

Union Calendar No. 408

103^D CONGRESS
2^D SESSION

H. R. 4683

[Report No. 103-738]

A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation of municipal solid waste, and for other purposes.

SEPTEMBER 22, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1994

Mr. PALLONE introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 22, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 29, 1994]

A BILL

To amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation of municipal solid waste, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. CONGRESSIONAL AUTHORIZATION OF STATE**
2 **CONTROL OVER TRANSPORTATION, MANAGE-**
3 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
4 **WASTE.**

5 (a) *IN GENERAL.*—*Subtitle D of the Solid Waste Dis-*
6 *posal Act (42 U.S.C. 6941 et seq.) is amended by adding*
7 *at the end the following new section:*

8 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**
9 **CONTROL OVER TRANSPORTATION, MANAGE-**
10 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
11 **WASTE.**

12 *“(a) AUTHORITY.*—*Each State and each qualified po-*
13 *litical subdivision may, in accordance with this section, ex-*
14 *ercise flow control authority within the boundaries of such*
15 *State or political subdivision, as the case may be, for each*
16 *of the following:*

17 *“(1) Municipal solid waste generated from house-*
18 *hold sources within the boundaries of the State or*
19 *qualified political subdivision.*

20 *“(2) Municipal solid waste generated within the*
21 *boundaries of the State or qualified political subdivi-*
22 *sion, if, before May 15, 1994, the State or qualified*
23 *political subdivision adopted a law, ordinance, regu-*
24 *lation, solid waste management plan or legally bind-*
25 *ing provision that—*

1 “(A) exercised flow control authority over
2 such solid waste with respect to a proposed or ex-
3 isting waste management facility designated be-
4 fore May 15, 1994, or

5 “(B) identified the use of 1 or more waste
6 management methods that will be necessary for
7 the transportation, management, or disposal of
8 municipal solid waste generated within its
9 boundaries, and committed to the designation of
10 1 or more waste management facilities for that
11 method or methods.

12 “(3) Recyclable materials generated within the
13 boundaries of the State or subdivision.

14 Any State or qualified political subdivision meeting the re-
15 quirements of subparagraph (A) or (B) of paragraph (2)
16 may also, after the effective date of this section, direct, limit,
17 regulate or prohibit the transportation, management, and
18 disposal of such solid waste from any existing or future
19 waste management facility to any other existing or future
20 waste management facility, and may do so without regard
21 to subsection (b)(2).

22 “(b) LIMITATIONS.—(1) A State or qualified political
23 subdivision may exercise the authority described in para-
24 graph (3) of subsection (a) with respect to recyclable mate-
25 rials only if—

1 “(A) the generator or owner of the materials vol-
2 untarily made the materials available to the State or
3 qualified political subdivision, or the designee of the
4 State or qualified political subdivision, and relin-
5 quished any rights to, or ownership of, such mate-
6 rials; and

7 “(B) the State or qualified political subdivision,
8 or the designee of the State or qualified political sub-
9 division, assumes such rights to, or ownership of, such
10 materials.

11 “(2) A State or qualified political subdivision may ex-
12 ercise the authority provided by subsection (a)(1) or (a)(3)
13 only if the State or qualified political subdivision—

14 “(A) before exercising the authority described in
15 subsection (a)(1), establishes a program to separate,
16 or divert at the point of generation, recyclable mate-
17 rials from the municipal solid waste, for purposes of
18 recycling, reclamation, or reuse, in accordance with
19 any Federal or State law or municipal solid waste
20 planning requirements in effect; and

21 “(B) after conducting 1 or more public hear-
22 ings—

23 “(i) finds, on the basis of the record devel-
24 oped at the hearing or hearings that it is nec-
25 essary to exercise the authority to meet the cur-

1 *rent solid waste management needs (as of the*
2 *date of the record) or the anticipated solid waste*
3 *management needs of the State or qualified polit-*
4 *ical subdivision for management of municipal*
5 *solid waste or recyclable materials; and*

6 *“(ii) provides a written explanation of the*
7 *reasons of the finding described in clause (i).*

8 *“(3) The authority to direct, limit, regulate, or pro-*
9 *hibit the transportation, management, or disposal of solid*
10 *waste pursuant to subsection (a)(2) shall apply only to the*
11 *specific classes or categories of solid waste to which the au-*
12 *thority under subsection (a)(2)(A) was applied by the State*
13 *or qualified political subdivision before May 15, 1994, and/*
14 *or to the specific classes or categories of solid waste for*
15 *which the State or qualified political subdivision committed*
16 *to designate a waste management facility under subsection*
17 *(a)(2)(B).*

