S. 1606

At the request of Mr. NELSON of Florida, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1606, a bill to amend title XI of the Social Security Act to prohibit Federal funds from being used to provide payments under a Federal health care program to any health care provider who charges a membership of any other extraneous or incidental fee to a patient as a prerequisite for the provision of an item or service to the patient.

S. 1617

At the request of Mr. DODD, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1617, a bill to amend the Workforce Investment Act of 1998 to increase the hiring of firefighters, and for other purposes.

S. 1707

At the request of Mr. JEFFORDS, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1749

At the request of Mr. KENNEDY, the names of the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX), the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 1749, a bill to enhance the border security of the United States, and for other purposes.

S. 1777

At the request of Mrs. CLINTON, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1777, a bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

S. 1911

At the request of Mr. INHOFE, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Tennessee (Mr. THOMPSON) were added as cosponsors of S. 1911, a bill to amend the Community Services block Grant Act to reauthorize national and regional programs designed to provide instructional activities for low-income youth.

S. 1917

At the request of Mr. JEFFORDS, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 1917, a bill to provide for highway infrastructure investment at the guaranteed funding level contained in the Transportation Equity Act for the 21st Century.

S. 1991

At the request of Mr. HOLLINGS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1991, to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes.

S. RES. 109

At the request of Mr. REID, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Missouri (Mrs. CARNAHAN), the Senator from Kansas (Mr. BROWNBACK), the Senator from New York (Mr. SCHUMER), and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. Res. 109, a resolution designating the second Sunday in the month of December as ''National Children's Memorial Day'' and the last Friday in the month of April as ''Children's Memorial Flag Day.''

S. RES. 219

At the request of Mr. GRAHAM, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. Res. 219, a resolution expressing support for the democratically elected Government of Columbia and its efforts to counter threats from United States-designated foreign terrorist organizations.

AMENDMENT NO. 3008

At the request of Mr. DAYTON, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of amendment No. 3008 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3023

At the request of Mrs. LINCOLN, the names of the Senator from Delaware (Mr. CARPER), the Senator from Illinois (Mr. FITZGERALD), the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of amendment No. 3023 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER (for himself and Mr. ALLEN):

S. 2029. A bill to convert the temporary judgeship for the eastern district of Virginia to a permanent judgeship, and for other purposes; to the Committee on the Judiciary.

Mr. WARNER. Mr. President, I rise today to introduce bipartisan, bicameral legislation to help ensure the continued effective administration of justice in the Commonwealth of Virginia. I am joined in the Senate on this initiative by my colleague Senator GEORGE ALLEN. Congressman ROBERT SCOTT is introducing similar legislation today in the House of Representatives.

Simply put, the legislation we are introducing today will convert a temporary judgeship in the Eastern District of Virginia into a permanent one. Without swift passage of this legislation, the Eastern District of Virginia could lose an authorized judgeship, thus placing an even greater workload on the already hard working judges that serve in this judicial district.

By way of background, in 1990, Congress authorized a temporary judgeship for the Eastern District of Virginia, bringing the total number of authorized judgeships in that district to ten, nine permanent judgeships and one temporary judgeship.

In 2000, Congress looked closely at the heavy caseload the judges of the Eastern District of Virginia carried, and as a result Congress authorized one additional permanent judgeship. With the advice of Senator ALLEN and me, President Bush has nominated Mr. Henry Hudson to fill this judicial vacancy. I strongly support Mr. Hudson's nomination and look forward to him receiving a confirmation hearing and a vote in the full Senate. Mr. Hudson has been deemed ''well qualified'' by the American Bar Association.

Thus, to date, eleven judgeships are currently authorized on the Eastern District of Virginia's bench. However, the temporary judgeship in the Eastern District of Virginia is set to expire with the first vacancy occurring after April 8, 2002. Thus, when one of the active judges on the Eastern District bench retires, takes senior status, or passes away, that position will not be filled, thus leaving the court with one less authorized judgeship than it has currently. It is important to note that Mr. Hudson's nomination will not be effected by the lapsing of the temporary judgeship.

If the temporary judgeship in the Eastern District of Virginia lapses, and this judicial district loses an authorized judgeship, an already overworked judiciary will be without relief.

The Judicial Conference of the United States recommends that a district have a newly authorized judgeship when the weighted filings per judge exceed 430 cases. In 2001, the weighted caseload per judge on the Eastern District was 617. If Virginia's temporary judgeship expires, the per judge weighted caseload would sky-rocket to 679 cases per judge.

Moreover, it is now clear based on experience that the Department of Justice has prosecuted and will continue to prosecute terrorist cases in the Eastern District of Virginia. Already, the Eastern District is proceeding with the cases of Zacaris Moussaoui and John Walker Lindh. While the judges

on the Eastern District bench stand ready to proceed with these and other cases, these cases could significantly increase the numbers of cases and the complexity of cases the judges on this bench preside over.

Given its already high case load and given the fact that the Eastern District is facing the likelihood of even a higher caseload with the terrorist prosecutions, the Eastern District of Virginia is in a unique position. Converting the temporary judgeship to a permanent one will provide some relief.

Accordingly, Congressman SCOTT, Senator ALLEN and I have joined together in support of this legislation that will simply allow the Eastern District to continue to maintain its current level of eleven district court judges.

This request is inherently reasonable. We are simply asking to maintain the status-quo of eleven authorized judgeships on the Eastern District bench. Meanwhile, the Judicial Conference currently recommends one additional permanent judgeship and the conversion of a temporary judgeship to a permanent judgeship.

I ask Chairman LEAHY and Senator HATCH to swiftly report this legislation from the Judiciary Committee, and I urge my colleagues to support final passage. Time is of the essence. We must ensure that the judicial system in the Eastern District of Virginia continues to be able to serve Virginians, and indeed the country, in an efficient manner.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2029

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DISTRICT JUDGESHIP FOR THE EASTERN DISTRICT OF VIRGINIA.**

(a) CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP.—The existing judgeship for the eastern district of Virginia authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table contained in section 133(a) of title 28, United States Code, is amended by striking the item relating to Virginia and inserting the following:

''Virginia:
Eastern ........................................ 11
Western ........................................ 4''.

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By Mr. CONRAD:

S. 2030. A bill to establish a community Oriented Policing Services anti-methamphetamine grant program, and for other purposes; to the Committee on the Judiciary.

Mr. CONRAD. Mr. President, today I introduce legislation intended to marshal the resources of the Federal Government, the expertise of State and local law enforcement, and the eyes, ears, and caring of our Nation's communities, to work together to eradicate the scourge of methamphetamine from our Nation.

Meth statistics are startling, not only for what they say about where we are currently, but even more important about the potential magnitude of the problem in our very near future. Nationwide U.S. Drug Enforcement Administration, DEA, meth lab seizures have increased seven-fold from 1994 to 2000. The North Dakota lab seizure numbers are even more dramatic: a nearly twenty-fold increase from 1998 to 2001. Among 2001 high school seniors, 6.9 percent had tried meth; the eighth-grade figure was 4.4 percent. Even more startling perhaps is that 28.3 percent of high school seniors said it was ''fairly easy'' or ''very easy'' to obtain meth. This is particularly alarming because meth is more addictive than cocaine, leading to paranoia, aggression, violent behavior, and hallucinations, and ultimately, and amazingly quickly, to brain damage similar to Alzheimer's disease, stroke, and epilepsy.

The COPS Anti-Methamphetamine Act of 2002 has one aim, to focus the principles of community policing on the problem of methamphetamine. Since its inception in 1994, the Community Oriented Policing Services COPS, program has been a catalyst for establishing a partnership between police and the community, leading to a reduction in crime and a strengthening of our neighborhoods. It is now time to tightly focus the COPS success on our nation's meth scourge.

Until now, meth use and production has too often occurred underground and below the radar screens of local law enforcement. My COPS methamphetamine initiative, by bringing the community and the local police closer together, will help law enforcement to react more quickly before a meth epidemic get ingrained in a locality, to weed it out before its roots get too deep. If a meth problem already exists in a neighborhood, the community-oriented policing model will allow police to have a better pulse on the drug market, on both the supply and the demand ends to better know the market's pressure points.

My initiative calls for five years of grants, at $75 million a year, to be given to localities for programs aimed at anti-meth enforcement, production, prevention, treatment, training, and intelligence-gathering efforts. And because meth is such a problem in rural States like North Dakota, I include a mechanism to ensure that smaller localities get their fair share of funding.

Meth is a continuing problem and challenge in our nation and in North Dakota, and I have been a strong supporter of providing the resources for local law enforcement to combat this drug. In 1998, for example, I was able to include North Dakota in the Midwest High Intensity Drug Trafficking Area, which has provided additional Federal funding to ensure that Federal, State, and local law enforcement works better as a team. The last piece of the puzzle is to ensure that local police are able to work as closely as possible with the community. It is simply imperative that if we are going to eradicate our Nation's spreading meth epidemic, and the countless associated shattered lives and futures lost, we all need to work together.

I urge my colleagues to support this legislation, and I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2030

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be referred to as the ''COPS Anti-Methamphetamine Act of 2002''.

**SEC. 2. GRANTS AUTHORIZED.**

The Attorney General shall make grants on a competitive basis to State and local community policing programs aimed at anti-methamphetamine enforcement, production, prevention, treatment, training, and intelligence gathering efforts.

**SEC. 3. USE OF FUNDS.**

(a) IN GENERAL.—Grants made under section 2 may be used to support personnel salary, equipment, and technology upgrades, officer overtime, and training.

(b) ASSISTANCE FROM COPS OFFICE.—The Community Oriented Policing Services (COPS) Office in the Department of Justice shall work directly with participating State and local community policing programs to assist in crafting innovative anti-methamphetamine strategies.

**SEC. 4. APPLICATION.**

Each eligible entity that desires a grant under this Act shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

**SEC. 5. SUPPLEMENT AND NOT SUPPLANT.**

Grant amounts received under this Act shall be used to supplement, and not supplant, other funds received by State and local community policing programs to assist in the methamphetamine problem.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2007.

