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H. R. 4683

IN THE SENATE OF THE UNITED STATES

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OCTOBER 4 (legislative day, SEPTEMBER 12), 1994

Read twice and referred to the Committee on Environment and Public Works

AN ACT

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. CONGRESSIONAL AUTHORIZATION OF STATE**

4 **CONTROL OVER TRANSPORTATION, MANAGE-**

5 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**

6 **WASTE.**

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

1 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**
2 **CONTROL OVER TRANSPORTATION, MANAGE-**
3 **MENT, AND DISPOSAL OF MUNICIPAL SOLID**
4 **WASTE.**

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

10 “(1) Municipal solid waste generated from
11 household sources within the boundaries of the State
12 or qualified political subdivision.

13 “(2) Municipal solid waste generated within the
14 boundaries of the State or qualified political subdivi-
15 sion, if, before May 15, 1994, the State or qualified
16 political subdivision adopted a law, ordinance, regu-
17 lation, solid waste management plan or legally bind-
18 ing provision that—

19 “(A) exercised flow control authority over
20 such solid waste with respect to a proposed or
21 existing waste management facility designated
22 before May 15, 1994, or

23 “(B) identified the use of 1 or more waste
24 management methods that will be necessary for
25 the transportation, management, or disposal of
26 municipal solid waste generated within its

1 boundaries, and committed to the designation
2 of 1 or more waste management facilities for
3 that method or methods.

4 “(3) Recyclable materials generated within the
5 boundaries of the State or subdivision.

6 Any State or qualified political subdivision meeting the re-
7 quirements of subparagraph (A) or (B) of paragraph (2)
8 may also, after the effective date of this section, direct,
9 limit, regulate or prohibit the transportation, manage-
10 ment, and disposal of such solid waste from any existing
11 or future waste management facility to any other existing
12 or future waste management facility, and may do so with-
13 out regard to subsection (b)(2).

14 “(b) LIMITATIONS.—(1) A State or qualified political
15 subdivision may exercise the authority described in para-
16 graph (3) of subsection (a) with respect to recyclable ma-
17 terials only if—

18 “(A) the generator or owner of the materials
19 voluntarily made the materials available to the State
20 or qualified political subdivision, or the designee of
21 the State or qualified political subdivision, and relin-
22 quished any rights to, or ownership of, such mate-
23 rials; and

24 “(B) the State or qualified political subdivision,
25 or the designee of the State or qualified political

1 subdivision, assumes such rights to, or ownership of,
2 such materials.

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

6 “(A) before exercising the authority described
7 in subsection (a)(1), establishes a program to sepa-
8 rate, or divert at the point of generation, recyclable
9 materials from the municipal solid waste, for pur-
10 poses of recycling, reclamation, or reuse, in accord-
11 ance with any Federal or State law or municipal
12 solid waste planning requirements in effect; and

13 “(B) after conducting 1 or more public hear-
14 ings—

15 “(i) finds, on the basis of the record devel-
16 oped at the hearing or hearings that it is nec-
17 essary to exercise the authority to meet the cur-
18 rent solid waste management needs (as of the
19 date of the record) or the anticipated solid
20 waste management needs of the State or quali-
21 fied political subdivision for management of
22 municipal solid waste or recyclable materials;
23 and

24 “(ii) provides a written explanation of the
25 reasons of the finding described in clause (i).

1 “(3) The authority to direct, limit, regulate, or pro-
2 hibit the transportation, management, or disposal of solid
3 waste pursuant to subsection (a)(2) shall apply only to the
4 specific classes or categories of solid waste to which the
5 authority under subsection (a)(2)(A) was applied by the
6 State or qualified political subdivision before May 15,
7 1994, and/or to the specific classes or categories of solid
8 waste for which the State or qualified political subdivision
9 committed to designate a waste management facility under
10 subsection (a)(2)(B).

11 “(4) The authority granted under subsection (a)(2)
12 shall expire if a State or qualified political subdivision has
13 not designated, by law, ordinance, regulation, solid waste
14 management plan, or other legally binding provision, 1 or
15 more proposed or existing waste management facilities
16 within 5 years of the date of enactment of this section.

