single  
6           or multifamily residence, a hotel, or a  
7           motel; and

8           “(ii) any waste material generated by  
9           a commercial, institutional, or industrial  
10          source that—

11           “(I)(aa) is essentially the same  
12           as waste normally generated by house-  
13           holds; or

14           “(bb) is collected and disposed of  
15           with other municipal solid waste as  
16           part of normal municipal solid waste  
17           collection services; and

18           “(II) is conditionally exempt  
19           small quantity generator waste under  
20           section 3001(d); but

21          “(B) does not include—

22           “(i) any solid waste identified or listed  
23           as a hazardous waste under section 3001;

24           “(ii) any solid waste, including con-  
25           taminated soil and debris, resulting from—

1           “(I) a response action taken  
2           under section 104 or 106 of the Com-  
3           prehensive Environmental Response,  
4           Compensation, and Liability Act (42  
5           U.S.C. 9604, 9606); or

6           “(II) a corrective action taken  
7           under this Act;

8           “(iii) any metal, pipe, glass, plastic,  
9           paper, textile, or other material that has  
10          been separated or diverted from municipal  
11          solid waste and has been transported into  
12          the State for the purpose of recycling or  
13          reclamation;

14          “(iv) any solid waste that is—

15               “(I) generated by an industrial  
16               facility; and

17               “(II) transported for the purpose  
18               of treatment, storage, or disposal to a  
19               facility that is owned or operated by  
20               the generator of the waste, or is lo-  
21               cated on property owned by the gener-  
22               ator or a company with which the  
23               generator is affiliated;

24               “(v) any solid waste generated inci-  
25               dent to the provision of service in inter-

1 state, intrastate, foreign, or overseas air  
2 transportation;

3 “(vi) any medical waste that is seg-  
4 regated from or not mixed with municipal  
5 solid waste; and

6 “(vii) any material or product re-  
7 turned from a dispenser or distributor to  
8 the manufacturer for credit, evaluation, or  
9 possible reuse.

10 “(5) OUT-OF-STATE MUNICIPAL SOLID  
11 WASTE.—The term ‘out-of-State municipal solid  
12 waste’ means—

13 “(A) with respect to a State, municipal  
14 solid waste generated outside the State but in-  
15 side the United States; and

16 “(B) to the extent that it is consistent with  
17 obligations of the United States under the  
18 North America Free Trade Agreement, the  
19 General Agreement on Tariffs and Trade, and  
20 other international agreements, municipal solid  
21 waste generated outside the United States.

22 “(6) SPECIFIC AUTHORIZATION.—

23 “(A) IN GENERAL.—The term ‘specific au-  
24 thorization’ means an explicit authorization pro-  
25 vided by a State or affected local government to

1 a landfill or incinerator, contained in a host  
2 community agreement or permit, to import  
3 waste from outside the State in which the land-  
4 fill or incinerator is located.

5 “(B) SPECIFIC REFERENCES.—The term  
6 ‘specific authorization’ may include an author-  
7 ization provided by—

8 “(i) a reference to a fixed radius sur-  
9 rounding the landfill or incinerator that in-  
10 cludes an area outside the State or a ref-  
11 erence to any place of origin;

12 “(ii) a reference to a specific place  
13 outside of the State; or

14 “(iii) use of a phrase such as ‘regard-  
15 less of origin’ or ‘outside the State’.

16 “(C) GENERAL REFERENCES.—The term  
17 ‘specific authorization’ shall not include a gen-  
18 eral reference authorizing the receipt of waste  
19 from outside the jurisdiction of a State or af-  
20 fected local government.

21 “(D) FORM.—The form of a specific au-  
22 thorization may vary as long as the form clearly  
23 and affirmatively indicates the approval or con-  
24 sent of the State or affected local government

1           for receipt of municipal solid waste from a  
2           source outside of the State.

3           “(b) PROHIBITING DISPOSAL OF OUT-OF-STATE MU-  
4 MUNICIPAL SOLID WASTE.—

5           “(1) IN GENERAL.—Except as provided in para-  
6 graph (2), if requested in writing by an affected  
7 local government, a Governor may prohibit the dis-  
8 posal of out-of-State municipal solid waste in any  
9 landfill or incinerator that is subject to the jurisdic-  
10 tion of the Governor or the affected local govern-  
11 ment.

