

**Suspend the Rules and Pass the Bill, S. 710, With an Amendment**  
**(The amendment strikes all after the enacting clause and inserts a  
new text)**

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 710

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IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2012

Referred to the Committee on Energy and Commerce

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## AN ACT

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hazardous Waste  
3 Electronic Manifest Establishment Act”.

4 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**  
5 **TEM.**

6 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-  
7 posal Act (42 U.S.C. 6921 et seq.) is amended by adding  
8 at the end the following:

9 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**  
10 **SYSTEM.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BOARD.—The term ‘Board’ means the  
13 Hazardous Waste Electronic Manifest System Advi-  
14 sory Board established under subsection (f).

15 “(2) FUND.—The term ‘Fund’ means the Haz-  
16 ardoous Waste Electronic Manifest System Fund es-  
17 tablished by subsection (d).

18 “(3) PERSON.—The term ‘person’ includes an  
19 individual, corporation (including a Government cor-  
20 poration), company, association, firm, partnership,  
21 society, joint stock company, trust, municipality,  
22 commission, Federal agency, State, political subdivi-  
23 sion of a State, or interstate body.

24 “(4) SYSTEM.—The term ‘system’ means the  
25 hazardous waste electronic manifest system estab-  
26 lished under subsection (b).

1           “(5) USER.—The term ‘user’ means a haz-  
2           ardous waste generator, a hazardous waste trans-  
3           porter, an owner or operator of a hazardous waste  
4           treatment, storage, recycling, or disposal facility, or  
5           any other person that—

6                   “(A) is required to use a manifest to com-  
7                   ply with any Federal or State requirement to  
8                   track the shipment, transportation, and receipt  
9                   of hazardous waste or other material that is  
10                  shipped from the site of generation to an off-  
11                  site facility for treatment, storage, disposal, or  
12                  recycling; and

13                   “(B)(i) elects to use the system to com-  
14                   plete and transmit an electronic manifest for-  
15                   mat; or

16                   “(ii) submits to the system for data proc-  
17                   essing purposes a paper copy of the manifest  
18                   (or data from such a paper copy), in accordance  
19                   with such regulations as the Administrator may  
20                   promulgate to require such a submission.

21           “(b) ESTABLISHMENT.—Not later than 3 years after  
22           the date of enactment of this section, the Administrator  
23           shall establish a hazardous waste electronic manifest sys-  
24           tem that may be used by any user.

25           “(c) USER FEES.—

1           “(1) IN GENERAL.—In accordance with para-  
2           graph (4), the Administrator may impose on users  
3           such reasonable service fees as the Administrator de-  
4           termines to be necessary to pay costs incurred in de-  
5           veloping, operating, maintaining, and upgrading the  
6           system, including any costs incurred in collecting  
7           and processing data from any paper manifest sub-  
8           mitted to the system after the date on which the sys-  
9           tem enters operation.

10           “(2) COLLECTION OF FEES.—The Adminis-  
11           trator shall—

12                   “(A) collect the fees described in para-  
13                   graph (1) from the users in advance of, or as  
14                   reimbursement for, the provision by the Admin-  
15                   istrator of system-related services; and

16                   “(B) deposit the fees in the Fund.

17           “(3) FEE STRUCTURE.—

18                   “(A) IN GENERAL.—The Administrator, in  
19                   consultation with information technology ven-  
20                   dors, shall determine through the contract  
21                   award process described in subsection (e) the  
22                   fee structure that is necessary to recover the  
23                   full cost to the Administrator of providing sys-  
24                   tem-related services, including—

25                           “(i) contractor costs relating to—

- 1 “(I) materials and supplies;
- 2 “(II) contracting and consulting;
- 3 “(III) overhead;
- 4 “(IV) information technology (in-
- 5 cluding costs of hardware, software,
- 6 and related services);
- 7 “(V) information management;
- 8 “(VI) collection of service fees;
- 9 “(VII) reporting and accounting;
- 10 and
- 11 “(VIII) project management; and
- 12 “(ii) costs of employment of direct
- 13 and indirect Government personnel dedi-
- 14 cated to establishing, managing, and main-
- 15 taining the system.

