

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO S. 710  
OFFERED BY MR. SHIMKUS OF ILLINOIS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hazardous Waste  
3 Electronic Manifest Establishment Act”.

**4 SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-  
5 TEM.**

6 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-  
7 posal Act (42 U.S.C. 6921 et seq.) is amended by adding  
8 at the end the following:

**9 “SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST  
10 SYSTEM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BOARD.—The term ‘Board’ means the  
13 Hazardous Waste Electronic Manifest System Advi-  
14 sory Board established under subsection (f).

15 “(2) FUND.—The term ‘Fund’ means the Haz-  
16 arduous Waste Electronic Manifest System Fund es-  
17 tablished by subsection (d).

1           “(3) PERSON.—The term ‘person’ includes an  
2 individual, corporation (including a Government cor-  
3 poration), company, association, firm, partnership,  
4 society, joint stock company, trust, municipality,  
5 commission, Federal agency, State, political subdivi-  
6 sion of a State, or interstate body.

7           “(4) SYSTEM.—The term ‘system’ means the  
8 hazardous waste electronic manifest system estab-  
9 lished under subsection (b).

10          “(5) USER.—The term ‘user’ means a haz-  
11 arduous waste generator, a hazardous waste trans-  
12 porter, an owner or operator of a hazardous waste  
13 treatment, storage, recycling, or disposal facility, or  
14 any other person that—

15           “(A) is required to use a manifest to com-  
16 ply with any Federal or State requirement to  
17 track the shipment, transportation, and receipt  
18 of hazardous waste or other material that is  
19 shipped from the site of generation to an off-  
20 site facility for treatment, storage, disposal, or  
21 recycling; and

22           “(B)(i) elects to use the system to com-  
23 plete and transmit an electronic manifest for-  
24 mat; or

1           “(ii) submits to the system for data proc-  
2           essing purposes a paper copy of the manifest  
3           (or data from such a paper copy), in accordance  
4           with such regulations as the Administrator may  
5           promulgate to require such a submission.

6           “(b) ESTABLISHMENT.—Not later than 3 years after  
7           the date of enactment of this section, the Administrator  
8           shall establish a hazardous waste electronic manifest sys-  
9           tem that may be used by any user.

10          “(c) USER FEES.—

11           “(1) IN GENERAL.—In accordance with para-  
12           graph (4), the Administrator may impose on users  
13           such reasonable service fees as the Administrator de-  
14           termines to be necessary to pay costs incurred in de-  
15           veloping, operating, maintaining, and upgrading the  
16           system, including any costs incurred in collecting  
17           and processing data from any paper manifest sub-  
18           mitted to the system after the date on which the sys-  
19           tem enters operation.

20           “(2) COLLECTION OF FEES.—The Adminis-  
21           trator shall—

22           “(A) collect the fees described in para-  
23           graph (1) from the users in advance of, or as  
24           reimbursement for, the provision by the Admin-  
25           istrator of system-related services; and

1 “(B) deposit the fees in the Fund.

2 “(3) FEE STRUCTURE.—

3 “(A) IN GENERAL.—The Administrator, in  
4 consultation with information technology ven-  
5 dors, shall determine through the contract  
6 award process described in subsection (e) the  
7 fee structure that is necessary to recover the  
8 full cost to the Administrator of providing sys-  
9 tem-related services, including—

10 “(i) contractor costs relating to—

11 “(I) materials and supplies;

12 “(II) contracting and consulting;

13 “(III) overhead;

14 “(IV) information technology (in-  
15 cluding costs of hardware, software,  
16 and related services);

17 “(V) information management;

18 “(VI) collection of service fees;

19 “(VII) reporting and accounting;

20 and

21 “(VIII) project management; and

22 “(ii) costs of employment of direct  
23 and indirect Government personnel dedi-  
24 cated to establishing and maintaining the  
25 system.

1 “(B) ADJUSTMENTS IN FEE AMOUNT.—

2 “(i) IN GENERAL.—The Adminis-  
3 trator, in consultation with the Board,  
4 shall increase or decrease the amount of a  
5 service fee determined under the fee struc-  
6 ture described in subparagraph (A) to a  
7 level that will—

8 “(I) result in the collection of an  
9 aggregate amount for deposit in the  
10 Fund that is sufficient to cover cur-  
11 rent and projected system-related  
12 costs (including any necessary system  
13 upgrades); and

14 “(II) minimize, to the maximum  
15 extent practicable, the accumulation  
16 of unused amounts in the Fund.