17 “(c) COMPETITIVE DESIGNATION PROCESS.—A
18 State or qualified political subdivision may exercise the au-
19 thority provided by subsection (a) only if the State or
20 qualified political subdivision develops and implements a
21 competitive designation process with respect to waste
22 management facilities or facilities for recyclable materials
23 which—

24 “(1) ensures that the designation process is
25 based on, or is part of, a municipal solid waste man-

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

6 “(2) sets forth the goals of the designation
7 process, including at a minimum—

8 “(A) capacity assurance;

9 “(B) the establishment of provisions to
10 provide that protection of human health and the
11 environment will be achieved; and

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

15 “(3) identifies and compares reasonable and
16 available alternatives and options for designation of
17 the facilities;

18 “(4) provides for public participation and com-
19 ment;

20 “(5) ensures that the designation of the facili-
21 ties is accomplished through an open competitive
22 process during which the State or qualified political
23 subdivision—

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

1 “(B) provides an opportunity for interested
2 public persons and private persons to offer their
3 existing (as of the date of the process) or pro-
4 posed facilities for designation; and

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

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

10 “(d) CERTIFICATION.—(1) A Governor of any State
11 may certify that the laws and regulations of the State in
12 effect on May 15, 1994, satisfy the requirements for a
13 competitive designation process under subsection (c).

14 “(2) In making a certification under paragraph (1),
15 a Governor shall—

16 “(A) publish notice of the proposed certification
17 in a newspaper of general circulation and provide
18 such additional notice of the proposed certification
19 as may be required by State law;

20 “(B) include in the notice of the proposed cer-
21 tification or otherwise make readily available a state-
22 ment of the laws and regulations subject to the cer-
23 tification and an explanation of the basis for a con-
24 clusion that they satisfy the requirements of sub-
25 section (c);

1 “(C) provide interested persons an opportunity
2 to comment on the proposed certification, for a pe-
3 riod of time not less than 60 days after publication
4 of the notice; and

5 “(D) provide public notice of the final certifi-
6 cation, together with an explanation of the basis for
7 the final certification, in a newspaper of general cir-
8 culation and provide such additional notice of the
9 final certification as may be required by State law.

10 “(e) OWNERSHIP OF RECYCLABLE MATERIALS.—

11 “(1) PROHIBITION ON REQUIRED TRANS-
12 FERS.—Nothing in this section shall authorize any
13 State or qualified political subdivision (or any des-
14 ignee thereof) to require any generator or owner of
15 recyclable materials to transfer any recyclable mate-
16 rials to such State or qualified political subdivision,
17 unless the generator or owner voluntarily made the
18 materials available to the State or qualified political
19 subdivision (or any designee thereof) and relin-
20 quished any rights to, or ownership of, such mate-
21 rials.

22 “(2) PROHIBITION ON PROHIBITED TRANS-
23 ACTIONS.—Nothing in this section shall prohibit any
24 person from selling, purchasing, or accepting, con-
25 veying, or transporting any recyclable materials for

1 purposes of transformation or remanufacture into
2 usable or marketable materials, unless the generator
3 or owner voluntarily made the materials available to
4 the State or qualified political subdivision (or any
5 designee thereof) and relinquished any rights to, or
6 ownership of, such materials.

7 “(f) EXISTING LAWS AND CONTRACTS.—

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

11 “(A) Any contract or other agreement (in-
12 cluding any contract containing an obligation to
13 repay the outstanding indebtedness on any pro-
14 posed or existing waste management facility)
15 entered into before May 15, 1994, by a State
16 or qualified political subdivision in which such
17 State or qualified political subdivision has des-
18 ignated a proposed or existing waste manage-
19 ment facility pursuant to a law, ordinance, reg-
20 ulation, solid waste management plan or legally
21 binding provision adopted by such State or
22 qualified political subdivision before May 15,
23 1994.

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

4 “(C)(i) Any law, ordinance, regulation,
5 solid waste management plan or legally binding
6 provision—

7 “(I) that is adopted before May 15,
8 1994; and

9 “(II) that pertain to the transpor-
10 tation, management, or disposal of municipi-
11 pal solid waste generated within the
12 boundaries of a State or qualified political
13 subdivision;

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

23 “(ii) Any law, ordinance, regulation, solid
24 waste management plan or legally binding pro-
25 vision—

1 “(I) that is adopted before May 15,
2 1994;

3 “(II) that pertains to the transpor-
4 tation, management, or disposal of municipi-
5 pal solid waste generated within the
6 boundaries of a State or qualified political
7 subdivision; and

8 “(III) under which a State or quali-
9 fied political subdivision, prior to May 15,
10 1994, directed, limited, regulated, or pro-
11 hibited the transportation, management, or
12 disposal of municipal solid waste that is
13 generated, or is commingled with municipi-
14 pal solid waste that is generated, from
15 commercial, institutional, or industrial
16 sources within its boundaries, or construc-
17 tion debris or demolition debris, generated
18 within its boundaries;

19 provided that the law, ordinance, regulation,
20 solid waste management plan or legally binding
21 provision is applied to the transportation, man-
22 agement, or disposal of such solid waste de-
23 scribed in subclause (III), to a proposed or ex-
24 isting waste management facility designated be-
25 fore May 15, 1994, under such law, ordinance,

1 regulation, solid waste management plan or le-
2 gally binding provision.