(b) LIMITATION.—Not less than 50 percent of the amount appropriated in each fiscal year under subsection (a) shall be awarded to local community policing programs that serve a population of not more than 150,000.

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By Mr. LEAHY (for himself and Mr. BROWNBACK):

S. 2031. A bill to restore Federal remedies for infringements of intellectual property by States, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, in June 1999, the U.S. Supreme Court issued a pair of decisions that altered the legal landscape with respect to intellectual property. I am referring to Florida Prepaid versus College Savings Bank and

its companion case, College Savings Bank versus Florida Prepaid. The Court ruled in these cases that States and their institutions cannot be held liable for damages for patent infringement and other violations of the Federal intellectual property laws, even though they can and do enjoy the full protection of those laws for themselves.

Both Florida Prepaid and College Savings Bank were decided by the same five-to-four majority of the justices. This slim majority of the Court threw out three Federal statutes that Congress passed, unanimously, in the early 1990s, to reaffirm that the Federal patent, copyright, and trademark laws apply to everyone, including the States.

I believe that there is an urgent need for Congress to respond to the Florida Prepaid decisions, for two reasons.

First, the decisions opened up a huge loophole in our Federal intellectual property laws. If we truly believe in fairness, we cannot tolerate a situation in which some participants in the intellectual property system get legal protection but need not adhere to the law themselves. If we truly believe in the free market, we cannot tolerate a situation where one class of market participants have to play by the rules and others do not. As Senator SPECTER said in August 1999, in a floor statement that was highly critical of the Florida Prepaid decisions, they "leave us with an absurd and untenable state of affairs," where "States will enjoy an enormous advantage over their private sector competitors."

This concern is not just abstract. Consider this. In one recent copyright case, the University of Houston was able to avoid any liability by invoking sovereign immunity. The plaintiff in that case, a woman named Denise Chavez, was unable to collect a nickle in connection with the university's alleged unauthorized publication of her short stories. Now, just a short time later, another public university funded by the State of Texas is suing Xerox for copyright infringement.

The second reason why Congress should respond to the Florida Prepaid decisions is that they raise broader concerns about the roles of Congress and the Court. Over the past decade, in a series of five-to-four decisions that might be called examples of "judicial activism," the current Supreme Court majority has overturned Federal legislation with a frequency unprecedented in American constitutional history. In doing so, the Court has more often than not relied on notions of State sovereign immunity that have little if anything to do with the text of the Constitution.

Some of us have liked some of the results; others have liked others; but that is not the point. This activist Court has been whittling away at the legitimate constitutional authority of the Federal Government. At the risk of sounding alarmist, this is the fact of the matter: We are faced with a choice. We can respond, in a careful and measured way, by reinstating our democratic policy choices in legislation that is crafted to meet the Court's stated objections. Or we can run away, abdicate our democratic policy-making duties to the unelected Court, and go down in history as the incredible shrinking Congress.

Just last month, the Court decided to intervene in another copyright dispute, to decide whether Congress went too far in 1998, when we extended the period of copyright protection for an additional 20 years. Many of us on the Judiciary Committee cosponsored that legislation, and it passed unanimously in both Houses. A decision that the legislation is unconstitutional could place further limits on congressional power.

About 4 months after the Florida Prepaid decisions issued, I introduced a bill that responded to those decisions. The Intellectual Property Protection Restoration Act of 1999 was designed to restore Federal remedies for violations of intellectual property rights by states.

I regret that the Senate did not consider my legislation during the last Congress. It has now been nearly 3 years since the Court decisions opened such a troubling loophole in our Federal intellectual property laws. We should delay no further.

Last month, the Judiciary Committee held its first hearing on the issue of sovereign immunity and the protection of intellectual property. I want to thank again everyone who participated in that hearing, which helped greatly to clarify the issues and challenges posed by the Court's new jurisprudence.

Today, I am pleased to be reintroducing the Intellectual Property Protection Restoration Act with my friend and fellow Judiciary Committee member, Senator BROWNBACK. I commend the Senator from Kansas for taking a stand on this important issue. I am also proud to have the House leaders on intellectual property issues, Representatives COBLE and BERMAN, as the principal sponsors of the House companion bill, H.R. 3204.

This bill has the same common-sense goal as the three statutes that the Supreme Court's decisions invalidated: To protect intellectual property rights fully and fairly. But the legislation has been re-engineered, after extensive consultation with constitutional and intellectual property experts, to ensure full compliance with the Court's new jurisprudential requirements. As a result, the bill has earned the strong support of the U.S. Copyright Office and the endorsements of a broad range of organizations including the American Bar Association, the American Intellectual Property Law Association, the Business Software Alliance, the Intellectual Property Owners Association, the International Trademark Association, the Motion Picture Association of America, the Professional Photographers of America Association, and the Chamber of Commerce.

In essence, our bill presents States with a choice. It creates reasonable incentives for States to waive their immunity in intellectual property cases, but it does not oblige them to do so. States that choose not to waive their immunity within 2 years after enactment of the bill would continue to enjoy many of the benefits of the Federal intellectual property system; however, like private parties that sue States for infringement, States that sue private parties for infringement could not recover any money damages unless they had waived their immunity from liability in intellectual property cases.

This arrangement is clearly constitutional. Congress may attach conditions to a State's receipt of Federal intellectual property protection under its Article I intellectual property power just as Congress may attach conditions on a State's receipt of Federal funds under its Article I spending power. Either way, the power to attach conditions to the Federal benefit is part of the greater power to deny the benefit altogether. And no condition could be more reasonable or proportionate than the condition that in order to obtain full protection for your Federal intellectual property rights, you must respect those of others.

I hope we can all agree on the need for corrective legislation. A recent GAO study confirmed that, as the law now stands, owners of intellectual property have few or no alternatives or remedies available against State infringers, just a series of dead ends.

We need to assure American inventors and investors, and our foreign trading partners, that as State involvement in intellectual property becomes ever greater in the new information economy, U.S. intellectual property rights are backed by legal remedies. I want to emphasize the international ramifications here. American trading interests have been well served by our strong and consistent advocacy of effective intellectual property protections in treaty negotiations and other international fora. Those efforts could be jeopardized by the loophole in U.S. intellectual property enforcement that the Supreme Court has created.

The Intellectual Property Protection Restoration Act restores protection for violations of intellectual property rights that may, under current law, go unremedied. We unanimously passed more sweeping legislation earlier this decade, but were thwarted by the Supreme Court's shifting jurisprudence. We should enact this legislation without further delay.

I ask unanimous consent that the text of the bill and a section-by-section summary of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2031

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; REFERENCES.**

(a) SHORT TITLE.—This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2002''.

(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

**SEC. 2. PURPOSES.**

The purposes of this Act are to—

(1) help eliminate the unfair commercial advantage that States and their instrumentalities now hold in the Federal intellectual property system because of their ability to obtain protection under the United States patent, copyright, and trademark laws while remaining exempt from liability for infringing the rights of others;

(2) promote technological innovation and artistic creation in furtherance of the policies underlying Federal laws and international treaties relating to intellectual property;

(3) reaffirm the availability of prospective relief against State officials who are violating or who threaten to violate Federal intellectual property laws; and

(4) abrogate State sovereign immunity in cases where States or their instrumentalities, officers, or employees violate the United States Constitution by infringing Federal intellectual property.

**SEC. 3. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION.**

(a) AMENDMENT TO PATENT LAW.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d)(1) No remedies under section 284 or 289 shall be awarded in any civil action brought under this title for infringement of a patent issued on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such patent, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a patent if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the patent, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the patent.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(b) AMENDMENT TO COPYRIGHT LAW.—Section 504 of title 17, United States Code, is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action brought under this title for infringement of an exclusive right in a work created on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to an exclusive right if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the exclusive right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(c) AMENDMENT TO TRADEMARK LAW.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action arising under this Act for a violation of any right of the registrant of a mark registered in the Patent and Trademark Office on or after January 1, 2002, or any right of the owner of a mark first used in commerce on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the violation commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a right of the registrant or owner of a mark if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO PATENT LAW.—

(A) IN GENERAL.—Section 296 of title 35, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 29 of title 35, United States Code, is amended by striking the item relating to section 296.

(2) AMENDMENTS TO COPYRIGHT LAW.—

(A) IN GENERAL.—Section 511 of title 17, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 511.

(3) AMENDMENTS TO TRADEMARK LAW.—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(A) by striking subsection (b);

(B) in subsection (c), by striking ''or (b)'' after ''subsection (a)''; and

(C) by redesignating subsection (c) as subsection (b).

**SEC. 4. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES.**

In any action against an officer or employee of a State or State instrumentality for any violation of any of the provisions of title 17 or 35, United States Code, the Trademark Act of 1946, or the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), remedies shall be available against the officer or employee in the same manner and to the same extent as such remedies are available in an action against a private individual under like circumstances. Such remedies may include monetary damages assessed against the officer or employee, declaratory and injunctive relief, costs, attorney fees, and destruction of infringing articles, as provided under the applicable Federal statute.

**SEC. 5. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY.**

(a) DUE PROCESS VIOLATIONS.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that deprives any person of property in violation of the fourteenth amendment of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(b) TAKINGS VIOLATIONS.—

(1) IN GENERAL.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that

takes property in violation of the fifth and fourteenth amendments of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(2) EFFECT ON OTHER RELIEF.—Nothing in this subsection shall prevent or affect the ability of a party to obtain declaratory or injunctive relief under section 4 of this Act or otherwise.

(c) COMPENSATION.—Compensation under subsection (a) or (b)—

(1) may include actual damages, profits, statutory damages, interest, costs, expert witness fees, and attorney fees, as set forth in the appropriate provisions of title 17 or 35, United States Code, the Trademark Act of 1946, and the Plant Variety Protection Act; and

(2) may not include an award of treble or enhanced damages under section 284 of title 35, United States Code, section 504(d) of title 17, United States Code, section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117 (b)), and section 124(b) of the Plant Variety Protection Act (7 U.S.C. 2564(b)).