17 “(ii) EXCEPTION FOR INITIAL PERIOD  
18 OF OPERATION.—The requirement de-  
19 scribed in clause (i)(II) shall not apply to  
20 any additional fees that accumulate in the  
21 Fund, in an amount that does not exceed  
22 \$2,000,000, during the 3-year period be-  
23 ginning on the date on which the system  
24 enters operation.

1           “(iii) TIMING OF ADJUSTMENTS.—Ad-  
2           justments to service fees described in  
3           clause (i) shall be made—

4                   “(I) initially, at the time at  
5                   which initial development costs of the  
6                   system have been recovered by the  
7                   Administrator such that the service  
8                   fee may be reduced to reflect the  
9                   elimination of the system development  
10                  component of the fee; and

11                   “(II) periodically thereafter, upon  
12                   receipt and acceptance of the findings  
13                   of any annual accounting or auditing  
14                   report under subsection (d)(3), if the  
15                   report discloses a significant disparity  
16                   for a fiscal year between the funds  
17                   collected from service fees under this  
18                   subsection for the fiscal year and ex-  
19                   penditures made for the fiscal year to  
20                   provide system-related services.

21           “(4) CREDITING AND AVAILABILITY OF FEES.—  
22           Fees authorized under this section shall be collected  
23           and available for obligation only to the extent and in  
24           the amount provided in advance in appropriations  
25           Acts.

1       “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST  
2 SYSTEM FUND.—

3           “(1) ESTABLISHMENT.—There is established in  
4 the Treasury of the United States a revolving fund,  
5 to be known as the ‘Hazardous Waste Electronic  
6 Manifest System Fund’, consisting of such amounts  
7 as are deposited in the Fund under subsection  
8 (e)(2)(B).

9           “(2) EXPENDITURES FROM FUND.—

10           “(A) IN GENERAL.—Only to the extent  
11 provided in advance in appropriations Acts, on  
12 request by the Administrator, the Secretary of  
13 the Treasury shall transfer from the Fund to  
14 the Administrator amounts appropriated to pay  
15 costs incurred in developing, operating, main-  
16 taining, and upgrading the system under sub-  
17 section (e).

18           “(B) USE OF FUNDS BY ADMINIS-  
19 TRATOR.—Fees collected by the Administrator  
20 and deposited in the Fund under this section  
21 shall be available to the Administrator subject  
22 to appropriations Acts in accordance with this  
23 section without fiscal year limitation.

24           “(C) OVERSIGHT OF FUNDS.—The Admin-  
25 istrator shall carry out all necessary measures

1 to ensure that amounts in the Fund are used  
2 only to carry out the goals of establishing, oper-  
3 ating, maintaining, upgrading, managing, sup-  
4 porting, and overseeing the system.

5 “(3) ACCOUNTING AND AUDITING.—

6 “(A) ACCOUNTING.—For each 2-fiscal-year  
7 period, the Administrator shall prepare and  
8 submit to the Committee on Environment and  
9 Public Works and the Committee on Appropria-  
10 tions of the Senate and the Committee on En-  
11 ergy and Commerce and the Committee on Ap-  
12 propriations of the House of Representatives a  
13 report that includes—

14 “(i) an accounting of the fees paid to  
15 the Administrator under subsection (c) and  
16 disbursed from the Fund for the period  
17 covered by the report, as reflected by fi-  
18 nancial statements provided in accordance  
19 with—

20 “(I) the Chief Financial Officers  
21 Act of 1990 (Public Law 101–576;  
22 104 Stat. 2838) and amendments  
23 made by that Act; and

24 “(II) the Government Manage-  
25 ment Reform Act of 1994 (Public



1 Law 103–356; 108 Stat. 3410) and  
2 amendments made by that Act; and

3 “(ii) an accounting describing actual  
4 expenditures from the Fund for the period  
5 covered by the report for costs described in  
6 subsection (c)(1).