18 *“(4) The authority granted under subsection (a)(2)*
19 *shall expire if a State or qualified political subdivision has*
20 *not designated, by law, ordinance, regulation, solid waste*
21 *management plan, or other legally binding provision, 1 or*
22 *more proposed or existing waste management facilities*
23 *within 5 years of the date of enactment of this section.*

24 *“(c) COMPETITIVE DESIGNATION PROCESS.—A State*
25 *or qualified political subdivision may exercise the authority*

1 *provided by subsection (a) only if the State or qualified po-*
2 *litical subdivision develops and implements a competitive*
3 *designation process with respect to waste management fa-*
4 *cilities or facilities for recyclable materials which—*

5 “(1) ensures that the designation process is based
6 on, or is part of, a municipal solid waste manage-
7 ment plan that is adopted by the State or qualified
8 political subdivision and that is designed to ensure
9 long-term management capacity for municipal solid
10 waste or recyclable materials generated within the
11 boundaries of the State or subdivision;

12 “(2) sets forth the goals of the designation proc-
13 ess, including at a minimum—

14 “(A) capacity assurance;

15 “(B) the establishment of provisions to pro-
16 vide that protection of human health and the en-
17 vironment will be achieved; and

18 “(C) any other goals determined to be rel-
19 evant by the State or qualified political subdivi-
20 sion;

21 “(3) identifies and compares reasonable and
22 available alternatives and options for designation of
23 the facilities;

24 “(4) provides for public participation and com-
25 ment;

1 “(5) ensures that the designation of the facilities
2 is accomplished through an open competitive process
3 during which the State or qualified political subdivi-
4 sion—

5 “(A) identifies in writing the criteria to be
6 utilized for selection of the facilities;

7 “(B) provides an opportunity for interested
8 public persons and private persons to offer their
9 existing (as of the date of the process) or pro-
10 posed facilities for designation; and

11 “(C) evaluates and selects the facilities for
12 designation based on the merits of the facilities
13 in meeting the criteria identified; and

14 “(6) bases the designation of each such facility
15 on reasons that shall be stated in a public record.

16 “(d) CERTIFICATION.—(1) A Governor of any State
17 may certify that the laws and regulations of the State in
18 effect on May 15, 1994, satisfy the requirements for a com-
19 petitive designation process under subsection (c).

20 “(2) In making a certification under paragraph (1),
21 a Governor shall—

22 “(A) publish notice of the proposed certification
23 in a newspaper of general circulation and provide
24 such additional notice of the proposed certification as
25 may be required by State law;

1 “(B) include in the notice of the proposed certifi-
2 cation or otherwise make readily available a state-
3 ment of the laws and regulations subject to the certifi-
4 cation and an explanation of the basis for a conclu-
5 sion that they satisfy the requirements of subsection
6 (c);

7 “(C) provide interested persons an opportunity
8 to comment on the proposed certification, for a period
9 of time not less than 60 days after publication of the
10 notice; and

11 “(D) public notice of the final certification, to-
12 gether with an explanation of the basis for the final
13 certification, in a newspaper of general circulation
14 and provide such additional notice of the final certifi-
15 cation as may be required by State law.

16 “(e) OWNERSHIP OF RECYCLABLE MATERIALS.—

17 “(1) PROHIBITION ON REQUIRED TRANSFERS.—
18 Nothing in this section shall authorize any State or
19 qualified political subdivision (or any designee there-
20 of) to require any generator or owner of recyclable
21 materials to transfer any recyclable materials to such
22 State or qualified political subdivision, unless the
23 generator or owner voluntarily made the materials
24 available to the State or qualified political subdivi-

1 *sion (or any designee thereof) and relinquished any*
2 *rights to, or ownership of, such materials.*

3 “(2) *PROHIBITION ON PROHIBITED TRANS-*
4 *ACTIONS.—Nothing in this section shall prohibit any*
5 *person from selling, purchasing, or accepting, convey-*
6 *ing, or transporting any recyclable materials for pur-*
7 *poses of transformation or remanufacture into usable*
8 *or marketable materials, unless the generator or*
9 *owner voluntarily made the materials available to the*
10 *State or qualified political subdivision (or any des-*
11 *ignee thereof) and relinquished any rights to, or own-*
12 *ership of, such materials.*