(d) BURDEN OF PROOF.—In any action under subsection (a) or (b)—

(1) with respect to any matter that would have to be proved if the action were an action for infringement brought under the applicable Federal statute, the burden of proof shall be the same as if the action were brought under such statute; and

(2) with respect to all other matters, including whether the State provides an adequate remedy for any deprivation of property proved by the injured party under subsection (a), the burden of proof shall be upon the State or State instrumentality.

(e) EFFECTIVE DATE.—This section shall apply to violations that occur on or after the date of enactment of this Act.

**SEC. 6. RULES OF CONSTRUCTION.**

(a) JURISDICTION.—The district courts shall have original jurisdiction of any action arising under this Act under section 1338 of title 28, United States Code.

(b) BROAD CONSTRUCTION.—This Act shall be construed in favor of a broad protection of intellectual property, to the maximum extent permitted by the United States Constitution.

(c) SEVERABILITY.—If any provision of this Act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.

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INTELLECTUAL PROPERTY PROTECTION RESTORATION ACT OF 2002 SECTION-BY-SECTION SUMMARY

Recent Supreme Court decisions invalidated prior efforts by Congress to abrogate State sovereign immunity in actions arising under the federal intellectual property laws. The Court's decisions give States an unfair advantage in the intellectual property marketplace by shielding them from money damages when they infringe the rights of private parties, while leaving them free to obtain money damages when their own rights are infringed. These decisions also have the potential to impair the rights of private intellectual property owners, discourage technological innovation and artistic creation, and compromise the ability of the United States to advocate effective enforcement of intellectual property rights in other countries and to fulfill its own obligations under international treaties. The Intellectual Property Protection Restoration Act of 2002 creates reasonable incentives for States to waive their immunity in intellectual property cases and participate in the intellectual property marketplace on equal terms with private parties. The bill also provides new remedies for State infringements that rise to the level of constitutional violations.

Sec. 1. SHORT TITLE; REFERENCES. This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2001.''

Sec. 2. PURPOSES. Legislative purposes in support of this Act.

Sec. 3. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION. Places States on an equal footing with private parties by eliminating any damages remedy for infringement of State-owned intellectual property unless the State has waived its immunity from any damages remedy for infringement of privately-owned intellectual property. Intellectual property that the State owned before the enactment of this Act is not affected.

Sec. 4. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES. Affirms the availability of injunctive relief against State officials who violate the Federal intellectual property laws. Such relief is authorized under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which held that an individual may sue a State official for prospective relief requiring the State official to cease violating federal law, even if the State itself is immune from suit under the eleventh amendment. This section also affirms that State officials may be personally liable for violations of the intellectual property laws.

Sec. 5. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY. Establishes a right to compensation for State infringements of intellectual property that rise to the level of constitutional violations. Compensation shall be measured by the statutory remedies available under the federal intellectual property laws, but may not include treble damages.

Sec. 6. RULES OF CONSTRUCTION. Establishes rules for interpreting this Act.

Mr. BROWNBACK. Mr. President, I am pleased to join Chairman LEAHY in sponsoring S. 2031, a bill that will protect intellectual property rights fully and fairly by complying with the Court's new constitutional requirements. This bill builds upon the same common-sense goals as the statutes that Senator HATCH championed a decade ago. I would like to commend both members for their outstanding leadership in this area. My hope is that S. 2031 will finally bring closure to our efforts in trying to clarify a complex and difficult issue for both Congress and the Courts.

There are two sides to this issue and both are compelling. For individuals and companies who make the investment and take the risk in creating new products and services, their property rights are at stake when a state infringes upon their intellectual property. States on the other hand also want to protect their sovereignty under the Constitution and want to assert their intellectual property rights especially in the context of private/public partnerships where ownership issues may be in doubt, creating the prospect for protracted litigation.

That is why this inherent conflict demands congressional action. With the arrival of the digital revolution where exact copies and reproductions can be made without limitations, this is an important economic issue for individuals and companies trying to compete in the marketplace. The question is how to fashion a legislative remedy in light of recent Supreme Court decisions that struck down previous attempts to bring clarity to the issue.

I believe the Leahy/Brownback bill is a reasonable compromise solution without running afoul of the constitutional issues highlighted by the Supreme Court in Seminole Tribe and the Florida Pre-paid cases.

S. 2031 presents States with a choice. It creates reasonable incentives for States to waive their sovereign immunity in intellectual property cases. States that choose not to waive their immunity within 2 years after enactment would continue to enjoy many of the benefits in the intellectual property marketplace. However, like private parties that sue States for infringement, States that sue private parties for infringement will not be able to recover any money damages unless they waive their immunity from liability in intellectual property cases. All other remedial actions will continue to be available to State litigants.

As Chairman LEAHY previously observed, this is clearly constitutional and avoids the concerns raised by the Courts with regard to past statutes addressing this matter. Under the Constitution's Article I spending power, Congress can attach limited conditions to a State's receipt of Federal funds. Similarly, it would seem to me that a State's receipt of Federal intellectual property protection under Article I's intellectual property power can similarly be conditioned. Especially in light of the commercial implications of this bill, it seems reasonable to expect that a condition to respect the rights of others is a necessary and logical complement to obtaining the full protections of the Federal intellectual property rights.

I would also add that a recent GAO study initiated by Senator HATCH when he chaired the Judiciary Committee confirmed the lack of alternatives or remedies against State infringers.

I would also like to add that this matter has repercussions which extend far beyond the domestic realm. The United States is one of the leading proponents for the enforcement of intellectual property rights throughout the world. That's why we cannot afford to be inconsistent in our own observance of intellectual property rights. Through international agreements such as TRIPs and NAFTA, the United States has vigorously challenged international institutions and other nations to adopt and enforce more extensive intellectual property laws. When States assert sovereign immunity for the purpose of infringing upon intellectual property rights, it damages the credibility of the United States internationally, and could possibly even lead to violations of our treaty obligations. Any decrease in the level of enforcement of intellectual property rights around the world is likely to harm American businesses, because of our

position as international leaders in industries like pharmaceuticals, information technology, and biotechnology.

I urge my colleagues to support this bill which provides a balanced and appropriate intellectual property remedy for American inventors and investors without compromising the sovereign rights of States under our Constitution.

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By Mr. CHAFEE (for himself, Mr. REED, Mr. KERRY, and Mr. KENNEDY):

S. 2033. A bill to authorize appropriations for the John H. Chafee Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CHAFEE. Mr. President, I rise today to introduce a bill to reauthorize funding for the John H. Chafee Blackstone River Valley National Heritage Corridor. I am pleased to be joined by three of my colleagues, Senators REED, KERRY and KENNEDY, as original cosponsors of this legislation. Representative Patrick Kennedy is joining this effort by introducing companion legislation in the House today.

Since the Corridor's inception on November 10, 1986, the Blackstone River Valley has undergone a profound rebirth. The Blackstone River, once polluted and neglected, has been transformed into an object of tremendous community pride and national importance. Historians recognize the Valley of the Blackstone River, gracefully winding through 24 communities in the States of Massachusetts and Rhode Island, as the birthplace of the American Industrial Revolution. Slater Mill, founded by the textile maker Samuel Slater in the 1790's, was the first to adapt English machine technology to cotton-yard manufacturing powered by water wheels. The success of the Slater Mill heralded in America's first factory-based industry of mass production, with accompanying communities dedicated to the production of manufactured goods. Gradually, this new ''Rhode Island System of Manufacturing'' led to profound changes economically, socially and culturally across the new nation.

This nationally significant story was all but forgotten when Senator John H. Chafee authored Federal legislation to establish the Blackstone River Valley National Heritage Corridor with the purpose of preserving and interpreting for present and future generations the uniqueness and significant historical value of the Blackstone Valley. A Corridor Commission, consisting of federally-appointed local and State representatives from Massachusetts and Rhode Island, was established to work in partnership with the National Park Service to carry out the mission of the Blackstone Corridor. For over 15 years, the Corridor Commission and its Heritage Partners have worked to instill a vision of community revitalization, historic preservation, and environmental protection in the Blackstone Corridor. The Corridor is a truly unique national park area, for the Federal Government does not own or manage any of the land or resources within the system. Yet, the Blackstone Corridor includes cities, towns, villages and almost 1 million people, and has become a model for other heritage corridors across the country.

Working in partnership with two State governments, dozens of local municipalities, businesses, nonprofit historical and environmental organizations, educational institutions, and many private citizens, the Corridor Commission has instilled a sense of community and identity to the residents of the Blackstone Corridor. These partnerships have resulted in the reversal of a long-standing lack of investment in the Valley's historic, cultural and natural resources. A Valley-wide identity program has placed over 200 educational signs across the Corridor to guide visitors into the Blackstone and its heritage sites. Key historic districts and sites have been preserved through the assistance of the Commission and its partners working to identify critical historic preservation funding and assistance. The water quality of the Blackstone River has seen dramatic improvements through cooperative, community-driven projects that have worked to ensure more consistent water flows; the protection of open space along the valley; the initiation of local river cleanups; and the remediation of toxic sites along the river's banks.

Since 1986, Congress has established three accounts for the management of the Corridor: the Operation Account providing funding for National Park Service staff support; the Technical Assistance Account to provide assistance to communities and Corridor partners; and the Development Fund to provide construction funding for the implementation of interpretive programming, river restoration, historic preservation, tourism and economic development and educational activities within the Corridor. A 10-year plan, completed by the Commission in 1998, outlines a strategy for the implementation of development funds by focusing on the ''resource protection needs and projects critical to maintaining or interpreting the distinctive nature of the Corridor.''