16 “(B) ADJUSTMENTS IN FEE AMOUNT.—

17 “(i) IN GENERAL.—The Adminis-

18 trator, in consultation with the Board,

19 shall increase or decrease the amount of a

20 service fee determined under the fee struc-

21 ture described in subparagraph (A) to a

22 level that will—

23 “(I) result in the collection of an

24 aggregate amount for deposit in the

25 Fund that is sufficient and not more

1 than reasonably necessary to cover  
2 current and projected system-related  
3 costs (including any necessary system  
4 upgrades); and

5 “(II) minimize, to the maximum  
6 extent practicable, the accumulation  
7 of unused amounts in the Fund.

8 “(ii) EXCEPTION FOR INITIAL PERIOD  
9 OF OPERATION.—The requirement de-  
10 scribed in clause (i)(II) shall not apply to  
11 any additional fees that accumulate in the  
12 Fund, in an amount that does not exceed  
13 \$2,000,000, during the 3-year period be-  
14 ginning on the date on which the system  
15 enters operation.

16 “(iii) TIMING OF ADJUSTMENTS.—Ad-  
17 justments to service fees described in  
18 clause (i) shall be made—

19 “(I) initially, at the time at  
20 which initial development costs of the  
21 system have been recovered by the  
22 Administrator such that the service  
23 fee may be reduced to reflect the  
24 elimination of the system development  
25 component of the fee; and

1                   “(II) periodically thereafter, upon  
2                   receipt and acceptance of the findings  
3                   of any annual accounting or auditing  
4                   report under subsection (d)(3), if the  
5                   report discloses a significant disparity  
6                   for a fiscal year between the funds  
7                   collected from service fees under this  
8                   subsection for the fiscal year and ex-  
9                   penditures made for the fiscal year to  
10                  provide system-related services.

11                  “(4) CREDITING AND AVAILABILITY OF FEES.—  
12                  Fees authorized under this section shall be collected  
13                  and available for obligation only to the extent and in  
14                  the amount provided in advance in appropriations  
15                  Acts.

16                  “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST  
17                  SYSTEM FUND.—

18                  “(1) ESTABLISHMENT.—There is established in  
19                  the Treasury of the United States a revolving fund,  
20                  to be known as the ‘Hazardous Waste Electronic  
21                  Manifest System Fund’, consisting of such amounts  
22                  as are deposited in the Fund under subsection  
23                  (c)(2)(B).

24                  “(2) EXPENDITURES FROM FUND.—

1           “(A) IN GENERAL.—Only to the extent  
2 provided in advance in appropriations Acts, on  
3 request by the Administrator, the Secretary of  
4 the Treasury shall transfer from the Fund to  
5 the Administrator amounts appropriated to pay  
6 costs incurred in developing, operating, main-  
7 taining, and upgrading the system under sub-  
8 section (c).

9           “(B) USE OF FUNDS BY ADMINIS-  
10 TRATOR.—Fees collected by the Administrator  
11 and deposited in the Fund under this section  
12 shall be available to the Administrator subject  
13 to appropriations Acts for use in accordance  
14 with this section without fiscal year limitation.

15           “(C) OVERSIGHT OF FUNDS.—The Admin-  
16 istrator shall carry out all necessary measures  
17 to ensure that amounts in the Fund are used  
18 only to carry out the goals of establishing, oper-  
19 ating, maintaining, upgrading, managing, sup-  
20 porting, and overseeing the system.

21           “(3) ACCOUNTING AND AUDITING.—

22           “(A) ACCOUNTING.—For each 2-fiscal-year  
23 period, the Administrator shall prepare and  
24 submit to the Committee on Environment and  
25 Public Works and the Committee on Appropria-

1           tions of the Senate and the Committee on En-  
2           ergy and Commerce and the Committee on Ap-  
3           propriations of the House of Representatives a  
4           report that includes—

5                   “(i) an accounting of the fees paid to  
6                   the Administrator under subsection (c) and  
7                   disbursed from the Fund for the period  
8                   covered by the report, as reflected by fi-  
9                   nancial statements provided in accordance  
10                  with—

11                           “(I) the Chief Financial Officers  
12                           Act of 1990 (Public Law 101–576;  
13                           104 Stat. 2838) and amendments  
14                           made by that Act; and

15                           “(II) the Government Manage-  
16                           ment Reform Act of 1994 (Public  
17                           Law 103–356; 108 Stat. 3410) and  
18                           amendments made by that Act; and

19                           “(ii) an accounting describing actual  
20                           expenditures from the Fund for the period  
21                           covered by the report for costs described in  
22                           subsection (c)(1).

