

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

# H. R. 4859

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1994

Mr. SMITH of New Jersey 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 and disposal 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 “Waste Flow Control  
5        Consensus Act of 1994”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE CON-**  
2 **TROL OVER TRANSPORTATION AND DIS-**  
3 **POSAL OF MUNICIPAL 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 AND DIS-**  
9 **POSAL OF MUNICIPAL SOLID WASTE.**

10 “(a) AUTHORITY.—

11 “(1) Each State and each qualified political  
12 subdivision may, in accordance with this section—

13 “(A) direct, limit, regulate, or prohibit the  
14 transportation, management 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 of the State or subdivi-  
18 sion and designate each waste management fa-  
19 cility to which any such municipal solid waste  
20 shall be transported;

21 “(B) direct, limit, regulate, or prohibit the  
22 transportation, management or disposal of mu-  
23 nicipal solid waste (as defined in subsection  
24 (g)(2)), incinerator ash from a solid waste in-  
25 cinerator unit, construction debris and demoli-  
26 tion debris, generated within the boundaries of

1 the State or qualified political subdivision and  
2 designate waste management facilities to which  
3 any such municipal solid waste shall be trans-  
4 ported, managed or disposed, if, before May 15,  
5 1994—

6 “(i) the State or qualified political  
7 subdivision adopted a law, ordinance, regu-  
8 lation, solid waste management plan or le-  
9 gally binding provision that pertains to the  
10 transportation, management or disposal of  
11 municipal solid waste generated within the  
12 boundaries, and

13 “(ii) directed, limited, regulated, or  
14 prohibited the transportation, management  
15 or disposal of municipal solid waste under  
16 the law, ordinance, regulation, solid waste  
17 management plan or legally binding provi-  
18 sion to a proposed or existing waste man-  
19 agement facility designated before May 15,  
20 1994, or

21 “(iii) the law, ordinance, regulation,  
22 solid waste management plan or legally  
23 binding provision identified the use of one  
24 or more waste management methods that  
25 will be necessary for the transportation,

1 management or disposal of municipal solid  
 2 waste generated within its boundaries at  
 3 one or more waste management facilities to  
 4 be designated in the future.

5 Any State or qualified political subdivision  
 6 meeting the requirements of this subsection  
 7 (a)(1)(B) (i) and (ii) or (iii) may also, after the  
 8 effective date of this section, direct, limit, regu-  
 9 late or prohibit the transportation, management  
 10 and disposal of such solid waste from any exist-  
 11 ing or future waste management facility to any  
 12 other existing or future waste management fa-  
 13 cility, without regard to subsection (b)(2)(B);  
 14 and

15 “(C) direct, limit, regulate, or prohibit the  
 16 transportation of recyclable materials generated  
 17 within the boundaries of the State or subdivi-  
 18 sion and designate each facility to which any  
 19 such material shall be transported.

20 “(2) Any contract, law, ordinance, regulation,  
 21 or legally binding provision of a State or qualified  
 22 political subdivision that directs, limits, regulates or  
 23 prohibits the transportation, management or dis-  
 24 posal of municipal solid waste in compliance with  
 25 this section shall be considered a reasonable regula-

1     tion of commerce and shall not be considered as im-  
 2     posing an undue burden on or otherwise impairing,  
 3     restraining or discriminating against interstate com-  
 4     merce.

5     “(b) LIMITATIONS.—

6         “(1) A State or qualified political subdivision  
 7     may exercise the authority described in paragraph  
 8     (1)(C) with respect to recyclable materials only if—

9             “(A) the generator or owner of the mate-  
 10         rials voluntarily made the materials available to  
 11         the State or qualified political subdivision, or  
 12         the designee of the State or qualified political  
 13         subdivision, and relinquished any rights to, or  
 14         ownership of, such materials; and

15             “(B) the State or qualified political sub-  
 16         division, or the designee of the State or quali-  
 17         fied political subdivision, assumes such rights  
 18         to, or ownership of, such materials.

19         “(2) A State or qualified political subdivision  
 20     may exercise the authority provided by subsection  
 21     (a)(1)(A) or (a)(1)(C) only if the State or qualified  
 22     political subdivision—

23             “(A) before exercising the authority de-  
 24         scribed in subsection (a)(1)(A), establishes a  
 25         program to separate, or divert at the point of

1 generation, the materials described in sub-  
2 section (g)(4) from the municipal solid waste,  
3 for purposes of recycling, reclamation, or reuse,  
4 in accordance with any Federal or State law or  
5 municipal solid waste planning requirements in  
6 effect; and

7 “(B) after conducting 1 or more public  
8 hearings—

9 “(i) finds, on the basis of the record  
10 developed at the hearing or hearings that  
11 it is necessary to exercise the authority to  
12 meet the current solid waste management  
13 needs (as of the date of the record) or the  
14 anticipated solid waste management needs  
15 of the State or qualified political subdivi-  
16 sion for management of municipal solid  
17 waste or recyclable materials; and

18 “(ii) provides a written explanation of  
19 the reasons for the finding described in  
20 subparagraph (i).

