

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4683

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

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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

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flow Control Act of  
5 1994”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE CON-**  
2 **TROL OVER TRANSPORTATION OF MUNICI-**  
3 **PAL SOLID WASTE.**

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

7 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**  
8 **CONTROL OVER TRANSPORTATION OF MU-**  
9 **NICIPAL SOLID WASTE.**

10 “(a) AUTHORITY.—

11 “(1) IN GENERAL.—Each State and each quali-  
12 fied political subdivision may, in accordance with  
13 this section—

14 “(A) direct, limit, regulate, or prohibit the  
15 transportation of municipal solid waste gen-  
16 erated from household sources (as described in  
17 subsection (g)(2)(A)(i)) within the boundaries  
18 of the State or subdivision and designate each  
19 waste management facility to which any such  
20 municipal solid waste shall be transported;

21 “(B) direct, limit, regulate, or prohibit the  
22 transportation of municipal solid waste that is  
23 generated, or is commingled with municipal  
24 solid waste that is generated, from commercial,  
25 institutional, or industrial sources within the  
26 boundaries of the State or subdivision, or that

1 is incinerator ash from a solid waste inciner-  
2 ation unit, or construction debris or demolition  
3 debris, generated within the boundaries of the  
4 State or subdivision (referred to in this sub-  
5 paragraph as ‘covered waste’) and designate  
6 each waste management facility to which any  
7 such covered waste shall be transported, if, be-  
8 fore May 15, 1994—

9 “(i) the State or subdivision adopted  
10 a law, ordinance, regulation, or legislative  
11 or administrative provision that pertains to  
12 the transportation of municipal solid waste  
13 generated within the boundaries; and

14 “(ii) directed, limited, regulated, or  
15 prohibited the transportation of covered  
16 waste under the law, ordinance, regulation,  
17 or provision to a facility designated before  
18 such date; and

19 “(C) direct, limit, regulate, or prohibit the  
20 transportation of recyclable materials generated  
21 within the boundaries of the State or subdivi-  
22 sion and designate each facility to which any  
23 such materials shall be transported.

24 “(2) APPLICATION.—A State or qualified politi-  
25 cal subdivision may exercise the authority described

1 in paragraph (1)(C) with respect to recyclable mate-  
2 rials only if—

3 “(A) the generator or owner of the mate-  
4 rials voluntarily made the materials available to  
5 the State or qualified political subdivision and  
6 relinquished any rights to, or ownership of,  
7 such materials; and

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

12 “(b) LIMITATIONS.—A State or qualified political  
13 subdivision may exercise the authority provided by sub-  
14 section (a) only if the State or qualified political subdivi-  
15 sion—

16 “(1) before exercising the authority described in  
17 subsection (a)(1)(A) with respect to municipal solid  
18 waste described in subsection (a)(1), establishes a  
19 program to separate, or divert at the point of gen-  
20 eration, the materials described in subsection (g)(4)  
21 from the municipal solid waste, for purposes of recy-  
22 cling, reclamation, or reuse, in accordance with any  
23 State law or municipal solid waste planning require-  
24 ments in effect;

1           “(2) develops and implements a process de-  
2           scribed in subsection (c) for the designation of facili-  
3           ties described in subsection (a); and

4           “(3) after conducting 1 or more public hear-  
5           ings—

6                   “(A) finds, on the basis of the record de-  
7                   veloped at the hearing or hearings that it is  
8                   necessary to exercise the authority provided by  
9                   subsection (a) to meet the current solid waste  
10                  management needs (as of the date of the  
11                  record) and anticipated solid waste manage-  
12                  ment needs of the State or qualified political  
13                  subdivision for management of municipal solid  
14                  waste or recyclable materials; and

15                   “(B) provides a written explanation of the  
16                   reasons for the finding described in subpara-  
17                   graph (A).

18           “(c) COMPETITIVE DESIGNATION PROCESS.—In de-  
19           veloping and implementing the designation process de-  
20           scribed in subsection (b)(2) or (e)(4) with respect to waste  
21           management facilities and facilities for recyclable mate-  
22           rials, the State or qualified political subdivision shall—

23                   “(1) ensure that the designation process is  
24                   based on, or is part of, a municipal solid waste man-  
25                   agement plan that is adopted by the State or quali-

1       fied political subdivision and that is designed to en-  
2       sure long-term management capacity for municipal  
3       solid waste or recyclable materials generated within  
4       the boundaries of the State or subdivision;

5           “(2) set forth the goals of the designation proc-  
6       ess, including at a minimum—

7                   “(A) capacity assurance;

