

107TH CONGRESS
1ST SESSION

H. R. 1214

To authorize State and local controls over the flow of municipal solid waste,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2001

Mr. GREENWOOD (for himself, Mr. DOYLE, Mr. MORAN of Virginia, Mr. UPTON, Mr. BONIOR, Mr. EHLERS, Mr. DINGELL, Mr. PETERSON of Pennsylvania, Mr. STUPAK, Mr. HOLDEN, Mr. GILCHREST, Mr. KILDEE, Ms. RIVERS, and Mr. LEACH) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize State and local controls over the flow 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 “Municipal Solid Waste
5 Flow Control Act of 2001”.

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

4 (a) AMENDMENT OF SUBTITLE D.—Subtitle D of the
5 Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is
6 amended by adding after section 4010 the following new
7 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(iii) either—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 shall be fully enforceable in accordance with State law.

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

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

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

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

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

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

5 “(i) EFFECT ON AUTHORITY OF STATES AND POLIT-
6 ICAL SUBDIVISIONS.—Nothing in this section shall be
7 interpreted—

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

11 “(2) to permit the exercise of flow control au-
12 thority over municipal solid waste and recyclable ma-
13 terials to an extent greater than the maximum vol-
14 ume authorized by State permit to be disposed at
15 the waste management facility or processed at the
16 facility for recyclable materials;

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

21 “(4) to impair in any manner the authority of
22 any State or political subdivision to adopt or enforce
23 any law, ordinance, regulation, or other legally bind-
24 ing provision or official act relating to the movement
25 or processing of municipal solid waste or recyclable

1 materials which does not constitute discrimination
2 against or an undue burden upon interstate com-
3 merce.

4 “(j) EFFECTIVE DATE.—The provisions of this sec-
5 tion shall take effect with respect to the exercise by any
6 State or political subdivision of flow control authority on
7 or after the date of enactment of this section. Such provi-
8 sions, other than subsection (d), shall also apply to the
9 exercise by any State or political subdivision of flow con-
10 trol authority before such date of enactment, except that
11 nothing in this section shall affect any final judgment that
12 is no longer subject to judicial review as of the date of
13 enactment of this section insofar as such judgment award-
14 ed damages based on a finding that the exercise of flow
15 control authority was unconstitutional.

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

23 “(1) the solid waste district, or a political sub-
24 division within such district, is required through a
25 recyclable materials recycling program to meet a

1 municipal solid waste reduction goal of at least 30
2 percent by the year 2005, and uses revenues gen-
3 erated by the exercise of flow control authority
4 strictly to implement programs to manage municipal
5 solid waste and recyclable materials, other than in-
6 cineration programs; and

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

10 “(A) was responsible under State law for
11 the management and regulation of the storage,
12 collection, processing, and disposal of solid
13 wastes within its jurisdiction;

14 “(B) was authorized by State statute (en-
15 acted prior to January 1, 1992) to exercise flow
16 control authority, and subsequently adopted or
17 sought to exercise the authority through a law,
18 ordinance, regulation, regulatory proceeding,
19 contract, franchise, or other legally binding pro-
20 vision; and

21 “(C) was required by State statute (en-
22 acted prior to January 1, 1992) to develop and
23 implement a solid waste management plan con-
24 sistent with the State solid waste management
25 plan, and the district solid waste management

1 plan was approved by the appropriate State
2 agency prior to September 15, 1994.

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

5 “(1) two or more political subdivisions are
6 members of a consortium of political subdivisions es-
7 tablished to exercise flow control authority with re-
8 spect to any waste management facility or facility
9 for recyclable materials;

10 “(2) all of such members have either presented
11 eligible bonds for sale or executed contracts with the
12 owner or operator of the facility requiring use of
13 such facility;

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

16 “(4) at least one of such members has met the
17 requirements of subsection (a)(2) with respect to
18 such facility; and

19 “(5) at least one of such members has pre-
20 sented eligible bonds for sale, or entered into a con-
21 tract or agreement referred to in subsection
22 (a)(3)(C), on or before the suspension date, for such
23 facility,

24 the facility shall be treated as having been designated, as
25 of May 16, 1994, by all members of such consortium, and

1 all such members shall be treated as meeting the require-
2 ments of subsection (a)(2) and (3) with respect to such
3 facility.