21 “(3) The authority granted under subsection  
22 (a)(1)(B)(iii) shall expire if a State or qualified po-  
23 litical subdivision has not designated, by law, ordi-  
24 nance, regulation, solid waste management plan or  
25 legally binding provision, one or more proposed or

1 existing waste management facilities within five (5)  
2 years of the date of enactment of this section.

3 “(c) COMPETITIVE DESIGNATION PROCESS.—A  
4 State or qualified political subdivision may exercise the au-  
5 thority provided by subsection (a) only if the State or  
6 qualified political subdivision develops and implements a  
7 competitive designation process with respect to waste  
8 management facilities or facilities for recyclable materials  
9 which—

10 “(1) ensures that the designation process is  
11 based on, or is part of, a municipal solid waste man-  
12 agement plan that is adopted by the State or quali-  
13 fied political subdivision and that is designed to en-  
14 sure long-term management capacity for municipal  
15 solid waste or recyclable materials generated within  
16 the boundaries of the State or subdivision;

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

19 “(A) capacity assurance;

20 “(B) the establishment of provisions to  
21 provide that protection of human health and the  
22 environment will be achieved; and

23 “(C) any other goals determined to be rel-  
24 evant by the State or qualified political subdivi-  
25 sion;

1           “(3) identifies and compares reasonable and  
2           available alternatives and options for designation of  
3           the facilities;

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

6           “(5) ensures that the designation of the facili-  
7           ties is accomplished through an open competitive  
8           process during which the State or qualified political  
9           subdivision—

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

12           “(B) provides an opportunity for interested  
13           public persons and private persons to offer their  
14           existing (as of the date of the process) or pro-  
15           posed facilities for designation; and

16           “(C) evaluates and selects the facilities for  
17           designation based on the merits of the facilities  
18           in meeting the criteria identified; and

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

21           “(7) CERTIFICATION.—

22           “(A) A Governor of any State may certify  
23           that the laws and regulations of the State in ef-  
24           fect on May 15, 1994 satisfy the requirements



1 for a competitive designation process under sub-  
2 section (c).

3 “(B) In making a certification under sub-  
4 paragraph (A), a Governor shall—

5 “(i) publish notice of the proposed  
6 certification in a newspaper of general cir-  
7 culation and provide such additional notice  
8 of the proposed certification as may be re-  
9 quired by State law;

10 “(ii) include in the notice of the pro-  
11 posed certification or otherwise make read-  
12 ily available a statement of the laws and  
13 regulations subject to the certification and  
14 an explanation of the basis for a conclusion  
15 that they satisfy the requirements of sub-  
16 section (c);

17 “(iii) provide interested persons an  
18 opportunity to comment on the proposed  
19 certification, for a period of time not less  
20 than sixty (60) days after publication of  
21 the notice; and

22 “(iv) publish notice of the final certifi-  
23 cation, together with an explanation of the  
24 basis for the final certification, in a news-  
25 paper of general circulation and provide

1           such additional notice of the final certifi-  
2           cation as may be required by State law.

3           “(C) Designations made after the final cer-  
4           tification and pursuant to the certified laws and  
5           regulations shall not be subject to judicial re-  
6           view for failure to satisfy the requirements of  
7           subsection (c).

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, solid waste management plan  
5       or legally binding provision described in subsection  
6       (e)(1) may contain an authorization described in  
7       paragraph (1) or a prohibition described in para-  
8       graph (2).

9           “(e) EXISTING LAWS AND CONTRACTS.—

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

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

1 provision adopted by such State or qualified po-  
2 litical subdivision before May 15, 1994.

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

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

9 “(I) that is adopted before May 15,  
10 1994; and

11 “(II) that pertains to the transpor-  
12 tation, management or disposal of munici-  
13 pal solid waste generated within the  
14 boundaries of a State or qualified political  
15 subdivision:

16 *Provided*, That the law, ordinance, regulation,  
17 solid waste management plan or legally binding  
18 provision is applied to the transportation, man-  
19 agement or disposal of municipal solid waste,  
20 generated from household sources (as described  
21 in subsection (g)(2)(A)(i)) within the bound-  
22 aries, to a proposed or existing water manage-  
23 ment facility designated before May 15, 1994  
24 under such law, ordinance, regulation, solid

1 waste management plan or legally binding pro-  
2 vision.

