

103^D CONGRESS
2^D SESSION

S. 2227

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

IN THE SENATE OF THE UNITED STATES

JUNE 21 (legislative day, JUNE 7), 1994

Mr. LAUTENBERG (for himself and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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 fa-
15 cility) entered into before May 15, 1994, by a
16 State or qualified political subdivision in which
17 such State or qualified political subdivision has
18 designated a waste management facility, or
19 management facility for recyclable materials,
20 for the management of municipal solid waste or
21 recyclable materials pursuant to an ordinance
22 or law adopted by such State or qualified politi-
23 cal subdivision before 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 of municipal solid waste generated
10 within the boundaries of a State or quali-
11 fied political subdivision;

12 to the extent that the law, ordinance, regula-
13 tion, or provision is applied to the transpor-
14 tation of municipal solid waste, generated from
15 household sources (as described in subsection
16 (g)(2)(A)(i)) within the boundaries, to a facility
17 designated before such date under such law, or-
18 dinance, regulation, or provision.

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

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

23 “(II) that pertains to the transpor-
24 tation of municipal solid waste 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 municipal
7 solid waste that is generated, or is com-
8 mingled with municipal solid waste that is
9 generated, from commercial, institutional,
10 or industrial sources within the boundaries,
11 or that is incinerator ash from a solid
12 waste incineration unit, or construction de-
13 bris or demolition debris, generated within
14 the boundaries;

15 to the extent that the law, ordinance, regula-
16 tion, or provision is applied to the transpor-
17 tation of municipal solid waste described in
18 subclause (III), to a facility designated before
19 such date under such law, ordinance, regula-
20 tion, or provision.

21 “(iii) Any law, ordinance, regulation, or
22 legislative or administrative provision—

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

1 “(II) that pertains to the transpor-
2 tation of recyclable materials generated
3 within the boundaries of a State or quali-
4 fied political subdivision;

5 to the extent that the law, ordinance, regula-
6 tion, or provision is applied to the transpor-
7 tation of recyclable materials, that are gen-
8 erated within the boundaries and with respect
9 to which the generator or owner of the mate-
10 rials, and the State or qualified political sub-
11 division, have met the appropriate conditions
12 described in subsection (a)(2), to a facility des-
13 ignated before such date under such law, ordi-
14 nance, regulation, or provision.

15 “(iv) Any law, ordinance, regulation, or
16 legislative or administrative provision—

17 “(I) that is adopted before May 15,
18 1994;

19 “(II) that pertains to the transpor-
20 tation of recyclable materials generated
21 within the boundaries of a State or quali-
22 fied political subdivision; and

23 “(III) under which a State or quali-
24 fied political subdivision, prior to May 15,
25 1994, directed, limited, regulated, or pro-

1 hibited the transportation of recyclable ma-
2 terials that are not materials with respect
3 to which the generator or owner of the ma-
4 terials, and the State or qualified political
5 subdivision, have met the appropriate con-
6 ditions described in subsection (a)(2) and
7 that—

8 “(aa) are generated from house-
9 hold sources (as described in sub-
10 section (g)(2)(A)(i)) within the bound-
11 aries; or

12 “(bb) are generated from com-
13 mercial, institutional, or industrial
14 sources within the boundaries;

15 to the extent that the law, ordinance, regula-
16 tion, or provision is applied to the transpor-
17 tation of recyclable materials, described in
18 subclause (III), to a facility designated before
19 such date under such law, ordinance, regula-
20 tion, or provision, and is applied to the same
21 class of materials described in item (aa) or (bb)
22 of subclause (III) to which the law, ordinance,
23 regulation, or provision applied before such
24 date.

1 “(2) CONTRACT INFORMATION.—A part 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 or recyclable
11 materials covered by the contract or agreement with
12 respect to which the State or qualified political sub-
13 division could otherwise exercise authority under
14 subsection (a), 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) EFFECT ON INTERSTATE COMMERCE.—Ef-
19 fective from the date of its adoption, no contract or
20 agreement described in subparagraph (A) or (B) of
21 paragraph (1), and no law, ordinance, regulation, or
22 provision described in paragraph (1)(C), shall be
23 considered to impose an undue burden on or other-
24 wise impair, restrain, or discriminate against inter-
25 state commerce.