The legislation I am introducing today, along with Senators REED, KERRY, and KENNEDY, will reauthorize the Development Fund account to provide $10 million in Federal funding from fiscal years 2003 through 2006. This authorization is consistent with the Blackstone Corridor's 10-year Plan guiding the Corridor's future development needs. Development funding will be used to move forward with projects that include a bi-State 45 mile long Blackstone bikeway; construction of river access points for recreational and tourism opportunities; renovation and reuse of historic structures and surrounding landscapes; and educational programs to raise the awareness of the Corridor's significance in the region.

With over 15 years of success and a number of challenges lying ahead, we urge Congress' continued support for the John H. Chafee Blackstone River Valley National Heritage Corridor. The Blackstone Corridor tells the story of the beginnings of America's movement into the industrial era. We must allow the telling of this story to continue.

I ask by unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2033

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. AUTHORIZATION OF APPROPRIATIONS.**

Section 10 of Public Law 99–647 (16 U.S.C. 461 note) is amended by striking subsection (b) and inserting the following:

''(b) DEVELOPMENT FUNDS.—There is authorized to be appropriated to carry out section 8(c) for the period of fiscal years 2003 through 2006 not more than $10,000,000, to remain available until expended.''.

Mr. KERRY. Mr. President, I rise in support of legislation that has been filed today to reauthorize the development fund for the John H. Chafee Blackstone River Valley National Heritage Corridor. The bill is sponsored by Senator CHAFEE, and I am proud to be an original cosponsor.

The John H. Chafee Blackstone River Valley National Heritage Corridor was established by Congress in 1986 to recognize and preserve the natural, cultural and historical resources of the region. I would like to read a description of the Blackstone River written by the National Park Service. I think it captures its special nature.

The Blackstone River Valley illustrates a major revolution in America's past: the Age of Industry. The way people lived during this turning point in history can still be seen in the valley's villages, farms, cities and riverways—in a working landscape between Worchester, Massachusetts and Providence, Rhode Island. In 1790, American craftsmen built the first machines that successfully used waterpower to spin cotton. America's first factory, Slater Mill was built on the banks of the Blackstone River. Here, industrial America was born. This revolutionary way of using waterpower spread quickly throughout the valley and New England. It changed nearly everything. Two hundred years later, the story of the American Industrial Revolution can still be seen and told in the Blackstone River Valley. Thousands of structures and whole landscapes show the radical changes in the way people lived and worked. The way people lived before the advent of industry also can be seen on the land, and the choices for the future are visible as well. For good and bad, each generation makes its choices and changes the character of life in the valley. Today, the rural to city landscapes tell the story of this revolution in American history. Native Americans, European colonizers, farmers, craftsmen, industrialists, and continuing waves of immigrants all left the imprint of their work and

culture on the land. The farms, hilltop market centers, mill villages, cities, dams, canals, roads, and railroads are physical products of tremendous social and economic power.

With the assistance of the National Park Service, the Commission has forged collaborative partnerships with a new spirit of ownership among government leaders, private investors and residents for the river resources and communities. The Blackstone has been called ''America's hardest working river'' because of its industrial legacy. That same description could apply to the people who have decided themselves to making the Blackstone River Valley National Heritage Corridor a success today. The natural value and historical importance of the Blackstone and the dedication of the people involved is why I am eager to support Senator CHAFEE's legislation.

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By Mr. VOINOVICH (for himself, Mr. FEINGOLD, Mr. LEVIN, Mr. DEWINE, and Mr. WARNER).

S. 2034. A bill to amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste; to the Committee on Environment and Public Works.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation along with a bipartisan coalition of my colleagues, Senators FEINGOLD, DEWINE, LEVIN, and WARNER that will allow States to finally obtain relief from the seemingly endless stream of solid waste that is flowing into States like Ohio, Michigan, Wisconsin, and Virginia.

Our bill, the Municipal Solid Waste Interstate Transportation and Local Authority Act, gives State and local governments the tools they need to limit garbage imports from other States and manage their own waste within their own States.

Each year, Ohio receives well over one million tons of municipal solid waste from other States. Over the last four years, annual levels of waste imports have been steadily increasing, and estimates for 2000 indicate that Ohio imported approximately 1.8 million tons of municipal solid waste. While these shipments are not near our record level of 3.7 million tons in 1989, I believe an import level of nearly two million tons of trash is still entirely too high.

Because it is cheap and because it is expedient, communities in a number of States have simply put their garbage on trains or on trucks and shipped it to be landfilled in States like Ohio, Indiana, Michigan, Pennsylvania, and Virginia. This is wrong and it has to stop.

Many State and local governments in importing states have worked hard to develop strategies to reduce waste and plan for future disposal needs. As Governor of Ohio, I worked aggressively to limit shipments of out-of-state waste into Ohio through voluntary cooperation of Ohio landfill operators and agreements with other States. We saw limited relief. However, Ohio has no assurance that our out-of-state waste numbers won't rise significantly, particularly in light of last year's closure of the Fresh Kills landfill on Staten Island. Unfortunately, the Federal courts have prevented States from enacting laws to protect our natural resources from being utilized as landfill space. What has emerged is an unnatural pattern where Ohio and other States, both importing and exporting, have tried to take reasonable steps to encourage conservation and local disposal, only to be undermined by a barrage of court decisions at every turn.

Quite frankly, State and local governments' hands are tied. Lacking a specific delegation of authority from Congress, States that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-state waste. In Ohio, I set up a comprehensive recycling program when I was Governor that was meant to reduce the waste-stream and help protect our environment. However, the actions of other States have worked to undermine our recycling efforts because Ohioans continue to ask why they should recycle to conserve landfill space when it is being used for other States' trash. Our citizens already have to live with the consequences of large amounts of out-of-state waste—increased noise, traffic, wear and tear on our roads and litter that is blown onto private homes, schools and businesses.

Ohio and many other States have taken comprehensive steps to protect our resources and address a significant environmental threat. However, excessive, uncontrolled waste disposal from other States has limited the ability of Ohioans to protect their environment, health and safety. I do not believe the Commerce Clause requires us to service other states at the expense of our own citizens' efforts.

A national solution is long overdue. When I became governor of Ohio in 1991, I joined a coalition with other Midwest Governors—Governor BAYH now Senator BAYH, of Indiana, Governor Engler of Michigan and Governor Casey, and later Governors Ridge and O'Bannon, of Pennsylvania—to try to pass effective interstate waste and flow control legislation.

In 1996, Midwest Governors were asked by congressional leaders to reach an agreement with Governor Whitman of New Jersey and Governor Pataki of new York on interstate waste provisions. The importing States quickly came to an agreement with Governor Whitman of New Jersey—the second largest exporting State—on interstate waste provisions. We began discussions with New York, but these were put on hold indefinitely in the wake of their May, 1996 announcement to close the Fresh Kills landfill.

The bill that my colleagues and I are introducing today reflects the agreement that Ohio, Indiana, Michigan, and Pennsylvania reached with then-Governor Whitman.

For Ohio, the most important aspect of this bill is the ability for states to limit future waste flows. For instance, they would have the option to set a ''permit cap,'' which would allow a State to impose a percentage limit on the amount of out-of-state waste that a new facility or expansion of an existing facility could receive annually. Or, a State could choose a provision giving them the authority to deny a permit for a new facility if it is determined that there is not a local or in-state regional need for that facility.

These provisions provide assurances to Ohio and other States that new facilities will not be built primarily for the purpose of receiving out-of-state waste. For instance, in 1996, Ohio EAP had to issue a permit for a landfill that was bidding to take 5,000 tons of garbage a day—approximately 1.5 million tons a year—from Canada alone, which would have doubled the amount of out-of-state waste entering Ohio. Thankfully this landfill lost the Canadian bid. Ironically though, the waste company put their plans on hold to build the facility because there is not enough need for the facility in the State and they need to ensure a steady out-of-state waste flow to make the plan feasible.

In addition, this bill would ensure that landfills and incinerators could not receive trash from other States until local governments approve its receipt. States could also freeze their out-of-state waste imports at 1993 levels, while some States would be able to reduce these levels to 65 percent by the year 2006. This bill also allows States to reduce the amount of construction and demolition debris they receive by 50 percent beginning in 2007.

States also could impose up to $3-per-ton cost recovery surcharge on out-of-state waste. This fee would help provide States with the funding necessary to implement solid waste management programs.

Unfortunately, efforts to place reasonable restrictions on out-of-state waste shipments have been perceived by some as an attempt to ban all out-of-state trash. On the contrary, we are not asking for outright authority for states to prohibit all out-of-state waste, nor are we seeking to prohibit waste from any one State. We are merely asking for reasonable tools that will enable state and local governments to act responsibly to manage their own waste and limit unreasonable waste imports from other states. Such measures would give substantial authority to limit imports and plan facilities around our own states' needs.

I believe the time is right to consider and pass an effective interstate waste bill. The bill we are introducing today is a consensus of importing and exporting States—States that have willingly come forward to offer a reasonable solution.

States like Ohio should not continue to be saddled with the environmental

costs of other States' inability to take care of their own solid waste. We in Ohio have worked hard to address our own needs. We are actively recycling and working to reduce our waste-stream to preserve our environment for future generations. Congress must act now to prevent this problem from spreading further to our neighbors out West and to help our neighbors in the East better manage the trash they generate.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2034

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Municipal Solid Waste Interstate Transportation and Local Authority Act of 2002''.

**SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.**

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

**"SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.**

''(a) DEFINITIONS.—In this section:

''(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government', with respect to a facility, means—

''(A) the public body authorized by State law to plan for the management of municipal solid waste for the area in which the facility is located or proposed to be located, a majority of the members of which public body are elected officials;

''(B) in a case in which there is no public body described in subparagraph (A), the elected officials of the city, town, township, borough, county, or parish selected by the Governor and exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or proposed to be located; or

''(C) in a case in which there is in effect an agreement or compact under section 105(b), contiguous units of local government located in each of 2 or more adjoining States that are parties to the agreement, for purposes of providing authorization under subsection (b), (c), or (d) for municipal solid waste generated in the jurisdiction of 1 of those units of local government and received in the jurisdiction of another of those units of local government.