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 of municipi-  
10 pal solid waste generated within the  
11 boundaries of a State or qualified political  
12 subdivision; and

13 “(III) under which a State or quali-  
14 fied political subdivision, prior to May 15,  
15 1994, directed, limited, regulated, or pro-  
16 hibited the transportation, management or  
17 disposal of municipal solid waste that is  
18 generated, or is commingled with municipi-  
19 pal solid waste that is generated, from  
20 commercial, institutional, or industrial  
21 sources within the boundaries, or that is  
22 incinerator ash from a solid waste inciner-  
23 ation unit, or construction debris or demo-  
24 lition debris, generated within the bound-  
25 aries:

1       *Provided*, That the law, ordinance, regulation,  
2       solid waste management plan or legally binding  
3       provision is applied to the transportation, man-  
4       agement or disposal of municipal solid waste  
5       described in subclause (III), to a proposed or  
6       existing waste management facility designated  
7       before May 15, 1994 under such law, ordi-  
8       nance, regulation, solid waste management plan  
9       or legally binding provision.

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

13               “(I) that is adopted before May 15,  
14               1994; and

15               “(II) that pertains to the transpor-  
16               tation of recyclable materials generated  
17               within the boundaries of a State or quali-  
18               fied political subdivision:

19       *Provided*, That the law, ordinance, regulation,  
20       solid waste management plan or legally binding  
21       provision is applied to the transportation of re-  
22       cyclable materials, that are generated within  
23       the boundaries and with respect to which the  
24       generator or owner of the materials, and the  
25       State or qualified political subdivision, have met

1 the appropriate conditions described in sub-  
2 section (b)(1), to a facility designated before  
3 May 15, 1994 under such law, ordinance, regu-  
4 lation, solid waste management plan or legally  
5 binding provision.

6 “(iv) Any law, ordinance, regulation, solid  
7 waste management plan or legally binding pro-  
8 vision—

9 “(I) that is adopted before May 15,  
10 1994;

11 “(II) that pertains to the transpor-  
12 tation of recyclable materials generated  
13 within the boundaries of a State or quali-  
14 fied political subdivision; and

15 “(III) under which a State or quali-  
16 fied political subdivision, prior to May 15,  
17 1994, directed, limited, regulated, or pro-  
18 hibited the transportation of recyclable ma-  
19 terials that are not materials with respect  
20 to which the generator or owner of the ma-  
21 terials, and the State or qualified political  
22 subdivision, have met the appropriate con-  
23 ditions described in subsection (b)(1) and  
24 that—

1           “(aa) are generated from house-  
2           hold sources (as described in sub-  
3           section (g)(2)(A)(i)) within the bound-  
4           aries; or

5           “(bb) are generated from com-  
6           mercial, institutional, or industrial  
7           sources within the boundaries:

8           *Provided*, That the law, ordinance, regulation,  
9           solid waste management plan or legally binding  
10          provision is applied to the transportation of re-  
11          cyclable materials, described in subclause (III),  
12          to a facility designated before May 15, 1994  
13          under such law, ordinance, regulation, solid  
14          waste management plan or legally binding pro-  
15          vision, and is applied to the same class of mate-  
16          rials described in item (aa) or (bb) of subclause  
17          (III) to which the law, ordinance, regulation,  
18          solid waste management plan or legally binding  
19          provision applied before May 15, 1994.

20          “(2) CONTRACT INFORMATION.—A party to a  
21          contract or other agreement that is described in sub-  
22          paragraph (e)(1)(A) or (e)(1)(B) shall provide a  
23          copy of the contract or agreement to the State or  
24          qualified political subdivision on request. Any propri-  
25          etary information contained in the contract or agree-



1       ment may be omitted in the copy, but the informa-  
2       tion that appears in the copy shall include at least  
3       the date that the contract or agreement was signed,  
4       the volume of municipal solid waste or recyclable  
5       materials covered by the contract or agreement with  
6       respect to which the State or qualified political sub-  
7       division could otherwise exercise authority under  
8       subsection (a) or (e)(1)(C), the source of the waste  
9       or materials, the destination of the waste or mate-  
10      rials, the duration of the contract or agreement, and  
11      the parties to the contract or agreement.

12           “(3) EFFECT ON INTERSTATE COMMERCE.—  
13      Any contract or agreement described in subsection  
14      (e)(1)(A) or (e)(1)(B), and any law, ordinance, regu-  
15      lation, solid waste management plan or legally bind-  
16      ing provision described in subsection (e)(1)(C), shall  
17      be considered a reasonable regulation of commerce  
18      by any State or qualified political subdivision, retro-  
19      active to the effective date of the contract or agree-  
20      ment, or to the date of adoption of any such law, or-  
21      dinance, regulation, solid waste management plan or  
22      legally binding provision, and shall not be considered  
23      as imposing an undue burden on or otherwise im-  
24      pairing, restraining or discriminating against inter-  
25      state commerce.