23                  “(B) AUDITING.—

24                           “(i) IN GENERAL.—For the purpose  
25                           of section 3515(c) of title 31, United

1 States Code, the Fund shall be considered  
2 a component of an Executive agency.

3 “(ii) COMPONENTS OF AUDIT.—The  
4 annual audit required in accordance with  
5 sections 3515(b) and 3521 of title 31,  
6 United States Code, of the financial state-  
7 ments of activities carried out using  
8 amounts from the Fund shall include an  
9 analysis of—

10 “(I) the fees collected and dis-  
11 bursed under this section;

12 “(II) the reasonableness of the  
13 fee structure in place as of the date of  
14 the audit to meet current and pro-  
15 jected costs of the system;

16 “(III) the level of use of the sys-  
17 tem by users; and

18 “(IV) the success to date of the  
19 system in operating on a self-sus-  
20 taining basis and improving the effi-  
21 ciency of tracking waste shipments  
22 and transmitting waste shipment  
23 data.

1 “(iii) FEDERAL RESPONSIBILITY.—

2 The Inspector General of the Environ-  
3 mental Protection Agency shall—

4 “(I) conduct the annual audit de-  
5 scribed in clause (ii); and

6 “(II) submit to the Administrator  
7 a report that describes the findings  
8 and recommendations of the Inspector  
9 General resulting from the audit.

10 “(e) CONTRACTS.—

11 “(1) AUTHORITY TO ENTER INTO CONTRACTS  
12 FUNDED BY SERVICE FEES.—After consultation with  
13 the Secretary of Transportation, the Administrator  
14 may enter into 1 or more information technology  
15 contracts with entities determined to be appropriate  
16 by the Administrator (referred to in this subsection  
17 as ‘contractors’) for the provision of system-related  
18 services.

19 “(2) TERM OF CONTRACT.—A contract awarded  
20 under this subsection shall have a term of not more  
21 than 10 years.

22 “(3) ACHIEVEMENT OF GOALS.—The Adminis-  
23 trator shall ensure, to the maximum extent prac-  
24 ticable, that a contract awarded under this sub-  
25 section—

1           “(A) is performance-based;

2           “(B) identifies objective outcomes; and

3           “(C) contains performance standards that  
4           may be used to measure achievement and goals  
5           to evaluate the success of a contractor in per-  
6           forming under the contract and the right of the  
7           contractor to payment for services under the  
8           contract, taking into consideration that a pri-  
9           mary measure of successful performance shall  
10          be the development of a hazardous waste elec-  
11          tronic manifest system that—

12                   “(i) meets the needs of the user com-  
13                   munity (including States that rely on data  
14                   contained in manifests);

15                   “(ii) attracts sufficient user participa-  
16                   tion and service fee revenues to ensure the  
17                   viability of the system;

18                   “(iii) decreases the administrative  
19                   burden on the user community; and

20                   “(iv) provides the waste receipt data  
21                   applicable to the biennial reports required  
22                   by section 3002(a)(6).

23          “(4) PAYMENT STRUCTURE.—Each contract  
24          awarded under this subsection shall include a provi-  
25          sion that specifies—

1           “(A) the service fee structure of the con-  
2           tractor that will form the basis for payments to  
3           the contractor; and

4           “(B) the fixed-share ratio of monthly serv-  
5           ice fee revenues from which the Administrator  
6           shall reimburse the contractor for system-re-  
7           lated development, operation, and maintenance  
8           costs.

9           “(5) CANCELLATION AND TERMINATION.—

10           “(A) IN GENERAL.—If the Administrator  
11           determines that sufficient funds are not made  
12           available for the continuation in a subsequent  
13           fiscal year of a contract entered into under this  
14           subsection, the Administrator may cancel or  
15           terminate the contract.

16           “(B) NEGOTIATION OF AMOUNTS.—The  
17           amount payable in the event of cancellation or  
18           termination of a contract entered into under  
19           this subsection shall be negotiated with the con-  
20           tractor at the time at which the contract is  
21           awarded.

22           “(6) NO EFFECT ON OWNERSHIP.—Regardless  
23           of whether the Administrator enters into a contract  
24           under this subsection, the system shall be owned by  
25           the Federal Government.