8                   “(B) the establishment of provisions to en-  
9       sure that protection of human health and the  
10      environment will be achieved; and

11                  “(C) any other goals determined to be rel-  
12      evant by the State or qualified political subdivi-  
13      sion;

14           “(3) identify and compare the alternatives and  
15      options for designation of the facilities;

16           “(4) provide for public participation and com-  
17      ment;

18           “(5) ensure that the designation of the facilities  
19      is accomplished through an open competitive process  
20      during which the State or qualified political subdivi-  
21      sion—

22                   “(A) identifies in writing the specific cri-  
23      teria to be utilized for selection of the facilities;

24                   “(B) provides an opportunity for interested  
25      public persons and private persons to offer their

1 existing (as of the date of the process) or pro-  
2 posed facilities for designation; and

3 “(C) evaluates and selects the facilities for  
4 designation based on the merits of the facilities  
5 in meeting the specific criteria identified; and

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

8 “(d) OWNERSHIP OF RECYCLABLE MATERIALS.—

9 “(1) PROHIBITION ON REQUIRED TRANS-  
10 FERS.—Except as provided in paragraph (3), noth-  
11 ing in this section shall authorize any State or quali-  
12 fied political subdivision to require any generator or  
13 owner of recyclable materials to transfer any recycla-  
14 ble materials (other than abandoned or discarded  
15 materials) to such State or qualified political sub-  
16 division.

17 “(2) PROHIBITION ON PROHIBITED TRANS-  
18 ACTIONS.—Except as provided in paragraph (3),  
19 nothing in this section shall prohibit any generator  
20 or owner of recyclable materials from selling, pur-  
21 chasing, accepting, conveying, or transporting any  
22 recyclable materials for purposes of transformation  
23 or remanufacture into usable or marketable mate-  
24 rials, unless the generator or owner voluntarily made  
25 the materials available to the State or qualified po-

1        litical subdivision and relinquished any rights to, or  
2        ownership of, such materials.

3            “(3) LAW AND CONTRACTS.—A contract, law,  
4        ordinance, regulation, or provision described in sub-  
5        section (e)(1) may contain an authorization de-  
6        scribed in paragraph (1) or a prohibition described  
7        in paragraph (2).

8            “(e) EXISTING LAWS AND CONTRACTS.—

9            “(1) IN GENERAL.—This section shall not su-  
10        persede, abrogate, or otherwise modify any of the  
11        following:

12            “(A) Any contract or other agreement (in-  
13        cluding any contract containing an obligation to  
14        repay the outstanding indebtedness on any pro-  
15        posed or existing waste management facility or  
16        facility for recyclable materials) entered into be-  
17        fore May 15, 1994, by a State or qualified po-  
18        litical subdivision in which such State or quali-  
19        fied political subdivision has designated a waste  
20        management facility, or management facility for  
21        recyclable materials, for the management of  
22        municipal solid waste or recyclable materials  
23        pursuant to an ordinance or law adopted by  
24        such State or qualified political subdivision be-  
25        fore May 15, 1994.

1           “(B) Any other contract or agreement en-  
2           tered into before May 15, 1994, for the man-  
3           agement of municipal solid waste.

4           “(C)(i) Any law, ordinance, regulation, or  
5           legislative or administrative provision—

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

8                   “(II) that pertains to the transpor-  
9                   tation or disposal of municipal solid waste  
10                  generated within the boundaries of a State  
11                  or qualified political subdivision:

12           to the extent that the law, ordinance, regula-  
13           tion, legislative or administrative provision is  
14           applied to the transportation or disposal of mu-  
15           nicipal solid waste, generated from household  
16           sources (as described in subsection (g)(2)(A)(i))  
17           within the boundaries, to a proposed or existing  
18           waste management facility designated before  
19           May 15, 1994, under such law, ordinance, regu-  
20           lation, legislative or administrative provision.

21           “(ii) Any law, ordinance, regulation, or leg-  
22           islative or administrative provision—

23                   “(I) that is adopted before May 15,  
24                   1994;

1           “(II) that pertains to the transpor-  
2           tation or disposal of municipal solid waste  
3           generated within the boundaries of a State  
4           or qualified political subdivision; and

5           “(III) under which a State or quali-  
6           fied political subdivision; prior to May 15,  
7           1994, directed, limited, regulated, or pro-  
8           hibited the transportation or disposal of  
9           municipal solid waste that is generated, or  
10          is commingled with municipal solid waste  
11          that is generated, from commercial, insti-  
12          tutional, or industrial sources within the  
13          boundaries, or that is incinerator ash from  
14          a solid waste incineration unit, or con-  
15          struction debris or demolition debris, gen-  
16          erated within the boundaries:

17          *Provided*, That the law, ordinance, regulation,  
18          legislative or administrative provision is applied  
19          to the transportation or disposal of municipal  
20          solid waste described in subclause (III), to a  
21          proposed or existing waste management facility  
22          designated before May 15, 1994, under such  
23          law, ordinance, regulation, legislative or admin-  
24          istrative provision.