4 “(m) RECOVERY OF DAMAGES.—

5 “(1) PROHIBITION.—No damages, interest on
6 damages, costs, or attorneys’ fees may be recovered
7 in any claim against any State or local government,
8 or official or employee thereof, based on the exercise
9 of flow control authority on or before May 16, 1994.

10 “(2) APPLICABILITY.—Paragraph (1) shall
11 apply to cases commenced on or after the date of en-
12 actment of the Local Authority for Municipal Solid
13 Waste Flow Control Act of 2001, and shall apply to
14 cases commenced before such date except cases in
15 which a final judgment no longer subject to judicial
16 review has been rendered.

17 “(n) DEFINITIONS.—For the purposes of this
18 section—

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

24 “(2) BOND ISSUED FOR A QUALIFIED ENVIRON-
25 MENTAL RETROFIT.—The term ‘bond issued for a

1 qualified environmental retrofit' means a bond de-
2 scribed in paragraph (4)(A) or (B), the proceeds of
3 which are dedicated to financing the retrofitting of
4 a resource recovery facility or a municipal solid
5 waste incinerator necessary to comply with section
6 129 of the Clean Air Act, provided that such bond
7 is presented for sale before the expiration date of
8 the bond or contract referred to in subsection
9 (a)(3)(A), (B), or (C) that is applicable to such fa-
10 cility and no later than December 31, 1999.

11 “(3) DESIGNATED.—The term ‘designated’
12 means identified by a State or political subdivision
13 for receipt of all or any portion of the municipal
14 solid waste or recyclable materials that is generated
15 within the boundaries of the State or political sub-
16 division. Such designation includes designation
17 through—

18 “(A) bond covenants, official statements,
19 or other official financing documents issued by
20 a State or political subdivision issuing an eligi-
21 ble bond; and

22 “(B) the execution of a contract of the
23 type described in subsection (a)(3)(C),
24 in which one or more specific waste management fa-
25 cilities are identified as the requisite facility or facili-

1 ties for receipt of municipal solid waste or recyclable
2 materials generated within the jurisdictional bound-
3 aries of that State or political subdivision.

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

6 “(A) a revenue bond or similar instrument
7 of indebtedness pledging payment to the bond-
8 holder or holder of the debt of identified reve-
9 nues; or

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

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

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

4 “(A) includes waste material removed from
5 a septic tank, septage pit, or cesspool (other
6 than from portable toilets); and

7 “(B) does not include—

8 “(i) any substance the treatment and
9 disposal of which is regulated under the
10 Toxic Substances Control Act;

11 “(ii) waste generated during scrap
12 processing and scrap recycling; or

13 “(iii) construction and demolition de-
14 bris, except where the State or political
15 subdivision had on or before January 1,
16 1989, issued eligible bonds secured pursu-
17 ant to State or local law requiring the de-
18 livery of construction and demolition debris
19 to a waste management facility designated
20 by such State or political subdivision.

21 “(7) POLITICAL SUBDIVISION.—The term ‘polit-
22 ical subdivision’ means a city, town, borough, coun-
23 ty, parish, district, or public service authority or
24 other public body created by or pursuant to State

1 law with authority to present for sale an eligible
2 bond or to exercise flow control authority.

3 “(8) RECYCLABLE MATERIALS.—The term ‘re-
4 cyclable materials’ means any materials that have
5 been separated from waste otherwise destined for
6 disposal (either at the source of the waste or at
7 processing facilities) or that have been managed sep-
8 arately from waste destined for disposal, for the pur-
9 pose of recycling, reclamation, composting of organic
10 materials such as food and yard waste, or reuse
11 (other than for the purpose of incineration). Such
12 term includes scrap tires to be used in resource re-
13 covery.

14 “(9) SUSPENSION DATE.—The term ‘suspension
15 date’ means, with respect to a State or political
16 subdivision—

17 “(A) May 16, 1994;

18 “(B) the date of an injunction or other
19 court order described in subsection (a)(2)(B)
20 that was issued with respect to that State or
21 political subdivision; or

22 “(C) the date of a suspension or partial
23 suspension described in subsection (a)(2)(C)
24 with respect to that State or political subdivi-
25 sion.