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

16 “(5) EFFECT ON STATE PROCUREMENT
17 LAWS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), nothing in this section shall
20 supersede or modify—

21 “(i) any State law or State regulation
22 concerning the procurement of municipal
23 solid waste services or facilities by qualified
24 political subdivisions; or

1 “(ii) any State law or regulation con-
2 cerning competitive bidding for such serv-
3 ices or facilities.

4 “(B) DESIGNATION.—Notwithstanding
5 subparagraph (A), any such facilities shall be
6 subject to the designation process described in
7 subsection(c).

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

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

13 “(B) the terms and requirements of the
14 document, and of any laws and regulations of
15 the State or qualified political subdivision in-
16 volved, that were in effect and applicable to the
17 designation continue to apply.

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

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

24 “(1) INDUSTRIAL SOLID WASTE.—The term ‘in-
25 dustrial solid waste’ means solid waste generated by

1 manufacturing or industrial processes, including
2 waste generated during scrap processing and recy-
3 cling, that is not hazardous waste regulated under
4 subtitle C.

5 “(2) MUNICIPAL SOLID WASTE.—

6 “(A) IN GENERAL.—The term ‘municipal
7 solid waste’—

8 “(i) means any waste generated by a
9 household, including a single or multifam-
10 ily residence;

11 “(ii) includes waste generated by a
12 commercial, institutional, or industrial
13 source to the extent that such waste—

14 “(I) is essentially the same as
15 waste normally generated by house-
16 holds; or

17 “(II) would be considered condi-
18 tionally exempt small quantity genera-
19 tor waste under section 3001(d) and
20 is collected and disposed of with other
21 municipal solid waste as part of nor-
22 mal municipal solid waste collection
23 services; and

24 “(iii) includes residue remaining after
25 recyclable materials have been separated,

1 or diverted at the point of generation, from
2 municipal solid waste described in clause
3 (i) or (ii).

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

7 “(i) Hazardous waste required to be
8 managed in accordance with subtitle C
9 (other than waste described in subpara-
10 graph (A)(ii)(II), solid waste containing a
11 polychlorinated biphenyl regulated under
12 the Toxic Substances Control Act (15
13 U.S.C. 2601 et seq.), or medical waste.

14 “(ii)(I) A recyclable material.

15 “(II) A material or a product re-
16 turned from a dispenser or distributor to
17 the manufacturer or the agent of the man-
18 ufacturer for credit, evaluation, or reuse.

19 “(III) A material or product that is
20 an out-of-date or unmarketable material or
21 product, or is a material or product that
22 does not conform to specifications, and
23 that is returned to the manufacturer or the
24 agent of the manufacturer for credit, eval-
25 uation, or reuse.

1 “(iii) Any solid waste (including con-
2 taminated soil and debris) resulting from a
3 response action taken under section 104 or
4 106 of the Comprehensive Environmental
5 Response, Compensation, and Liability Act
6 of 1980 (42 U.S.C. 9604 or 9606) or a
7 corrective action taken under this Act.

8 “(iv)(I) Industrial solid waste.

9 “(II) Any solid waste that is gen-
10 erated by an industrial facility and trans-
11 ported for the purpose of containment,
12 storage, or disposal to a facility that is
13 owned or operated by the generator of the
14 waste, or a facility that is located on prop-
15 erty owned by the generator or a company
16 with which the generator is affiliated.

17 “(3) QUALIFIED POLITICAL SUBDIVISION.—The
18 term ‘qualified political subdivision’ means a govern-
19 mental entity of a political subdivision of a State if
20 a majority of members of the entity are elected offi-
21 cials and the entity has been granted authority by
22 the State to plan for, or determine the methods to
23 be utilized for, the collection, disposal, or other man-
24 agement of municipal solid waste generated within
25 the boundaries of the political subdivision.

