



**S.B. 41**  
124th General Assembly  
(As Introduced)

Sens. Carnes, DiDonato

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**BILL SUMMARY**

- Establishes a two-year moratorium on the licensing of new construction and demolition debris facilities that are planning to accept construction and demolition debris that is generated outside Ohio.

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**CONTENT AND OPERATION**

Current law provides that a person cannot establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license issued by an approved board of health or from the Director of Environmental Protection. If a board or the Director finds that the proposed facility or modification complies with specified rules and standards, the board or Director must issue a license for the facility. (Sec. 3714.06, not in bill.)

For a period of two years following the effective date of the bill, the bill alters the licensing procedure established in current law. During the two-year period established by the bill, the Director or a board of health cannot issue a license to any person for the installation of a new construction and demolition debris facility if the Director or board receives information as a part of the application process discussed below that the proposed facility will accept construction and demolition debris that is generated outside Ohio. (Sec. 3714.061(A).)

As part of the license application process for the installation of a new construction and demolition debris facility during the two-year period established under the bill, the Director or a board of health must inquire if the person proposing to operate the new facility is planning to accept construction and demolition debris that is generated outside this state. Information that is received by the Director or board indicating that the person is not planning to accept at the facility construction and demolition debris that is generated outside this state must be incorporated into the license that is issued for the facility as a condition of

licensure. However, if the person indicates that the facility will accept construction and demolition debris that is generated outside this state, the Director or board must reject the application for licensure. (Sec. 3714.061 (B).)

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## COMMENT

The United States Constitution vests Congress with the power to regulate commerce among the states.<sup>1</sup> As interpreted by the United States Supreme Court, the Commerce Clause, by negative implication, restricts the states' ability to regulate interstate commerce.<sup>2</sup> Through application of the Commerce Clause, the Supreme Court has prohibited states from restricting the interstate flow of commerce, which includes wastes such as solid waste and construction and demolition debris.<sup>3</sup> Because the bill seeks to limit the licensing of new construction and demolition debris facilities that will accept out-of-state materials, it could be interpreted as restricting the flow of articles of commerce into this state if a court reviews the bill for its constitutionality.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-13-01	p. 130

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<sup>1</sup> *U.S. CONST. Art. I, §8, clause 3.*

<sup>2</sup> *Huish Detergents, Inc. v. Warren County, Kentucky et al.*, 214 F.3d 707 (2000); citing *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 87, 107 (1987).

<sup>3</sup> *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).