1           “(4) LIMITATION.—Any designation by a State  
2 or qualified political subdivision of any waste man-  
3 agement facility or facility for recyclable materials  
4 after the date of enactment of this section shall com-  
5 ply with subsection (c). Nothing in this paragraph  
6 shall affect any designation made before the date of  
7 enactment of this section.

8           “(f) SAVINGS CLAUSE.—

9           “(1) Nothing in this section is intended to su-  
10 percede, amend, or otherwise modify Federal or  
11 State environmental laws and regulations that apply  
12 to the disposal or management of solid waste at  
13 waste management facilities and facilities for recy-  
14 clable materials.

15           “(2) Nothing in this section shall be interpreted  
16 to authorize a qualified political subdivision to exer-  
17 cise the authority granted by this section in a man-  
18 ner inconsistent with State law.

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

20           “(1) INDUSTRIAL SOLID WASTE.—The term ‘in-  
21 dustrial solid waste’ means solid waste generated by  
22 manufacturing or industrial processes, including  
23 waste generated during scrap processing and scrap  
24 recycling, that is not hazardous waste regulated  
25 under subtitle C.

1 “(2) MUNICIPAL SOLID WASTE.—

2 “(A) IN GENERAL.—The term ‘municipal  
3 solid waste’ means—

4 “(i) any solid waste generated by a  
5 household, including a single or multifam-  
6 ily residence;

7 “(ii) any solid waste that is generated  
8 by a commercial, institutional, or industrial  
9 source;

10 “(iii) residue remaining after recyc-la-  
11 ble materials have been separated, or di-  
12 verted at the point of generation or at a  
13 waste management facility, from municipal  
14 solid waste described in clause (i) or (ii);  
15 and

16 “(iv) conditional exempt small quan-  
17 tity generator waste under section 3001(d)  
18 of this Act, provided it is collected, proc-  
19 essed or disposed with other municipal  
20 solid waste as part of municipal solid waste  
21 services.

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

1           “(i) Hazardous waste required to be  
2 managed in accordance with subtitle C  
3 (other than waste described in subpara-  
4 graph (A)(iv)), solid waste containing a  
5 polychlorinated biphenyl regulated under  
6 the Toxic Substances Control Act (15  
7 U.S.C. 2601 et seq.), or medical waste list-  
8 ed in section 11002 of this Act.

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

10           “(II) A material or a product re-  
11 turned from a dispenser or distributor to  
12 the manufacturer or the agent of the man-  
13 ufacturer for credit, evaluation, or reuse.

14           “(III) A material or product that is  
15 an out-of-date or unmarketable material or  
16 product, or is a material or product that  
17 does not conform to specifications, and  
18 that is returned to the manufacturer or the  
19 agent of the manufacturer for credit, eval-  
20 uation, or reuse.

21           “(iii) Any solid waste (including con-  
22 taminated soil and debris) resulting from a  
23 response action taken under section 104 or  
24 106 of the Comprehensive Environmental  
25 Response, Compensation, and Liability Act

1 of 1980 (42 U.S.C. 9604 or 9606) or a  
2 corrective action taken under this Act.

3 “(iv)(I) Industrial solid waste.

4 “(II) Any solid waste that is gen-  
5 erated by an industrial facility and trans-  
6 ported for the purpose of containment,  
7 storage, or disposal to a facility that is  
8 owned or operated by the generator of the  
9 waste, or a facility that is located on prop-  
10 erty owned by the generator.

11 “(3) QUALIFIED POLITICAL SUBDIVISION.—The  
12 term ‘qualified political subdivision’ means a govern-  
13 mental entity or political subdivision of a State, as  
14 authorized by the State, to plan for, or determine  
15 the methods to be utilized for, the collection, trans-  
16 portation, disposal or other management of municipi-  
17 pal solid waste generated within the boundaries of  
18 the governmental entity or political subdivision.

19 “(4) RECYCLABLE MATERIAL.—The term ‘recy-  
20 clable material’ means any material (including any  
21 metal, glass, plastic, textile, wood, paper, rubber, or  
22 other material) that has been or will be separated or  
23 diverted from solid waste for the purpose of recy-  
24 cling, reclamation, or reuse.

1           “(5) SOLID WASTE MANAGEMENT PLAN.—The  
2 term ‘solid waste management plan’ means a plan  
3 for the transportation, treatment, processing,  
4 composting, disposal or other management of munic-  
5 ipal solid waste adopted by a State or qualified polit-  
6 ical subdivision pursuant to and conforming with  
7 State law.

8           “(6) WASTE MANAGEMENT FACILITY.—The  
9 term ‘waste management facility’ means any facility  
10 in which solid waste is collected, separated, stored,  
11 transferred, treated, processed, deposited or dis-  
12 posed.”

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

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

○

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