3 “(iii) 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; and

8 “(II) that pertains to the transpor-
9 tation or management of recyclable mate-
10 rials generated within the boundaries of a
11 State or qualified political subdivision;

12 provided that the law, ordinance, regulation,
13 solid waste management plan or legally binding
14 provision is applied to the transportation or
15 management of recyclable materials, that are
16 generated within its boundaries and with re-
17 spect to which the generator or owner of the
18 materials, and the State or qualified political
19 subdivision, have met the appropriate conditions
20 described in subsection (b)(1), to a proposed or
21 existing facility for recyclable materials des-
22 ignated before May 15, 1994, under such law,
23 ordinance, regulation, solid waste management
24 plan or legally binding provision.

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

18 “(3) LIMITATION.—Any designation by a State
19 or qualified political subdivision of any waste man-
20 agement facility or facility for recyclable materials
21 after the date of enactment of this section shall com-
22 ply with subsection (c). Nothing in this paragraph
23 shall affect any designation made before the date of
24 enactment of this section, and any such designation

1 shall be deemed to satisfy the requirements of sub-
2 section (c).

3 “(g) SAVINGS CLAUSE.—(1) Nothing in this section
4 is intended to supersede, amend, or otherwise modify Fed-
5 eral or State environmental laws and regulations that
6 apply to the disposal or management of solid waste at
7 waste management facilities or facilities for recyclable ma-
8 terials.

9 “(2) Nothing in this section shall be interpreted to
10 authorize a qualified political subdivision to exercise the
11 authority granted by this section in a manner inconsistent
12 with State law.

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

20 “(i) DEFINITIONS.—As used in this section:

21 “(1) FLOW CONTROL AUTHORITY.—The term
22 ‘flow control authority’ means the authority to con-
23 trol the movement of solid waste or recyclable mate-
24 rials and direct the transportation of such waste or
25 recyclable materials to one or more designated waste

1 management facilities or facilities for recyclable ma-
2 terials.

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

9 “(3) MUNICIPAL SOLID WASTE.—

10 “(A) IN GENERAL.—(i) The term ‘municipal
11 solid waste’ means all waste materials dis-
12 carded for disposal by households, including
13 single and multifamily residences.

14 “(ii) The term also includes waste mate-
15 rials generated by commercial, institutional,
16 and industrial sources, to the extent such
17 wastes—

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

20 “(II) were collected and disposed of
21 with other municipal solid waste as part of
22 normal municipal solid waste collection
23 services, and regardless of when generated,
24 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,
5 or diverted at the point of generation, from
6 waste 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, dispos-
13 able diapers, office supplies, cosmetics, glass
14 and metal food containers, elementary or sec-
15 ondary school science laboratory waste, and
16 household hazardous waste.

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

19 “(i) Any solid waste identified or list-
20 ed as a hazardous waste under section
21 3001.

22 “(ii) Solid waste containing a poly-
23 chlorinate biphenyl regulated under the
24 Toxic Substances Control Act (15 U.S.C.
25 2601 et seq.).

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

3 “(I) a response action taken
4 under section 104 or 106 of the Com-
5 prehensive Environmental Response,
6 Compensation, 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 sec-
11 tion 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 lo-
2 cated on property owned by the gener-
3 ator or a company with which the
4 generator is affiliated.

5 “(viii) Any medical waste referred to
6 in section 11002 that is segregated from,
7 or 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
12 the methods to be utilized for, the collection, trans-
13 portation, disposal or other management of municipi-
14 pal solid waste generated within the boundaries of
15 the 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
20 at the point of generation, from solid waste for the
21 purpose of recycling, reclamation, or reuse.

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

1 ment of municipal solid waste adopted by a State or
2 qualified political subdivision pursuant to and con-
3 forming with State law.

4 “(7) WASTE MANAGEMENT FACILITY.—The
5 term ‘waste management facility’ means any facility
6 or facilities in which solid waste is separated, stored,
7 transferred, treated, processed, combusted, deposited
8 or 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
15 bound to designate one or more existing or future
16 waste management facilities, or performed or caused
17 to be performed one or more of the following actions
18 for the purpose of designating one or more such fa-
19 cilities:

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

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

1 “(C) Execution of a legally binding con-
2 tract or franchise agreement for waste collec-
3 tion services expressly for the delivery of waste
4 to a waste management facility to be des-
5 ignated.

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

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

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

Passed the House of Representatives September 29,
1994.

Attest: DONNALD K. ANDERSON,
Clerk.

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