7 “(B) AUDITING.—

8 “(i) IN GENERAL.—For the purpose  
9 of section 3515(c) of title 31, United  
10 States Code, the Fund shall be considered  
11 a component of an Executive agency.

12 “(ii) COMPONENTS OF AUDIT.—The  
13 annual audit required in accordance with  
14 sections 3515(b) and 3521 of title 31,  
15 United States Code, of the financial state-  
16 ments of activities carried out using  
17 amounts from the Fund shall include an  
18 analysis of—

19 “(I) the fees collected and dis-  
20 bursed under this section;

21 “(II) the reasonableness of the  
22 fee structure in place as of the date of  
23 the audit to meet current and pro-  
24 jected costs of the system;

1                   “(III) the level of use of the sys-  
2                   tem by users; and

3                   “(IV) the success to date of the  
4                   system in operating on a self-sus-  
5                   taining basis and improving the effi-  
6                   ciency of tracking waste shipments  
7                   and transmitting waste shipment  
8                   data.

9                   “(iii) FEDERAL RESPONSIBILITY.—  
10                  The Inspector General of the Environ-  
11                  mental Protection Agency shall—

12                   “(I) conduct the annual audit de-  
13                   scribed in clause (ii); and

14                   “(II) submit to the Administrator  
15                   a report that describes the findings  
16                   and recommendations of the Inspector  
17                   General resulting from the audit.

18                  “(e) CONTRACTS.—

19                   “(1) AUTHORITY TO ENTER INTO CONTRACTS  
20                   FUNDED BY SERVICE FEES.—The Administrator  
21                   may enter into 1 or more information technology  
22                   contracts with entities determined to be appropriate  
23                   by the Administrator (referred to in this subsection  
24                   as ‘contractors’) for the provision of system-related  
25                   services.

1           “(2) TERM OF CONTRACT.—A contract awarded  
2           under this subsection shall have a term of not more  
3           than 10 years.

4           “(3) ACHIEVEMENT OF GOALS.—The Adminis-  
5           trator shall ensure, to the maximum extent prac-  
6           ticable, that a contract awarded under this sub-  
7           section—

8                   “(A) is performance-based;

9                   “(B) identifies objective outcomes; and

10                   “(C) contains performance standards that  
11           may be used to measure achievement and goals  
12           to evaluate the success of a contractor in per-  
13           forming under the contract and the right of the  
14           contractor to payment for services under the  
15           contract, taking into consideration that a pri-  
16           mary measure of successful performance shall  
17           be the development of a hazardous waste elec-  
18           tronic manifest system that—

19                   “(i) meets the needs of the user com-  
20           munity (including States that rely on data  
21           contained in manifests);

22                   “(ii) attracts sufficient user participa-  
23           tion and service fee revenues to ensure the  
24           viability of the system;

1 “(iii) decreases the administrative  
2 burden on the user community; and

3 “(iv) provides the waste receipt data  
4 applicable to the biennial reports required  
5 by section 3002(a)(6).

6 “(4) PAYMENT STRUCTURE.—Each contract  
7 awarded under this subsection shall include a provi-  
8 sion that specifies—

9 “(A) the service fee structure of the con-  
10 tractor that will form the basis for payments to  
11 the contractor; and

12 “(B) the fixed-share ratio of monthly serv-  
13 ice fee revenues from which the Administrator  
14 shall reimburse the contractor for system-re-  
15 lated development, operation, and maintenance  
16 costs.

17 “(5) CANCELLATION AND TERMINATION.—

18 “(A) IN GENERAL.—If the Administrator  
19 determines that sufficient funds are not made  
20 available for the continuation in a subsequent  
21 fiscal year of a contract entered into under this  
22 subsection, the Administrator may cancel or  
23 terminate the contract.

24 “(B) NEGOTIATION OF AMOUNTS.—The  
25 amount payable in the event of cancellation or

1           termination of a contract entered into under  
2           this subsection shall be negotiated with the con-  
3           tractor at the time at which the contract is  
4           awarded.

5           “(6) NO EFFECT ON OWNERSHIP.—Regardless  
6           of whether the Administrator enters into a contract  
7           under this subsection, the system shall be owned by  
8           the Federal Government.