1           “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST  
2 SYSTEM ADVISORY BOARD.—

3           “(1) ESTABLISHMENT.—Not later than 3 years  
4 after the date of enactment of this section, the Ad-  
5 ministrator shall establish a board to be known as  
6 the ‘Hazardous Waste Electronic Manifest System  
7 Advisory Board’.

8           “(2) COMPOSITION.—The Board shall be com-  
9 posed of 9 members, of which—

10           “(A) 1 member shall be the Administrator  
11 (or a designee), who shall serve as Chairperson  
12 of the Board; and

13           “(B) 8 members shall be individuals ap-  
14 pointed by the Administrator—

15           “(i) at least 2 of whom shall have ex-  
16 pertise in information technology;

17           “(ii) at least 3 of whom shall have ex-  
18 perience in using or represent users of the  
19 manifest system to track the transpor-  
20 tation of hazardous waste under this sub-  
21 title (or an equivalent State program); and

22           “(iii) at least 3 of whom shall be a  
23 State representative responsible for proc-  
24 essing those manifests.

1           “(3) DUTIES.—The Board shall meet annually  
2           to discuss, evaluate the effectiveness of, and provide  
3           recommendations to the Administrator relating to,  
4           the system.

5           “(g) REGULATIONS.—

6           “(1) PROMULGATION.—

7                   “(A) IN GENERAL.—Not later than 1 year  
8                   after the date of enactment of this section, after  
9                   consultation with the Secretary of Transpor-  
10                  tation, the Administrator shall promulgate reg-  
11                  ulations to carry out this section.

12                  “(B) INCLUSIONS.—The regulations pro-  
13                  mulgated pursuant to subparagraph (A) may  
14                  include such requirements as the Administrator  
15                  determines to be necessary to facilitate the  
16                  transition from the use of paper manifests to  
17                  the use of electronic manifests, or to accommo-  
18                  date the processing of data from paper mani-  
19                  fests in the electronic manifest system, includ-  
20                  ing a requirement that users of paper manifests  
21                  submit to the system copies of the paper mani-  
22                  fests for data processing purposes.

23                  “(C) REQUIREMENTS.—The regulations  
24                  promulgated pursuant to subparagraph (A)  
25                  shall ensure that each electronic manifest pro-

1           vides, to the same extent as paper manifests  
2           under applicable Federal and State law, for—

3                   “(i) the ability to track and maintain  
4                   legal accountability of—

5                           “(I) the person that certifies that  
6                           the information provided in the mani-  
7                           fest is accurately described; and

8                           “(II) the person that acknowl-  
9                           edges receipt of the manifest;

10                   “(ii) if the manifest is electronically  
11                   submitted, State authority to access paper  
12                   printout copies of the manifest from the  
13                   system; and

14                           “(iii) access to all publicly available  
15                           information contained in the manifest.

16                   “(2) EFFECTIVE DATE OF REGULATIONS.—Any  
17                   regulation promulgated by the Administrator under  
18                   paragraph (1) and in accordance with section 3003  
19                   relating to electronic manifesting of hazardous waste  
20                   shall take effect in each State as of the effective  
21                   date specified in the regulation.

22                           “(3) ADMINISTRATION.—The Administrator  
23                   shall carry out regulations promulgated under this  
24                   subsection in each State unless the State program is

1 fully authorized to carry out such regulations in lieu  
2 of the Administrator.

3 “(h) REQUIREMENT OF COMPLIANCE WITH RESPECT  
4 TO CERTAIN STATES.—In any case in which the State in  
5 which waste is generated, or the State in which waste will  
6 be transported to a designated facility, requires that the  
7 waste be tracked through a hazardous waste manifest, the  
8 designated facility that receives the waste shall, regardless  
9 of the State in which the facility is located—

10 “(1) complete the facility portion of the applica-  
11 ble manifest;

12 “(2) sign and date the facility certification; and

13 “(3) submit to the system a final copy of the  
14 manifest for data processing purposes.

15 “(i) AUTHORIZATION FOR START-UP ACTIVITIES.—  
16 There are authorized to be appropriated \$2,000,000 for  
17 each of fiscal years 2013 through 2015 for start-up activi-  
18 ties to carry out this section, to be offset by collection of  
19 user fees under subsection (c) such that all such appro-  
20 priated funds are offset by fees as provided in subsection  
21 (c).”.

22 (b) CONFORMING AMENDMENT.—The table of con-  
23 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)  
24 is amended by inserting at the end of the items relating  
25 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.