



Sub. S.B. 41

124th General Assembly

(As Reported by S. Energy, Natural Resources, & Environment)

Sens. Carnes, DiDonato

BILL SUMMARY

- Establishes a two-year moratorium on the operation of construction and demolition debris facilities that have not commenced operation, but are planning to accept construction and demolition debris that is generated outside Ohio.

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 requires the Director or a board of health, whichever is applicable, to suspend the license of a construction and demolition debris facility when two conditions apply. First, the facility has not commenced operation on the bill's effective date. Second, the facility intends to accept construction and demolition debris that is generated outside Ohio. (Sec. 3714.061.)

COMMENT

The United States Constitution vests Congress with the power to regulate commerce among the states.¹ As interpreted by the United States Supreme Court, the Commerce Clause, by negative implication, restricts the states' ability to

¹ *U.S. CONST. Art. I, §8, clause 3.*

regulate interstate commerce.² 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.³ Because the bill seeks to limit the operation of a construction and demolition debris facility 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-13-01	p. 130
Reported, S. Energy, Natural Resources, & Environment	03-15-01	p. 221

S0041-RS.124/jc

² *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).

³ *Philadelphia v. New Jersey*, 437 U.S. 617 (1978).