9           “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST  
10          SYSTEM ADVISORY BOARD.—

11           “(1) ESTABLISHMENT.—Not later than 3 years  
12           after the date of enactment of this section, the Ad-  
13           ministrator shall establish a board to be known as  
14           the ‘Hazardous Waste Electronic Manifest System  
15           Advisory Board’.

16           “(2) COMPOSITION.—The Board shall be com-  
17           posed of 9 members, of which—

18           “(A) 1 member shall be the Administrator  
19           (or a designee), who shall serve as Chairperson  
20           of the Board; and

21           “(B) 8 members shall be individuals ap-  
22           pointed by the Administrator—

23           “(i) at least 2 of whom shall have ex-  
24           pertise in information technology;

1                   “(ii) at least 3 of whom shall have ex-  
2                   perience in using or represent users of the  
3                   manifest system to track the transpor-  
4                   tation of hazardous waste under this sub-  
5                   title (or an equivalent State program); and

6                   “(iii) at least 3 of whom shall be a  
7                   State representative responsible for proc-  
8                   essing those manifests.

9                   “(3) DUTIES.—The Board shall meet annually  
10                  to discuss, evaluate the effectiveness of, and provide  
11                  recommendations to the Administrator relating to,  
12                  the system.

13                 “(g) REGULATIONS.—

14                 “(1) PROMULGATION.—

15                 “(A) IN GENERAL.—Not later than 1 year  
16                 after the date of enactment of this section, the  
17                 Administrator shall promulgate regulations to  
18                 carry out this section.

19                 “(B) INCLUSIONS.—The regulations pro-  
20                 mulgated pursuant to subparagraph (A) may  
21                 include such requirements as the Administrator  
22                 determines to be necessary to facilitate the  
23                 transition from the use of paper manifests to  
24                 the use of electronic manifests, or to accommo-  
25                 date the processing of data from paper mani-

1           feats in the electronic manifest system, includ-  
2           ing a requirement that users of paper manifests  
3           submit to the system copies of the paper mani-  
4           fests for data processing purposes.

5           “(C) REQUIREMENTS.—The regulations  
6           promulgated pursuant to subparagraph (A)  
7           shall ensure that each electronic manifest pro-  
8           vides, to the same extent as paper manifests  
9           under applicable Federal and State law, for—

10           “(i) the ability to track and maintain  
11           legal accountability of—

12           “(I) the person that certifies that  
13           the information provided in the mani-  
14           fest is accurately described; and

15           “(II) the person that acknowl-  
16           edges receipt of the manifest;

17           “(ii) if the manifest is electronically  
18           submitted, State authority to access paper  
19           printout copies of the manifest from the  
20           system; and

21           “(iii) access to all publicly available  
22           information contained in the manifest.

23           “(2) EFFECTIVE DATE OF REGULATIONS.—Any  
24           regulation promulgated by the Administrator under  
25           paragraph (1) and in accordance with section 3003

1 relating to electronic manifesting of hazardous waste  
2 shall take effect in each State as of the effective  
3 date specified in the regulation.

4 “(3) ADMINISTRATION.—The Administrator  
5 shall carry out regulations promulgated under this  
6 subsection in each State unless the State program is  
7 fully authorized to carry out such regulations in lieu  
8 of the Administrator.

9 “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT  
10 TO CERTAIN STATES.—In any case in which the State in  
11 which waste is generated, or the State in which waste will  
12 be transported to a designated facility, requires that the  
13 waste be tracked through a hazardous waste manifest, the  
14 designated facility that receives the waste shall, regardless  
15 of the State in which the facility is located—

16 “(1) complete the facility portion of the applica-  
17 ble manifest;

18 “(2) sign and date the facility certification; and

19 “(3) submit to the system a final copy of the  
20 manifest for data processing purposes.

21 “(i) AUTHORIZATION FOR START-UP ACTIVITIES.—  
22 There are authorized to be appropriated \$2,000,000 for  
23 each of fiscal years 2013 through 2015 for start-up activi-  
24 ties to carry out this section, to be offset by collection of  
25 user fees under subsection (c) such that all such appro-



1 priated funds are offset by fees as provided in subsection  
2 (c).”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
4 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)  
5 is amended by inserting at the end of the items relating  
6 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.