12           “(2) EXCEPTIONS.—The authority to prohibit  
13 the disposal of out-of-State municipal solid waste  
14 under paragraph (1) shall not apply to—

15           “(A) landfills in operation on the date of  
16 enactment of this section that—

17           “(i) received during calendar year  
18 1993 documented shipments of out-of-  
19 State municipal solid waste; and

20           “(ii) are in compliance with all appli-  
21 cable State laws (including any State rule  
22 or regulation) relating to design and loca-  
23 tion standards, leachate collection, ground  
24 water monitoring, and financial assurance

1 for closure and post-closure and corrective  
2 action;

3 “(B) proposed landfills that—

4 “(i) prior to January 1, 1993, re-  
5 ceived—

6 “(I) a specific authorization as  
7 part of a host community agreement  
8 from the affected local government to  
9 receive out-of-State municipal solid  
10 waste; and

11 “(II) a notice of decision from  
12 the State to grant a construction per-  
13 mit; and

14 “(iii) are in compliance with all of the  
15 terms and conditions of the host commu-  
16 nity agreement and construction permit; or

17 “(C) incinerators in operation on the date  
18 of enactment of this section that—

19 “(i) received, during calendar year  
20 1993, documented shipments of out-of-  
21 State municipal solid waste;

22 “(ii) are in compliance with the appli-  
23 cable requirements of section 129 of the  
24 Clean Air Act (42 U.S.C. 7429); and

1           “(iii) are in compliance with all appli-  
2           cable State laws (including any State rule  
3           or regulation) relating to facility design  
4           and operations.

5           “(c) RESTRICTION ON EXCEPTED LANDFILLS.—  
6           With respect to a landfill covered by an exception under  
7           subsection (b)(2), notwithstanding the absence of a re-  
8           quest in writing by the affected local government, a Gov-  
9           ernor of a State, beginning in the first calendar year that  
10          begins after the date of enactment of this section, may  
11          limit the quantity of out-of-State municipal solid waste re-  
12          ceived for disposal—

13           “(1) at each landfill in the State to an annual  
14          quantity equal to the quantity of out-of-State munic-  
15          ipal solid waste received for disposal at the landfill  
16          during calendar year 1993; and

17           “(2) by the State, if the State imported more  
18          than 700,000 tons of out-of-State municipal solid  
19          waste in calendar year 1993, by limiting the quan-  
20          tity of out-of-State municipal solid waste received by  
21          the State to—

22           “(A) in calendar years 1997 through 2003,  
23          95 percent of the quantity received by the State  
24          during the previous calendar year; and

1           “(B) in calendar year 2004 and each suc-  
2           ceeding year, 65 percent of the quantity re-  
3           ceived by the State during calendar year 1993.

4           “(d) EXPORT RATCHET.—The quantity of municipal  
5 solid waste exported by a State to landfills or incinerators  
6 (that are not covered by host community agreements or  
7 permits authorizing receipt of out-of-State municipal solid  
8 waste) in any 1 other State may not exceed—

9           “(1) in calendar year 1997, the greater of  
10          1,400,000 tons or 90 percent of the quantity ex-  
11          ported to the State in calendar year 1993;

12          “(2) in calendar year 1998, the greater of  
13          1,300,000 tons or 90 percent of the quantity ex-  
14          ported to the State in calendar year 1997;

15          “(3) in calendar year 1999, the greater of  
16          1,200,000 tons or 90 percent of the quantity ex-  
17          ported to the State in calendar year 1998;

18          “(4) in calendar year 2000, the greater of  
19          1,100,000 tons or 90 percent of the quantity ex-  
20          ported to the State in calendar year 1999;

21          “(5) in calendar year 2001, 1,000,000 tons;

22          “(6) in calendar year 2002, 750,000 tons; and

23          “(7) in calendar year 2003 and each succeeding  
24          year, 550,000 tons.

1       “(e) LOCAL GOVERNMENT PROCEDURES.—Prior to  
2 submitting a request to a Governor under this section, an  
3 affected local government shall—

4           “(1) provide notice and opportunity for public  
5 comment concerning the proposed request; and

6           “(2) following notice and comment, take formal  
7 action on the proposed request at a public meeting.

8       “(f) NONDISCRIMINATION.—

9           “(1) LIMITATION BY GOVERNOR.—Any limita-  
10 tion on municipal solid waste imposed by a Governor  
11 of a State under subsection (c)(1)—

12           “(A) shall be applicable throughout the  
13 State;

14           “(B) shall not discriminate against any  
15 particular landfill within the State; and

16           “(C) shall not discriminate against any  
17 shipments of out-of-State municipal solid waste  
18 on the basis of the State of origin.