13 “(f) *EXISTING LAWS AND CONTRACTS.—*

14 “(1) *IN GENERAL.—This section shall not*
15 *supersede, abrogate, or otherwise modify any of the*
16 *following:*

17 “(A) *Any contract or other agreement (in-*
18 *cluding any contract containing an obligation to*
19 *repay the outstanding indebtedness on any pro-*
20 *posed or existing waste management facility) en-*
21 *tered into before May 15, 1994, by a State or*
22 *qualified political subdivision in which such*
23 *State or qualified political subdivision has des-*
24 *ignated a proposed or existing waste manage-*
25 *ment facility pursuant to a law, ordinance, reg-*

1 *ulation, solid waste management plan or legally*
2 *binding provision adopted by such State or*
3 *qualified political subdivision before May 15,*
4 *1994.*

5 *“(B) Any other contract or agreement en-*
6 *tered into before May 15, 1994, for the manage-*
7 *ment of solid waste.*

8 *“(C)(i) Any law, ordinance, regulation,*
9 *solid waste management plan or legally binding*
10 *provision—*

11 *“(I) that is adopted before May 15,*
12 *1994; and*

13 *“(II) that pertain to the transpor-*
14 *tation, management, or disposal of municipi-*
15 *pal solid waste generated within the bound-*
16 *aries of a State or qualified political sub-*
17 *division;*

18 *if the law, ordinance, regulation, solid waste*
19 *management plan or legally binding provision is*
20 *applied to the transportation, management, or*
21 *disposal of municipal solid waste, generated*
22 *from household sources within its boundaries, to*
23 *a proposed or existing waste management facil-*
24 *ity designated before May 15, 1994, under such*

1 *law, ordinance, regulation, solid waste manage-*
2 *ment plan or legally binding provision.*

3 “(ii) Any law, ordinance, regulation, solid
4 waste management plan or legally binding pro-
5 vision—

6 “(I) that is adopted before May 15,
7 1994;

8 “(II) that pertains to the transpor-
9 tation, management, or disposal or municipi-
10 pal solid waste generated within the bound-
11 aries of a State or qualified political sub-
12 division; and

13 “(III) under which a State or qualified
14 political subdivision, prior to May 15,
15 1994, directed, limited, regulated, or prohib-
16 ited the transportation, management, or
17 disposal of municipal solid waste that is
18 generated, or is commingled with municipal
19 solid waste that is generated, from commer-
20 cial, institutional, or industrial sources
21 within its boundaries, or construction de-
22 bris or demolition debris, generated within
23 its boundaries;

24 provided that the law, ordinance, regulation,
25 solid waste management plan or legally binding

1 *provision is applied to the transportation, man-*
2 *agement, or disposal of such solid waste de-*
3 *scribed in subclause (III), to a proposed or exist-*
4 *ing waste management facility designated before*
5 *May 15, 1994, under such law, ordinance, regu-*
6 *lation, solid waste management plan or legally*
7 *binding provision.*

8 *“(iii) Any law, ordinance, regulation, solid*
9 *waste management plan or legally binding pro-*
10 *vision—*

11 *“(I) that is adopted before May 15,*
12 *1994; and*

13 *“(II) that pertains to the transpor-*
14 *tation or management of recyclable mate-*
15 *rials generated within the boundaries of a*
16 *State or qualified political subdivision;*

17 *provided that the law, ordinance, regulation,*
18 *solid waste management plan or legally binding*
19 *provision is applied to the transportation or*
20 *management of recyclable materials, that are*
21 *generated within its boundaries and with respect*
22 *to which the generator or owner of the materials,*
23 *and the State or qualified political subdivision,*
24 *have met the appropriate conditions described in*
25 *subsection (b)(1), to a proposed or existing facil-*

1 *ity for recyclable materials designated before*
2 *May 15, 1994, under such law, ordinance, regu-*
3 *lation, solid waste management plan or legally*
4 *binding provision.*