''(2) AUTHORIZATION TO RECEIVE OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'authorization to receive out-of-State municipal solid waste' means a provision contained in a host community agreement or permit that specifically authorizes a facility to receive out-of-State municipal solid waste.

''(B) SPECIFIC AUTHORIZATION.—

''(i) SUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), only the following, shall be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) an authorization to receive municipal solid waste from any place within a fixed radius surrounding the facility that includes an area outside the State;

''(II) an authorization to receive municipal solid waste from any place of origin in the absence of any provision limiting those places of origin to places inside the State;

''(III) an authorization to receive municipal solid waste from a specifically identified place or places outside the State; or

''(IV) a provision that uses such a phrase as 'regardless of origin' or 'outside the State' in reference to municipal solid waste.

''(ii) INSUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), either of the following, by itself, shall not be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) A general reference to the receipt of municipal solid waste from outside the jurisdiction of the affected local government.

''(II) An agreement to pay a fee for the receipt of out-of-State municipal solid waste.

''(C) FORM OF AUTHORIZATION.—To qualify as an authorization to receive out-of-State municipal solid waste, a provision need not be in any particular form; a provision shall so qualify so long as the provision clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from places of origin outside the State.

''(3) DISPOSAL.—The term 'disposal' includes incineration.

''(4) EXISTING HOST COMMUNITY AGREEMENT.—The term 'existing host community agreement' means a host community agreement entered into before January 1, 2002.

''(5) FACILITY.—The term 'facility' means a landfill, incinerator, or other enterprise that received municipal solid waste before the date of enactment of this section.

''(6) GOVERNOR.—The term 'Governor', with respect to a facility, means the chief executive officer of the State in which a facility is located or proposed to be located or any other officer authorized under State law to exercise authority under this section.

''(7) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding agreement, lawfully entered into between an owner or operator of a facility and an affected local government that contains an authorization to receive out-of-State municipal solid waste.

''(8) MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'municipal solid waste' means—

''(i) material discarded for disposal by—

''(I) households (including single and multifamily residences); and

''(II) public lodgings such as hotels and motels; and

''(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

''(I) is essentially the same as material described in clause (i); or

''(II) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service.

''(B) INCLUSIONS.—The term 'municipal solid waste' includes—

''(i) appliances;

''(ii) clothing;

''(iii) consumer product packaging;

''(iv) cosmetics;

''(v) disposable diapers;

''(vi) food containers made of glass or metal;

''(vii) food waste;

''(viii) household hazardous waste;

''(ix) office supplies;

''(x) paper; and

''(xi) yard waste.

''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

''(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

''(ii) solid waste resulting from—

''(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

''(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

''(III) a corrective action taken under this Act;

''(iii) recyclable material—

''(I) that has been separated, at the source of the material, from waste destined for disposal; or

''(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

''(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

''(v) solid waste that is—

''(I) generated by an industrial facility; and

''(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

''(aa) that is owned or operated by the generator of the waste;

''(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

''(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

''(vi) medical waste that is segregated from or not mixed with solid waste;

''(vii) sewage sludge or residuals from a sewage treatment plant; or

''(viii) combustion ash generated by a resource recovery facility or municipal incinerator.

''(9) NEW HOST COMMUNITY AGREEMENT.—The term 'new host community agreement' means a host community agreement entered into on or after the date of enactment of this section.

''(10) OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'out-of-State municipal solid waste', with respect to a State, means municipal solid waste generated outside the State.

''(B) INCLUSION.—The term 'out-of-State municipal solid waste' includes municipal solid waste generated outside the United States.

''(11) RECEIVE.—The term 'receive' means receive for disposal.

''(12) RECYCLABLE MATERIAL.—

''(A) IN GENERAL.—The term 'recyclable material' means a material that may feasibly be used as a raw material or feedstock in place of or in addition to, virgin material in the manufacture of a usable material or product.

''(B) VIRGIN MATERIAL.—In subparagraph (A), the term 'virgin material' includes petroleum.

''(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF OUT-OF-STATE WASTE.—No facility may receive for disposal out-of-State municipal solid waste except as provided in subsections (c), (d), and (e).

''(c) EXISTING HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under an existing host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the owner or operator of the facility has complied with paragraph (2); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) PUBLIC INSPECTION OF AGREEMENT.—Not later than 90 days after the date of enactment of this section, the owner or operator of a facility described in paragraph (1) shall—

''(A) provide a copy of the existing host community agreement to the State and affected local government; and

''(B) make a copy of the existing host community agreement available for inspection by the public in the local community.

''(d) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under a new host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the agreement meets the requirements of paragraphs (2) through (5); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) REQUIREMENTS FOR AUTHORIZATION.—

''(A) IN GENERAL.—Authorization to receive out-of-State municipal solid waste under a new host community agreement shall—

''(i) be granted by formal action at a meeting;

''(ii) be recorded in writing in the official record of the meeting; and

''(iii) remain in effect according to the terms of the new host community agreement.

''(B) SPECIFICATIONS.—An authorization to receive out-of-State municipal solid waste shall specify terms and conditions, including—

''(i) the quantity of out-of-State municipal solid waste that the facility may receive; and

''(ii) the duration of the authorization.

''(3) INFORMATION.—Before seeking an authorization to receive out-of-State municipal solid waste under a new host community agreement, the owner or operator of the facility seeking the authorization shall provide (and make readily available to the State, each contiguous local government and Indian tribe, and any other interested person for inspection and copying) the following:

''(A) A brief description of the facility, including, with respect to the facility and any planned expansion of the facility, a description of—

''(i) the size of the facility;

''(ii) the ultimate municipal solid waste capacity of the facility; and

''(iii) the anticipated monthly and yearly volume of out-of-State municipal solid waste to be received at the facility.

''(B) A map of the facility site that indicates—

''(i) the location of the facility in relation to the local road system;

''(ii) topographical and general hydrogeological features;

''(iii) any buffer zones to be acquired by the owner or operator; and

''(iv) all facility units.

''(C) A description of—

''(i) the environmental characteristics of the site, as of the date of application for authorization;

''(ii) ground water use in the area, including identification of private wells and public drinking water sources; and

''(iii) alterations that may be necessitated by, or occur as a result of, operation of the facility.

''(D) A description of—

''(i) environmental controls required to be used on the site (under permit requirements), including—

''(I) run-on and run off management;

''(II) air pollution control devices;

''(III) source separation procedures;

''(IV) methane monitoring and control;

''(V) landfill covers;

''(VI) landfill liners or leachate collection systems; and

''(VII) monitoring programs; and

''(ii) any waste residuals (including leachate and ash) that the facility will generate, and the planned management of the residuals.

''(E) A description of site access controls to be employed by the owner or operator and road improvements to be made by the owner or operator, including an estimate of the timing and extent of anticipated local truck traffic.

''(F) A list of all required Federal, State, and local permits.

''(G) Estimates of the personnel requirements of the facility, including—

''(i) information regarding the probable skill and education levels required for job positions at the facility; and

''(ii) to the extent practicable, a distinction between preoperational and postoperational employment statistics of the facility.

''(H) Any information that is required by State or Federal law to be provided with respect to—

''(i) any violation of environmental law (including regulations) by the owner or operator or any subsidiary of the owner or operator;

''(ii) the disposition of any enforcement proceeding taken with respect to the violation; and

''(iii) any corrective action and rehabilitation measures taken as a result of the proceeding.

''(I) Any information that is required by Federal or State law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

''(J) Any information that is required by Federal or State law to be provided with respect to gifts and contributions made by the owner or operator.

''(4) ADVANCE NOTIFICATION.—Before taking formal action to grant or deny authorization to receive out-of-State municipal solid waste under a new host community agreement, an affected local government shall—

''(A) notify the State, contiguous local governments, and any contiguous Indian tribes;

''(B) publish notice of the proposed action in a newspaper of general circulation at least 15 days before holding a hearing under subparagraph (C), except where State law provides for an alternate form of public notification; and

''(C) provide an opportunity for public comment in accordance with State law, including at least 1 public hearing.

''(5) SUBSEQUENT NOTIFICATION.—Not later than 90 days after an authorization to receive out-of-State municipal solid waste is granted under a new host community agreement, the affected local government shall give notice of the authorization to—

''(A) the Governor;

''(B) contiguous local governments; and

''(C) any contiguous Indian tribes.

''(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MUNICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO HOST COMMUNITY AGREEMENTS.—

''(1) PERMIT.—

''(A) IN GENERAL.—Subject to subsection (f), a facility for which, before the date of enactment of this section, the State issued a permit containing an authorization may receive out-of-State municipal solid waste if—

''(i) not later than 90 days after the date of enactment of this section, the owner or operator of the facility notifies the affected local government of the existence of the permit; and

''(ii) the owner or operator of the facility complies with all of the terms and conditions of the permit after the date of enactment of this section.

''(B) DENIED OR REVOKED PERMITS.—A facility may not receive out-of-State municipal solid waste under subparagraph (A) if the operating permit for the facility (or any renewal of the operating permit) was denied or revoked by the appropriate State agency before the date of enactment of this section unless the permit or renewal was granted, renewed, or reinstated before that date.

''(2) DOCUMENTED RECEIPT DURING 1993.—

''(A) IN GENERAL.—Subject to subsection (f), a facility that, during 1993, received out-of-State municipal solid waste may receive out-of-State municipal solid waste if the owner or operator of the facility submits to the State and to the affected local government documentation of the receipt of out-of-State municipal solid waste during 1993, including information about—

''(i) the date of receipt of the out-of-State municipal solid waste;

''(ii) the volume of out-of-State municipal solid waste received in 1993;

''(iii) the place of origin of the out-of-State municipal solid waste received; and

''(iv) the type of out-of-State municipal solid waste received.