1           “(iii) Any law, ordinance, regulation, or  
2 legislative or administrative provision—

3                   “(I) that is adopted before May 15,  
4 1994; and

5                   “(II) that pertains to the transpor-  
6 tation of recyclable materials generated  
7 within the boundaries of a State or quali-  
8 fied political subdivision:

9           *Provided*, That the law, ordinance, regulation,  
10 legislative or administrative provision is applied  
11 to the transportation of recyclable materials,  
12 that are generated within the boundaries and  
13 with respect to which the generator or owner of  
14 the materials, and the State or qualified politi-  
15 cal subdivision, have met the appropriate condi-  
16 tions described in subsection (a)(2), to a facility  
17 designated before May 15, 1994, under such  
18 law, ordinance, regulation, legislative or admin-  
19 istrative provision.

20           “(iv) Any law, ordinance, regulation, or  
21 legislative or administrative provision—

22                   “(I) that is adopted before May 15,  
23 1994;

24                   “(II) that pertains to the transpor-  
25 tation of recyclable materials generated

1 within the boundaries of a State or quali-  
2 fied political subdivision; and

3 “(III) under which a State or quali-  
4 fied political subdivision, prior to May 15,  
5 1994, directed, limited, regulated, or pro-  
6 hibited the transportation of recyclable ma-  
7 terials that are not materials with respect  
8 to which the generator or owner of the ma-  
9 terials, and the State or qualified political  
10 subdivision, have met the appropriate con-  
11 ditions described in subsection (a)(2) and  
12 that—

13 “(aa) are generated from house-  
14 hold sources (as described in sub-  
15 section (g)(2)(A)(i)) within the bound-  
16 aries; or

17 “(bb) are generated from com-  
18 mercial, institutional, or industrial  
19 sources within the boundaries:

20 *Provided*, That the law, ordinance, regulation,  
21 legislative or administrative provision is applied  
22 to the transportation of recyclable materials,  
23 described in subclause (III), to a facility des-  
24 ignated before May 15, 1994, under such law,  
25 ordinance, regulation, legislative or administra-

1           tive provision, and is applied to the same class  
2           of materials described in item (aa) or (bb) of  
3           subclause (III) to which the law, ordinance, reg-  
4           ulation, legislative or administrative provision  
5           applied before such date.

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

23          “(3) EFFECT ON INTERSTATE COMMERCE.—Ef-  
24          fective from the date of its adoption, any contract or  
25          agreement described in subparagraph (A) or (B) of

1 paragraph (1), and any law, ordinance, regulation,  
2 or provision described in paragraph (1)(C), shall be  
3 considered to be a reasonable regulation of com-  
4 merce by a State or qualified political subdivision  
5 and shall not be treated as imposing an undue bur-  
6 den on or otherwise impairing, restraining, or dis-  
7 criminating against interstate commerce.

8 “(4) LIMITATION.—A State or qualified politi-  
9 cal subdivision may exercise the authority of any  
10 law, ordinance, regulation, or provision described in  
11 paragraph (1)(C), to the extent provided in such  
12 paragraph, only if the State or qualified political  
13 subdivision develops and implements a process de-  
14 scribed in subsection (c) for the designation of any  
15 waste management facility or facility for recyclable  
16 materials that the State or qualified political sub-  
17 division designates, after the date of enactment of  
18 this section, as a facility to which any waste or ma-  
19 terials described in paragraph (1) shall be trans-  
20 ported. Nothing in this paragraph shall affect any  
21 designation made before the date of enactment of  
22 this section.

23 “(5) EFFECT ON STATE PROCUREMENT  
24 LAWS.—

1           “(A) IN GENERAL.—Except as provided in  
2 subparagraph (B), nothing in this section shall  
3 supersede or modify—

4           “(i) any State law or State regulation  
5 concerning the procurement of municipal  
6 solid waste services or facilities by qualified  
7 political subdivisions; or

8           “(ii) any State law or regulation con-  
9 cerning competitive bidding for such serv-  
10 ices or facilities.

11           “(B) DESIGNATION.—Notwithstanding  
12 subparagraph (A), any such facilities shall be  
13 subject to the designation process described in  
14 subsection (c).