5 *“(2) CONTRACT INFORMATION.—A party to a*
6 *contract or other agreement that is described in sub-*
7 *paragraph (A) or (B) of paragraph (1) shall provide*
8 *a copy of the contract or agreement to the State or*
9 *qualified political subdivision on request. Any propri-*
10 *etary information contained in the contract or agree-*
11 *ment may be omitted in the copy, but the information*
12 *that appears in the copy shall include at least the*
13 *date that the contract or agreement was signed, the*
14 *volume of municipal solid waste covered by the con-*
15 *tract or agreement with respect to which the State or*
16 *qualified political subdivision could otherwise exercise*
17 *authority under subsection (a) or paragraph (1)(C),*
18 *the source of the waste or materials, the destination*
19 *of the waste or materials, the duration of the contract*
20 *or agreement, and the parties to the contract or agree-*
21 *ment.*

22 *“(3) LIMITATION.—Any designation by a State*
23 *or qualified political subdivision of any waste man-*
24 *agement facility or facility for recyclable materials*
25 *after the date of enactment of this section shall com-*

1 *ply with subsection (c). Nothing in this paragraph*
2 *shall affect any designation made before the date of*
3 *enactment of this section, and any such designation*
4 *shall be deemed to satisfy the requirements of sub-*
5 *section (c).*

6 “(g) *SAVINGS CLAUSE.—(1) Nothing in this section is*
7 *intended to supersede, amend, or otherwise modify Federal*
8 *or State environmental laws and regulations that apply to*
9 *the disposal or management of solid waste at waste manage-*
10 *ment facilities or facilities for recyclable materials.*

11 “(2) *Nothing in this section shall be interpreted to au-*
12 *thorize a qualified political subdivision to exercise the au-*
13 *thority granted by this section in a manner inconsistent*
14 *with State law.*

15 “(h) *EFFECT ON INTERSTATE COMMERCE.—The exer-*
16 *cise of flow control authority in compliance with this sec-*
17 *tion by a State or qualified political subdivision shall itself*
18 *be considered a reasonable regulation of commerce and shall*
19 *not itself be considered as imposing an undue burden on*
20 *or otherwise impairing, restraining, or discriminating*
21 *against interstate commerce.*

22 “(i) *DEFINITIONS.—As used in this section—*

23 “(1) *FLOW CONTROL AUTHORITY.—The term*
24 *‘flow control authority’ means the authority to control*
25 *the movement of solid waste or recyclable materials*

1 *and direct the transportation of such waste or recy-*
2 *clable materials to one or more designated waste*
3 *management facilities or facilities for recyclable mate-*
4 *rials.*

5 “(2) *INDUSTRIAL SOLID WASTE.*—*The term ‘in-*
6 *dustrial solid waste’ means solid waste generated by*
7 *manufacturing or industrial processes, including*
8 *waste generated during scrap processing and scrap*
9 *recycling, that is not hazardous waste regulated under*
10 *subtitle C.*

11 “(3) *MUNICIPAL SOLID WASTE.*—

12 “(A) *IN GENERAL.*—(i) *The term ‘muni-*
13 *cipal solid waste’ means all waste materials dis-*
14 *carded for disposal by households, including sin-*
15 *gle and multifamily residences.*

16 “(ii) *The term also includes waste materials*
17 *generated by commercial, institutional, and in-*
18 *dustrial sources, to the extent such wastes—*

19 “(I) *are essentially the same as waste*
20 *normally generated by households; or*

21 “(II) *were collected and disposed of*
22 *with other municipal solid waste as part of*
23 *normal municipal solid waste collection*
24 *services, and regardless of when generated,*
25 *would be considered conditionally exempt*

1 *small quantity generator waste under sec-*
2 *tion 3001(d).*

3 “(iii) *The term includes residue remaining*
4 *after recyclable materials have been separated, or*
5 *diverted at the point of generation, from waste*
6 *materials described in clause (i) or (ii).*

7 “(iv) *The term also includes any waste ma-*
8 *terial or waste substance removed from a septic*
9 *tank, septic pit, or cesspool.*

10 “(v) *Examples of municipal solid waste in-*
11 *clude food and yard waste, paper, clothing, ap-*
12 *pliances, consumer product packaging, disposable*
13 *diapers, office supplies, cosmetics, glass and*
14 *metal food containers, elementary or secondary*
15 *school science laboratory waste, and household*
16 *hazardous waste.*

17 “(B) *EXCLUSIONS.—The term does not in-*
18 *clude any of the following:*

19 “(i) *Any solid waste identified or listed*
20 *as a hazardous waste under section 3001.*

21 “(ii) *Solid waste containing a poly-*
22 *chlorinate biphenyl regulated under the*
23 *Toxic Substances Control Act (15 U.S.C.*
24 *2601 et seq.).*

1 “(iii) Any solid waste, including con-
2 taminated soil and debris, resulting from—

3 “(I) a response action taken under
4 section 104 or 106 of the Comprehen-
5 sive Environmental Response, Com-
6 pensation, and Liability Act (42
7 U.S.C. 9604 or 9606),

8 “(II) a response action taken
9 under a State law with authorities
10 comparable to the authorities of section
11 104 or 106, or

12 “(III) a corrective action taken
13 under this Act.