''(B) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(C) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a facility that receives out-of-State municipal solid waste under subparagraph (A)—

''(i) shall make available for inspection by the public in the local community a copy of the documentation submitted under subparagraph (A); but

''(ii) may omit any proprietary information contained in the documentation.

''(3) BI-STATE METROPOLITAN STATISTICAL AREAS.—

''(A) IN GENERAL.—A facility in a State may receive out-of-State municipal solid waste if the out-of-State municipal solid waste is generated in, and the facility is located in, the same bi-State level A metropolitan statistical area (as defined and listed by the Director of the Office of Management and Budget as of the date of enactment of this section) that contains 2 contiguous major cities, each of which is in a different State.

''(B) GOVERNOR AGREEMENT.—A facility described in subparagraph (A) may receive out-of-State municipal solid waste only if the Governor of each State in the bi-State metropolitan statistical area agrees that the facility may receive out-of-State municipal solid waste.

''(f) REQUIRED COMPLIANCE.—A facility may not receive out-of-State municipal solid waste under subsection (c), (d), or (e) at any time at which the State has determined that—

''(1) the facility is not in compliance with applicable Federal and State laws (including regulations) relating to—

''(A) facility design and operation; and

''(B)(i) in the case of a landfill—

''(I) facility location standards;

''(II) leachate collection standards;

''(III) ground water monitoring standards; and

''(IV) standards for financial assurance and for closure, postclosure, and corrective action; and

''(ii) in the case of an incinerator, the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

''(2) the noncompliance constitutes a threat to human health or the environment.

''(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(1) LIMITS ON QUANTITY OF WASTE RECEIVED.—

''(A) LIMIT FOR ALL FACILITIES IN THE STATE.—

''(i) IN GENERAL.—A State may limit the quantity of out-of-State municipal solid waste received annually at each facility in the State to the quantity described in paragraph (2).

''(ii) NO CONFLICT.—

''(I) IN GENERAL.—A limit under clause (i) shall not conflict with—

''(aa) an authorization to receive out-of-State municipal solid waste contained in a permit; or

''(bb) a host community agreement entered into between the owner or operator of a facility and the affected local government.

''(II) CONFLICT.—A limit shall be treated as conflicting with a permit or host community agreement if the permit or host community agreement establishes a higher limit, or if the permit or host community agreement does not establish a limit, on the quantity of out-of-State municipal solid waste that may be received annually at the facility.

''(B) LIMIT FOR PARTICULAR FACILITIES.—

''(i) IN GENERAL.—An affected local government that has not executed a host community agreement with a particular facility may limit the quantity of out-of-State municipal solid waste received annually at the facility to the quantity specified in paragraph (2).

''(ii) NO CONFLICT.—A limit under clause (i) shall not conflict with an authorization to receive out-of-State municipal solid waste contained in a permit.

''(C) EFFECT ON OTHER LAWS.—Nothing in this subsection supersedes any State law relating to contracts.

''(2) LIMIT ON QUANTITY.—

''(A) IN GENERAL.—For any facility that commenced receiving documented out-of-State municipal solid waste before the date of enactment of this section, the quantity referred to in paragraph (1) for any year shall be equal to the quantity of out-of-State municipal solid waste received at the facility during calendar year 1993.

''(B) DOCUMENTATION.—

''(i) CONTENTS.—Documentation submitted under subparagraph (A) shall include information about—

''(I) the date of receipt of the out-of-State municipal solid waste;

''(II) the volume of out-of-State municipal solid waste received in 1993;

''(III) the place of origin of the out-of-State municipal solid waste received; and

''(IV) the type of out-of-State municipal solid waste received.

''(ii) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(3) NO DISCRIMINATION.—In establishing a limit under this subsection, a State shall act in a manner that does not discriminate against any shipment of out-of-State municipal solid waste on the basis of State of origin.

''(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE TO DECLINING PERCENTAGES OF QUANTITIES RECEIVED DURING 1993.—

''(1) IN GENERAL.—A State in which facilities received more than 650,000 tons of out-of-State municipal solid waste in calendar year 1993 may establish a limit on the quantity of out-of-State municipal solid waste that may be received at all facilities in the State described in subsection (e)(2) in the following quantities:

''(A) In calendar year 2003, 95 percent of the quantity received in calendar year 1993.

''(B) In each of calendar years 2004 through 2007, 95 percent of the quantity received in the previous year.

''(C) In each calendar year after calendar year 2007, 65 percent of the quantity received in calendar year 1993.

''(2) UNIFORM APPLICABILITY.—A limit under paragraph (1) shall apply uniformly—

''(A) to the quantity of out-of-State municipal solid waste that may be received at all facilities in the State that received out-of-State municipal solid waste in calendar year 1993; and

''(B) for each facility described in clause (i), to the quantity of out-of-State municipal solid waste that may be received from each State that generated out-of-State municipal solid waste received at the facility in calendar year 1993.

''(3) NOTICE.—Not later than 90 days before establishing a limit under paragraph (1), a State shall provide notice of the proposed limit to each State from which municipal solid waste was received in calendar year 1993.

''(4) ALTERNATIVE AUTHORITIES.—If a State exercises authority under this subsection, the State may not thereafter exercise authority under subsection (g).

''(i) COST RECOVERY SURCHARGE.—

''(1) DEFINITIONS.—In this subsection:

''(A) COST.—The term 'cost' means a cost incurred by the State for the implementation of State laws governing the processing, combustion, or disposal of municipal solid waste, limited to—

''(i) the issuance of new permits and renewal of or modification of permits;

''(ii) inspection and compliance monitoring;

''(iii) enforcement; and

''(iv) costs associated with technical assistance, data management, and collection of fees.

''(B) PROCESSING.—The term 'processing' means any activity to reduce the volume of municipal solid waste or alter the chemical, biological or physical state of municipal solid waste, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

''(2) AUTHORITY.—A State may authorize, impose, and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

''(3) AMOUNT OF SURCHARGE.—The amount of a cost recovery surcharge—

''(A) may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (5); and

''(B) in no event may exceed $3.00 per ton of waste.

''(4) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State under this subsection shall be used to fund solid waste management programs, administered by the State or a political subdivision of the State, that incur costs for which the surcharge is collected.

''(5) CONDITIONS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

''(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

''(ii) the surcharge is based on those costs to the State demonstrated under subparagraph (A) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

''(iii) the surcharge is compensatory and is not discriminatory.

''(B) PROHIBITION OF SURCHARGE.—In no event shall a cost recovery surcharge be imposed by a State to the extent that—

''(i) the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax paid to the State or a political subdivision of the State; or

''(ii) to the extent that the amount of the surcharge is offset by voluntary payments to a State or a political subdivision of the State, in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

''(C) SUBSIDY; NON-DISCRIMINATION.—The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A).

''(j) IMPLEMENTATION AND ENFORCEMENT.—A State may adopt such laws (including regulations), not inconsistent with this section, as are appropriate to implement and enforce this section, including provisions for penalties.

''(k) ANNUAL STATE REPORT.—

''(1) FACILITIES.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each facility that receives out-of-State municipal solid waste shall submit to the State information specifying—

''(A) the quantity of out-of-State municipal solid waste received during the preceding calendar year; and

''(B) the State of origin of the out-of-State municipal solid waste received during the preceding calendar year.

''(2) TRANSFER STATIONS.—

''(A) DEFINITION OF RECEIVE FOR TRANSFER.—In this paragraph, the term 'receive for transfer' means receive for temporary storage pending transfer to another State or facility.

''(B) REPORT.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each transfer station that receives for transfer out-of-State municipal solid waste shall submit to the State a report describing—

''(i) the quantity of out-of-State municipal solid waste received for transfer during the preceding calendar year;

''(ii) each State of origin of the out-of-State municipal solid waste received for transfer during the preceding calendar year; and

''(iii) each State of destination of the out-of-State municipal solid waste transferred from the transfer station during the preceding calendar year.

''(3) NO PRECLUSION OF STATE REQUIREMENTS.—The requirements of paragraphs (1) and (2) do not preclude any State requirement for more frequent reporting.

''(4) FALSE OR MISLEADING INFORMATION.—Documentation submitted under paragraphs (1) and (2) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(5) REPORT.—On March 1, 2003, and on March 1 of each year thereafter, each State to which information is submitted under paragraphs (1) and (2) shall publish and make available to the public a report containing information on the quantity of out-of-State municipal solid waste received for disposal and received for transfer in the State during the preceding calendar year.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

''Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid waste at existing facilities.''.

**SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.**

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 2(a)), is amended by adding after section 4011 the following:

**"SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.**

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'authorization to receive out-of-State municipal solid waste', 'disposal', 'existing host community agreement', 'host community agreement', 'municipal solid waste', 'out-of-State municipal solid waste', and 'receive' have the meaning given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—The term 'facility' means a landfill, incinerator, or other enterprise that receives out-of-State municipal solid waste on or after the date of enactment of this section.

''(b) AUTHORITY TO DENY PERMITS OR IMPOSE PERCENTAGE LIMITS.—

''(1) ALTERNATIVE AUTHORITIES.—In any calendar year, a State may exercise the authority under either paragraph (2) or paragraph (3), but may not exercise the authority under both paragraphs (2) and (3).

''(2) AUTHORITY TO DENY PERMITS.—A State may deny a permit for the construction or operation of or a major modification to a facility if—

''(A) the State has approved a State or local comprehensive municipal solid waste management plan developed under Federal or State law; and

''(B) the denial is based on a determination, under a State law authorizing the denial, that there is not a local or regional need for the facility in the State.

''(3) AUTHORITY TO IMPOSE PERCENTAGE LIMIT.—A State may provide by law that a State permit for the construction, operation, or expansion of a facility shall include the requirement that not more than a specified percentage (which shall be not less than 20 percent) of the total quantity of municipal solid waste received annually at the facility shall be out-of-State municipal solid waste.

''(c) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(3), a facility operating under an existing host community agreement that contains an authorization to receive out-of-State municipal solid waste in a specific quantity annually may receive that quantity.