15           “(6) DESIGNATION BEFORE A DATE.—For pur-  
16 poses of this section, a facility shall be considered to  
17 be designated before a date if—

18           “(A) the facility was designated before the  
19 date in a written document; and

20           “(B) the terms and requirements of the  
21 document, and of any laws and regulations of  
22 the State or qualified political subdivision in-  
23 volved, that were in effect and applicable to the  
24 designation continue to apply.

1       “(f) SAVINGS CLAUSE.—Nothing in this section is in-  
2 tended to supersede, amend, or otherwise modify Federal  
3 or State environmental standards that apply to the dis-  
4 posal or management of solid waste at waste management  
5 facilities and facilities for recyclable materials.

6       “(g) DEFINITIONS.—As used in this section:

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

13           “(2) MUNICIPAL SOLID WASTE.—

14           “(A) IN GENERAL.—The term ‘municipal  
15 solid waste’—

16                   “(i) means any waste generated by a  
17 household, including a single or multifam-  
18 ily residence;

19                   “(ii) includes waste generated by a  
20 commercial, institutional, or industrial  
21 source to the extent that such waste—

22                           “(I) has characteristics that are  
23 similar to waste normally generated  
24 by households; or

1           “(II) would be considered condi-  
2           tionally exempt small quantity genera-  
3           tor waste under section 3001(d) and  
4           is collected and disposed of with other  
5           municipal solid waste as part of nor-  
6           mal municipal solid waste collection  
7           services; and

8           “(iii) includes residue remaining after  
9           recyclable materials have been separated,  
10          or diverted at the point of generation, from  
11          municipal solid waste described in clause  
12          (i) or (ii).

13          “(B) EXCLUSIONS.—The term ‘municipal  
14          solid waste’ shall not include any of the follow-  
15          ing:

16               “(i) Hazardous waste required to be  
17               managed in accordance with subtitle C  
18               (other than waste described in subpara-  
19               graph (A)(ii)(II), solid waste containing a  
20               polychlorinated biphenyl regulated under  
21               the Toxic Substances Control Act (15  
22               U.S.C. 2601 et seq.), or medical waste.

23               “(ii)(I) A recyclable material.

24               “(II) A material or a product re-  
25               turned from a dispenser or distributor to

1 the manufacturer or the agent of the man-  
2 ufacturer for credit, evaluation, or reuse.

3 “(III) A material or product that is  
4 an out-of-date or unmarketable material or  
5 product, or is a material or product that  
6 does not conform to specifications, and  
7 that is returned to the manufacturer or the  
8 agent of the manufacturer for credit, eval-  
9 uation, or reuse.

10 “(iii) Any solid waste (including con-  
11 taminated soil and debris) resulting from a  
12 response action taken under section 104 or  
13 106 of the Comprehensive Environmental  
14 Response, Compensation, and Liability Act  
15 of 1980 (42 U.S.C. 9604 or 9606) or a  
16 corrective action taken under this Act.

17 “(iv)(I) Industrial solid waste.

18 “(II) Any solid waste that is gen-  
19 erated by an industrial facility and trans-  
20 ported for the purpose of containment,  
21 storage, or disposal to a facility that is  
22 owned or operated by the generator of the  
23 waste, or a facility that is located on prop-  
24 erty owned by the generator or a company  
25 with which the generator is affiliated.

1           “(3) QUALIFIED POLITICAL SUBDIVISION.—The  
2 term ‘qualified political subdivision’ means a govern-  
3 mental entity of a political subdivision of a State if  
4 a majority of members of the entity are elected offi-  
5 cials and the entity has been granted authority by  
6 the State to plan for, or determine the methods to  
7 be utilized for, the collection, disposal, or other man-  
8 agement of municipal solid waste generated within  
9 the boundaries of the political subdivision.

10           “(4) RECYCLABLE MATERIAL.—The term ‘recy-  
11 clable material’ means any material (including any  
12 metal, glass, plastic, textile, wood, paper, rubber, or  
13 other material) that has been separated, or diverted  
14 at the point of generation, from solid waste for the  
15 purpose of recycling, reclamation, or reuse.

16           “(5) WASTE MANAGEMENT FACILITY.—The  
17 term ‘waste management facility’ means any facility  
18 in which solid waste is collected, separated, stored,  
19 transferred, treated, processed, or disposed of.”.

20           “(b) TABLE OF CONTENTS.—The table of contents for  
21 such subtitle D is amended by adding after the item relat-  
22 ing to section 4010 the following new item:

“Sec. 4011. Congressional authorization of State control over transportation of  
municipal solid waste.”.

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HR 4683 IH—3