14 “(iv) Recyclable materials.

15 “(v) Materials and products returned
16 from a dispenser or distributor to the man-
17 ufacturer or an agent of the manufacturer
18 for credit, evaluation, and possible reuse.

19 “(vi) Industrial solid waste.

20 “(vii) Any solid waste that is—

21 “(I) generated by an industrial
22 facility; and

23 “(II) transported for the purpose
24 of treatment, storage, or disposal to a
25 facility that is owned or operated by

1 *the generator of the waste, or is located*
2 *on property owned by the generator or*
3 *a company with which the generator is*
4 *affiliated.*

5 *“(viii) Any medical waste referred to*
6 *in section 11002 that is segregated from, or*
7 *not mixed with, solid waste.*

8 *“(4) QUALIFIED POLITICAL SUBDIVISION.—The*
9 *term ‘qualified political subdivision’ means a govern-*
10 *mental entity or political subdivision of a State, as*
11 *authorized by the State, to plan for, or determine the*
12 *methods to be utilized for, the collection, transpor-*
13 *tation, disposal or other management of municipal*
14 *solid waste generated within the boundaries of the*
15 *governmental entity or political subdivision.*

16 *“(5) RECYCLABLE MATERIAL.—The term ‘recy-*
17 *clable material’ means any material (including any*
18 *metal, glass, plastic, textile, wood, paper, rubber, or*
19 *other material) that has been separated, or diverted at*
20 *the point of generation, from solid waste for the pur-*
21 *pose of recycling, reclamation, or reuse.*

22 *“(6) SOLID WASTE MANAGEMENT PLAN.—The*
23 *term ‘solid waste management plan’ means a plan for*
24 *the transportation, treatment, processing, composting,*
25 *combustion, disposal or other management of munici-*

1 *pal solid waste adopted by a State or qualified politi-*
2 *cal subdivision pursuant to and conforming with*
3 *State law.*

4 “(7) *WASTE MANAGEMENT FACILITY.*—*The term*
5 *‘waste management facility’ means any facility or fa-*
6 *cilities in which solid waste is separated, stored,*
7 *transferred, treated, processed, combusted, deposited or*
8 *disposed.*

9 “(8) *COMMITTED TO THE DESIGNATION OF ONE*
10 *OR MORE WASTE MANAGEMENT FACILITIES.*—*The*
11 *phrase ‘Committed to the designation of one or more*
12 *waste management facilities’ as used in subsection*
13 *(a)(2)(B) means that the State or qualified political*
14 *subdivision, prior to May 15, 1994, was legally bound*
15 *to designate one or more existing or future waste*
16 *management facilities, or performed or caused to be*
17 *performed one or more of the following actions for the*
18 *purpose of designating one or more such facilities:*

19 “(A) *Solicitation of proposals for designa-*
20 *tion of a waste management facility.*

21 “(B) *Purchase of land on which the waste*
22 *management facility to be designated will be*
23 *located.*

24 “(C) *Execution of a legally binding contract*
25 *or franchise agreement for waste collection serv-*

1 *ices expressly for the delivery of waste to a waste*
2 *management facility to be designated.*

3 *“(D) Other action since January 1, 1993,*
4 *that evidences recent significant financial com-*
5 *mitment for the continuing development of a*
6 *waste management facility for which a designa-*
7 *tion will be made unless such action has been*
8 *halted by a court order based upon a ruling*
9 *under the Constitution of the United States.”.*

10 *(b) TABLE OF CONTENTS.—The table of contents for*
11 *such subtitle D is amended by adding at the end of the items*
12 *relating to such subtitle the following new item:*

“Sec. 4011. Congressional authorization of State control over transportation, man-
agement, and disposal of municipal solid waste.”.

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