''(2) NO EFFECT ON STATE PERMIT DENIAL.—Nothing in paragraph (1) authorizes a facility described in that paragraph to receive out-of-State municipal solid waste if the State has denied a permit to the facility under subsection (b)(2).

''(d) UNIFORM AND NONDISCRIMINATORY APPLICATION.—A law under subsection (b) or (c)—

''(1) shall be applicable throughout the State;

''(2) shall not directly or indirectly discriminate against any particular facility; and

''(3) shall not directly or indirectly discriminate against any shipment of out-of-State municipal solid waste on the basis of place of origin.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 1(b)) is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4012. Authority to deny permits for or impose percentage limits on new facilities.''.

**SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.**

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 3(a)), is amended by adding after section 4012 the following:

**"SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.**

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'affected local government', 'Governor', and 'receive' have the meanings given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—

''(A) BASE YEAR QUANTITY.—The term 'base year quantity' means—

''(i) the annual quantity of out-of-State construction and demolition debris received at a State in calendar year 2003, as determined under subsection (c)(2)(B)(i); or

''(ii) in the case of an expedited implementation under subsection (c)(5), the annual quantity of out-of-State construction and demolition debris received in a State in calendar year 2002.

''(B) CONSTRUCTION AND DEMOLITION WASTE.—

''(i) IN GENERAL.—The term 'construction and demolition waste' means debris resulting from the construction, renovation, repair, or demolition of or similar work on a structure.

''(ii) EXCLUSIONS.—The term 'construction and demolition waste' does not include debris that—

''(I) is commingled with municipal solid waste; or

''(II) is contaminated, as determined under subsection (b).

''(C) FACILITY.—The term 'facility' means any enterprise that receives construction and demolition waste on or after the date of enactment of this section, including landfills.

''(D) OUT-OF-STATE CONSTRUCTION AND DEMOLITION WASTE.—The term 'out-of-State construction and demolition waste' means—

''(i) with respect to any State, construction and demolition debris generated outside the State; and

''(ii) construction and demolition debris generated outside the United States, unless the President determines that treatment of the construction and demolition debris as out-of-State construction and demolition waste under this section would be inconsistent with the North American Free Trade Agreement or the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501)).

''(b) CONTAMINATED CONSTRUCTION AND DEMOLITION DEBRIS.—

''(1) IN GENERAL.—For the purpose of determining whether debris is contaminated, the generator of the debris shall conduct representative sampling and analysis of the debris.

''(2) SUBMISSION OF RESULTS.—Unless not required by the affected local government, the results of the sampling and analysis under paragraph (1) shall be submitted to the affected local government for recordkeeping purposes only.

''(3) DISPOSAL OF CONTAMINATED DEBRIS.—Any debris described in subsection (a)(2)(B)(i) that is determined to be contaminated shall be disposed of in a landfill that meets the requirements of this Act.

''(c) LIMIT ON CONSTRUCTION AND DEMOLITION WASTE.—

''(1) IN GENERAL.—A State may establish a limit on the annual amount of out-of-State construction and demolition waste that may be received at landfills in the State.

''(2) REQUIRED ACTION BY THE STATE.—A State that seeks to limit the receipt of out-of-State construction and demolition waste received under this section shall—

''(A) not later than January 1, 2003, establish and implement reporting requirements to determine the quantity of construction and demolition waste that is—

''(i) disposed of in the State; and

''(ii) imported into the State; and

''(B) not later than March 1, 2004—

''(i) establish the annual quantity of out-of-State construction and demolition waste received during calendar year 2003; and

''(ii) report the tonnage received during calendar year 2003 to the Governor of each exporting State.

''(3) REPORTING BY FACILITIES.—

''(A) IN GENERAL.—Each facility that receives out-of-State construction and demolition debris shall report to the State in which the facility is located the quantity and State of origin of out-of-State construction and demolition debris received—

''(i) in calendar year 2002, not later than February 1, 2003; and

''(ii) in each subsequent calendar year, not later than February 1 of the calendar year following that year.

''(B) NO PRECLUSION OF STATE REQUIREMENTS.—The requirement of subparagraph (A) does not preclude any State requirement for more frequent reporting.

''(C) PENALTY.—Each submission under this paragraph shall be made under penalty of perjury under State law.

''(4) LIMIT ON DEBRIS RECEIVED.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B).

''(B) REDUCED ANNUAL PERCENTAGES.—A limit on out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2004, 95 percent of the base year quantity;

''(ii) in calendar year 2005, 90 percent of the base year quantity;

''(iii) in calendar year 2006, 85 percent of the base year quantity;

''(iv) in calendar year 2007, 80 percent of the base year quantity;

''(v) in calendar year 2008, 75 percent of the base year quantity;

''(vi) in calendar year 2009, 70 percent of the base year quantity;

''(vii) in calendar year 2010, 65 percent of the base year quantity;

''(viii) in calendar year 2011, 60 percent of the base year quantity;

''(ix) in calendar year 2012, 55 percent of the base year quantity; and

''(x) in calendar year 2013 and in each subsequent year, 50 percent of the base year quantity.

''(5) EXPEDITED IMPLEMENTATION.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B) if—

''(i) on the date of enactment of this section, the State has determined the quantity of construction and demolition waste received in the State in calendar year 2002; and

''(ii) the State complies with paragraphs (2) and (3).

''(B) EXPEDITED REDUCED ANNUAL PERCENTAGES.—An expedited implementation of a limit on the receipt of out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2003, 95 percent of the base year quantity;

''(ii) in calendar year 2004, 90 percent of the base year quantity;

''(iii) in calendar year 2005, 85 percent of the base year quantity;

''(iv) in calendar year 2006, 80 percent of the base year quantity;

''(v) in calendar year 2007, 75 percent of the base year quantity;

''(vi) in calendar year 2008, 70 percent of the base year quantity;

''(vii) in calendar year 2009, 65 percent of the base year quantity;

''(viii) in calendar year 2010, 60 percent of the base year quantity;

''(ix) in calendar year 2011, 55 percent of the base year quantity; and

''(x) in calendar year 2012 and in each subsequent year, 50 percent of the base year quantity.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 3(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4013. Construction and demolition debris.''.

**SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.**

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 4(a)) is amended by adding after section 4013 the following:

**''SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.**

''(a) FLOW CONTROL AUTHORITY FOR FACILITIES PREVIOUSLY DESIGNATED.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste and recyclable materials voluntarily relinquished by the owner or generator thereof to particular waste management facilities, or facilities for recyclable materials, designated as of the suspension date, if each of the following conditions are met:

''(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, as such jurisdiction was in effect on the suspension date.

''(2) Such flow control authority is imposed through the adoption or execution of a law, ordinance, regulation, resolution, or other legally binding provision or official act of the State or political subdivision that—

''(A) was in effect on the suspension date;

''(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution; or

''(C) was in effect immediately prior to suspension or partial suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of an injunction or other court order of the type described in subparagraph (B) issued by a court of competent jurisdiction.

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

''(A) on or before the suspension date, presented eligible bonds for sale;

''(B) on or before the suspension date, issued a written public declaration or regulation stating that bonds would be issued and held hearings regarding such issuance, and subsequently presented eligible bonds for sale within 180 days of the declaration or regulation; or

''(C) on or before the suspension date, executed a legally binding contract or agreement that—

''(i) was in effect as of the suspension date;

''(ii) obligates the delivery of a minimum quantity of municipal solid waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials; and

''(iii) either—

''(I) obligates the State or political subdivision to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required timeframe; or

''(II) otherwise imposes liability for damages resulting from such failure.

''(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—Subsection (a) authorizes only the exercise of flow control authority with respect to the flow to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which such flow control authority was applicable on the suspension date and—

''(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of the suspension date, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories on or before the suspension date; and

''(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of the suspension date, only of the classes or categories that were clearly identified by the State or political subdivision as of the suspension date to be flow controlled to such facility.

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

''(1) The final maturity date of the bond referred to in subsection (a)(3)(A) or (B).

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

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

The dates referred to in paragraphs (1) and (2) shall be determined based upon the terms and provisions of the bond or contract or agreement. In the case of a contract or agreement described in subsection (a)(3)(C) that has no specified expiration date, for purposes of paragraph (2) of this subsection the expiration date shall be the first date that the State or political subdivision that is a party to the contract or agreement can withdraw from its responsibilities under the contract or agreement without being in default thereunder and without substantial penalty or other substantial legal sanction. The expiration date of a contract or agreement referred to in subsection (a)(3)(C) shall be deemed to occur at the end of the period of an extension exercised during the term of the original contract or agreement, if the duration of that extension was specified by such contract or agreement as in effect on the suspension date.

''(d) INDEMNIFICATION FOR CERTAIN TRANSPORTATION.—Notwithstanding any other provision of this section, no State or political subdivision may require any person to transport municipal solid waste or recyclable materials, or to deliver such waste or materials for transportation, to any active portion of a municipal solid waste landfill unit if contamination of such active portion is a basis for listing of the municipal solid waste landfill unit on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such landfill unit has indemnified that person against all liability under that Act with respect to such waste or materials.

''(e) OWNERSHIP OF RECYCLABLE MATERIALS.—Nothing in this section shall authorize any State or political subdivision to require any person to sell or transfer any recyclable materials to such State or political subdivision.

''(f) LIMITATION ON REVENUE.—A State or political subdivision may exercise the flow control authority granted in this section only if the State or political subdivision limits the use of any of the revenues it derives from the exercise of such authority to the payment of one or more of the following:

''(1) Principal and interest on any eligible bond.

''(2) Principal and interest on a bond issued for a qualified environmental retrofit.

''(3) Payments required by the terms of a contract referred to in subsection (a)(3)(C).

''(4) Other expenses necessary for the operation and maintenance and closure of designated facilities and other integral facilities identified by the bond necessary for the operation and maintenance of such designated facilities.