19       “(2) RESPONSE TO LOCAL GOVERNMENTS.—In  
20 responding to a request by an affected local govern-  
21 ment under subsection (b)(1) or (c)(2), the Governor  
22 shall respond in a manner that does not discriminate  
23 against any particular landfill within the State and  
24 does not discriminate against any shipments of out-

1 of-State municipal solid waste on the basis of State  
2 of origin.

3 “(g) ADMINISTRATIVE PROVISIONS.—

4 “(1) DOCUMENTATION.—To be eligible to exer-  
5 cise any authority under subsection (c) or (d), a  
6 Governor shall—

7 “(A) not later than 90 days after the date  
8 of enactment of this section, submit to the Ad-  
9 ministrator information on documented ship-  
10 ments of out-of-State municipal solid waste re-  
11 ceived for disposal during calendar year 1993;  
12 and

13 “(B) on April 1 of each calendar year, sub-  
14 mit to the Administrator information on docu-  
15 mented shipments of out-of-State municipal  
16 solid waste received for disposal during the  
17 year.

18 “(2) PUBLICATION.—Not later than 120 days  
19 after the date of enactment of this section, the Ad-  
20 ministrator shall publish a list of the quantity of  
21 documented shipments of out-of-State municipal  
22 solid waste that was received during calendar year  
23 1993 at each landfill covered by the exceptions pro-  
24 vided in subsection (b)(2) for disposal in a State in

1       which a Governor submitted information under para-  
2       graph (1).

3           “(3) LIST.—On June 1 of each calendar year,  
4       the Administrator shall publish a list of States im-  
5       porting out-of-State municipal solid waste in the  
6       previous calendar year and the quantity received by  
7       each importing State.

8       “(h) LIMITATIONS ON PROSPECTIVE WASTE  
9 FLOWS.—

10           “(1) DENIAL OF PERMIT.—

11           “(A) IN GENERAL.—A State may provide  
12       by law that the State will deny a permit for the  
13       construction or operation of a new landfill or  
14       incinerator or a major modification to an exist-  
15       ing landfill or incinerator if—

16           “(i) the State has approved a State or  
17       local comprehensive solid waste manage-  
18       ment plan developed under Federal or  
19       State law; and

20           “(ii) the denial is based on the State’s  
21       determination, pursuant to a State law au-  
22       thorizing the denial, that there is not a  
23       local or regional need for the landfill or in-  
24       cinerator in the State.

1           “(B) INTERSTATE COMMERCE.—A denial  
2 of a permit under subparagraph (A)(i) shall not  
3 be considered to impose an undue burden on  
4 interstate commerce or to otherwise impair, re-  
5 strain, or discriminate against commerce.

6           “(2) PERCENTAGE LIMITATION.—

7           “(A) IN GENERAL.—A State not exercising  
8 authority under paragraph (1) may provide by  
9 law that a State permit issued after the date of  
10 enactment of this section for a new municipal  
11 solid waste landfill or incinerator or for expan-  
12 sion of a municipal solid waste landfill or incin-  
13 erator shall include an annual percentage limi-  
14 tation of not less than 20 percent on the total  
15 quantity of out-of-State municipal solid waste  
16 received annually at the landfill or incinerator  
17 relative to the total quantity of municipal solid  
18 waste received annually at the landfill or incin-  
19 erator.

20           “(B) HOST COMMUNITY AGREEMENT.—  
21 Notwithstanding subparagraph (A), a landfill or  
22 incinerator with specific authorization to receive  
23 a specific quantity of out-of-State municipal  
24 solid waste annually pursuant to a host commu-  
25 nity agreement entered into prior to the date of

1 enactment of this section may receive the spe-  
 2 cific quantity authorized under the host com-  
 3 munity agreement.

4 “(C) NONDISCRIMINATION.—An annual  
 5 percentage limitation referred to in subpara-  
 6 graph (A)—

7 “(i) shall be uniform for all solid  
 8 waste landfills and incinerators in a State;  
 9 and

10 “(ii) may not discriminate against  
 11 out-of-State municipal solid waste accord-  
 12 ing to the State of origin, unless the waste  
 13 is received under an agreement entered  
 14 into under section 1005(b), under which  
 15 the receiving State and 1 or more other  
 16 States agreed to a different percentage  
 17 limitation for specific facilities receiving  
 18 municipal solid waste from 1 of the States  
 19 that is a party to the compact.”.

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

21 The table of contents of the Solid Waste Disposal Act  
 22 (42 U.S.C. 6901 et seq.) is amended by adding at the end  
 23 of the items relating to subtitle D the following:

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

○