''(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before the suspension date. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

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

''(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of the applicable State or political subdivision; or

''(2) after the applicable State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority expressly because of the existence of a court order of the type described in subsection (a)(2)(B) issued by a court of the same State or the Federal judicial circuit within which such State is located and before the effective date on which it resumes enforcement of flow control authority after enactment of this section,

shall be fully enforceable in accordance with State law.

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

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

''(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State; and

''(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,

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

''(2) ADDITIONAL FLOW CONTROL AUTHORITY.—A State or any political subdivision of a State that meets the requirements of paragraph (1) may exercise flow control authority over all classes and categories of municipal solid waste that were subject to flow

control by that State or political subdivision on May 16, 1994, by directing municipal solid waste from any waste management facility that was designated as of May 16, 1994 to any other waste management facility in the State without regard to whether the political subdivision in which the municipal solid waste is generated had designated the particular waste management facility or had issued a bond or entered into a contact referred to in subparagraph (A) or (B) of subsection (a)(3), respectively.

''(3) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (c).

''(i) EFFECT ON AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS.—Nothing in this section shall be interpreted—

''(1) to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law;

''(2) to permit the exercise of flow control authority over municipal solid waste and recyclable materials to an extent greater than the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials;

''(3) to limit the authority of any State or political subdivision to place a condition on a franchise, license, or contract for municipal solid waste or recyclable materials collection, processing, or disposal; or

''(4) to impair in any manner the authority of any State or political subdivision to adopt or enforce any law, ordinance, regulation, or other legally binding provision or official act relating to the movement or processing of municipal solid waste or recyclable materials which does not constitute discrimination against or an undue burden upon interstate commerce.

''(j) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section. Such provisions, other than subsection (d), shall also apply to the exercise by any State or political subdivision of flow control authority before such date of enactment, except that nothing in this section shall affect any final judgment that is no longer subject to judicial review as of the date of enactment of this section insofar as such judgment awarded damages based on a finding that the exercise of flow control authority was unconstitutional.

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

''(1) the solid waste district, or a political subdivision within such district, is required through a recyclable materials recycling program to meet a municipal solid waste reduction goal of at least 30 percent by the year 2005, and uses revenues generated by the exercise of flow control authority strictly to implement programs to manage municipal solid waste and recyclable materials, other than incineration programs; and

''(2) prior to the suspension date, the solid waste district, or a political subdivision within such district—

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

''(B) was authorized by State statute (enacted prior to January 1, 1992) to exercise flow control authority, and subsequently adopted or sought to exercise the authority through a law, ordinance, regulation, regulatory proceeding, contract, franchise, or other legally binding provision; and

''(C) was required by State statute (enacted prior to January 1, 1992) to develop and implement a solid waste management plan consistent with the State solid waste management plan, and the district solid waste management plan was approved by the appropriate State agency prior to September 15, 1994.

''(l) SPECIAL RULE FOR CERTAIN CONSORTIA.—For purposes of this section, if—

''(1) two or more political subdivisions are members of a consortium of political subdivisions established to exercise flow control authority with respect to any waste management facility or facility for recyclable materials;

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

''(3) the facility was designated as of the suspension date by at least one of such members;

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

''(5) at least one of such members has presented eligible bonds for sale, or entered into a contract or agreement referred to in subsection (a)(3)(C), on or before the suspension date, for such facility,

the facility shall be treated as having been designated, as of May 16, 1994, by all members of such consortium, and all such members shall be treated as meeting the requirements of subsection (a)(2) and (3) with respect to such facility.

''(m) RECOVERY OF DAMAGES.—

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

''(2) APPLICABILITY.—Paragraph (1) shall apply to cases commenced on or after the date of enactment of the Solid Waste Interstate Transportation and Local Authority Act of 1999, and shall apply to cases commenced before such date except cases in which a final judgment no longer subject to judicial review has been rendered.

''(n) DEFINITIONS.—For the purposes of this section—

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

''(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a bond described in paragraph (4)(A) or (B), the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A), (B), or (C) that is applicable to such facility and no later than December 31, 1999.

''(3) DESIGNATED.—The term 'designated' means identified by a State or political subdivision for receipt of all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or political subdivision. Such designation includes designation through—

''(A) bond covenants, official statements, or other official financing documents issued by a State or political subdivision issuing an eligible bond; and

''(B) the execution of a contract of the type described in subsection (a)(3)(C),

in which one or more specific waste management facilities are identified as the requisite facility or facilities for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that State or political subdivision.

''(4) ELIGIBLE BOND.—The term 'eligible bond' means—

''(A) a revenue bond or similar instrument of indebtedness pledging payment to the bondholder or holder of the debt of identified revenues; or

''(B) a general obligation bond,

the proceeds of which are used to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development costs, or finance costs, as evidenced by the bond documents.

''(5) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the regulatory authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or political subdivision.

''(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given that term in section 4011, except that such term—

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

''(B) does not include—

''(i) any substance the treatment and disposal of which is regulated under the Toxic Substances Control Act;

''(ii) waste generated during scrap processing and scrap recycling; or

''(iii) construction and demolition debris, except where the State or political subdivision had on or before January 1, 1989, issued eligible bonds secured pursuant to State or local law requiring the delivery of construction and demolition debris to a waste management facility designated by such State or political subdivision.

''(7) POLITICAL SUBDIVISION.—The term 'political subdivision' means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

''(8) RECYCLABLE MATERIALS.—The term 'recyclable materials' means any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

''(9) SUSPENSION DATE.—The term 'suspension date' means, with respect to a State or political subdivision—

''(A) May 16, 1994;

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

''(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

''(10) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.''.

(b) TABLE OF CONTENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4014. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.''.

**SEC. 6. EFFECT ON INTERSTATE COMMERCE.**

No action by a State or affected local government under an amendment made by this Act shall be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate against interstate commerce.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 227—TO CLARIFY THE RULES REGARDING THE ACCEPTANCE OF PRO BONO LEGAL SERVICES BY SENATORS

Mr. McCONNELL (for himself, Mr. MCCAIN, and Mr. FEINGOLD) submitted the following resolution, which was ordered held at the desk:

S. RES. 227

*Resolved*, That (a) notwithstanding the provisions of the Standing Rules of the Senate or Senate Resolution 508, adopted by the Senate on September 4, 1980, or Senate Resolution 321, adopted by the Senate on October 3, 1996, pro bono legal services provided to a Member of the Senate with respect to any civil action challenging the constitutionality of a Federal statute that expressly authorizes a Member either to file an action or to intervene in an action—

(1) shall not be deemed a gift to the Member;

(2) shall not be deemed to be a contribution to the office account of the Member;

(3) shall not require the establishment of a legal expense trust fund; and

(4) shall be governed by the Select Committee on Ethics Regulations Regarding Disclosure of Pro Bono Legal Services, adopted February 13, 1997, or any revision thereto.

(b) This resolution shall supersede Senate Resolution 321, adopted by the Senate on October 3, 1996.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 3033. Mr. LOTT proposed an amendment to amendment SA 2989 proposed by Mrs. FEINSTEIN (for herself, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, Mr. LEAHY, Mr. DURBIN, Mr. FITZGERALD, and Mr. CORZINE) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 3034. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table.

SA 3035. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, supra; which was ordered to lie on the table.

SA 3036. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, supra; which was ordered to lie on the table.

SA 3037. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3038. Mr. KYL (for himself, Mr. MILLER, Mr. WARNER, Mr. MURKOWSKI, and Mr. VOINOVICH) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3039. Mr. REID (for Mr. BINGAMAN) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

## TEXT OF AMENDMENTS

**SA 3033.** Mr. LOTT proposed an amendment to amendment SA 2989 proposed by Mrs. FEINSTEIN (for herself, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, Mr. LEAHY, Mr. DURBIN, Mr. FITZGERALD, and Mr. CORZINE) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place, add the following:

**SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.**

(a) FINDINGS.—The Senate finds that—

(1) the Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 of the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2001.

**SA 3034.** Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table; as follows:

At the end, add the following:

**SEC. ___. LIMITATION ON ACCEPTANCE OF OUT-OF-STATE CONTRIBUTIONS BY CANDIDATES.**

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 318, is further amended by adding at the end the following new section:

''LIMITATION ON ACCEPTANCE OF OUT-OF-STATE CONTRIBUTIONS BY CANDIDATES

''SEC. 325. (a) LIMITATION.—

''(1) SENATE CANDIDATES.—A Senate candidate and the candidate's authorized committee shall not accept, during an election cycle, contributions from persons other than individuals residing in the candidate's State in an amount exceeding 40 percent of the total amount of contributions accepted during the election cycle.

''(2) HOUSE CANDIDATES.—A House candidate and the candidate's authorized committee shall not accept, during an election cycle, contributions from persons other than individuals residing in the candidate's congressional district in an amount exceeding 40 percent of the total amount of contributions accepted during the election cycle.

''(b) TIME TO MEET REQUIREMENT.—A candidate shall meet the requirement of the applicable paragraph of subsection (a) on the date for filing the post-general election report under section 304(a)(2)(A)(ii).''.

(b) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431), as amended by section 304(c), is further amended by adding at the end the following new paragraphs:

''(27) SENATE CANDIDATE.—The term 'Senate candidate' means a candidate who seeks nomination for election, or election, to the Senate.

''(28) HOUSE CANDIDATE.—The term 'House candidate' means a candidate who seeks nomination for election, or election, to the House of Representatives.''.

**SA 3035.** Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table; as follows:

At the end, add the following:

**SEC. ___. LIMIT ON CONGRESSIONAL USE OF THE FRANKING PRIVILEGE.**

Section 3210(a)(6)(A) of title 39, United States Code, is amended to read as follows:

''(A) A Member of Congress shall not mail any mass mailing as franked mail during a year in which there will be an election for the seat held by the Member during the period between January 1 of that year and the date of the general election for that office, unless the Member has made a public announcement that the Member will not be a