

105TH CONGRESS  
1ST SESSION

# H. R. 943

To amend the Solid Waste Disposal Act to provide authority for States to control the movement of municipal solid waste to waste management facilities within the boundaries of the State or within the boundaries of political subdivisions of the State.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1997

Mr. FRANKS of New Jersey (for himself, Mrs. ROUKEMA, and Mr. FRELINGHUYSEN) introduced the following bill; which was referred to the Committee on Commerce

---

## A BILL

To amend the Solid Waste Disposal Act to provide authority for States to control the movement of municipal solid waste to waste management facilities within the boundaries of the State or within the boundaries of political subdivisions of the State.

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 “Municipal Solid Waste  
5       Flow Control Act of 1997”.

1 **SEC. 2. CONGRESSIONAL AUTHORIZATION OF STATE AND**  
2 **LOCAL MUNICIPAL SOLID WASTE FLOW CON-**  
3 **TROL.**

4 (a) AMENDMENT OF SUBTITLE D.—Subtitle D of the  
5 Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is  
6 amended by adding after section 4010 the following new  
7 section:

8 **“SEC. 4011. CONGRESSIONAL AUTHORIZATION OF STATE**  
9 **AND LOCAL GOVERNMENT CONTROL OVER**  
10 **MOVEMENT OF MUNICIPAL SOLID WASTE**  
11 **AND RECYCLABLE MATERIALS.**

12 “(a) FLOW CONTROL AUTHORITY FOR FACILITIES  
13 DESIGNATED AS OF MAY 16, 1994.—Any State or politi-  
14 cal subdivision thereof is authorized to exercise flow con-  
15 trol authority to direct the movement of municipal solid  
16 waste, and recyclable materials voluntarily relinquished by  
17 the owner or generator thereof, to particular waste man-  
18 agement facilities, or facilities for recyclable materials,  
19 designated as of May 16, 1994, if each of the following  
20 conditions are met:

21 “(1) The waste and recyclable materials are  
22 generated within the jurisdictional boundaries of  
23 such State or political subdivision, determined as of  
24 May 16, 1994.

1           “(2) Such flow control authority is imposed  
2           through the adoption or execution of a law, ordi-  
3           nance, regulation, resolution, or other legally binding  
4           provision or legally binding official act of the State  
5           or political subdivision that—

6                       “(A) was in effect on May 16, 1994,

7                       “(B) was in effect prior to the issuance of  
8                       an injunction or other order by a court based  
9                       on a ruling that such law, ordinance, regula-  
10                      tion, resolution, or other legally binding provi-  
11                      sion or official act violated the Commerce  
12                      Clause of the United States Constitution, or

13                     “(C) was in effect immediately prior to  
14                     suspension thereof by legislative or official ad-  
15                     ministrative action of the State or political sub-  
16                     division expressly because of the existence of a  
17                     court order of the type described in subpara-  
18                     graph (B) issued by a court of the same State  
19                     or Federal judicial circuit.

20           “(3) The State or a political subdivision thereof  
21           has, for one or more of such designated facilities, in  
22           accordance with paragraph (2), on or before May  
23           16, 1994, either—

24                       “(A) presented eligible bonds for sale, or

1           “(B) executed a legally binding contract or  
2           agreement that obligates it to deliver a mini-  
3           mum quantity of waste or recyclable materials  
4           to one or more such designated waste manage-  
5           ment facilities or facilities for recyclable mate-  
6           rials and that obligates it to pay for that mini-  
7           mum quantity of waste or recyclable materials  
8           even if the stated minimum quantity of such  
9           waste or recyclable materials is not delivered  
10          within a required timeframe.

11          “(b) WASTE STREAM SUBJECT TO FLOW CON-  
12          TROL.—The flow control authority of subsection (a) shall  
13          only permit the exercise of flow control authority to any  
14          designated facility of the specific classes or categories of  
15          municipal solid waste and voluntarily relinquished recycla-  
16          ble materials to which flow control authority was applica-  
17          ble on May 16, 1994, or immediately before the effective  
18          date of an injunction or court order referred to in sub-  
19          section (a)(2)(B) or an action referred to in subsection  
20          (a)(2)(C) and—

21               “(1) in the case of any designated waste man-  
22               agement facility or facility for recyclable materials  
23               that was in operation as of May 16, 1994, only if  
24               the facility concerned received municipal solid waste  
25               or recyclable materials in those classes or categories

1 within 2 years prior to May 16, 1994, or the effective date of such injunction or other court order or  
2 action,  
3

4 “(2) in the case of any designated waste management facility or facility for recyclable materials  
5 that was not yet in operation as of May 16, 1994,  
6 only of the classes or categories that were clearly  
7 identified by the State or political subdivision as of  
8 May 16, 1994, to be flow controlled to such facility,  
9 and  
10

11 “(3) only to the extent of the maximum volume  
12 authorized by State permit to be disposed at the  
13 waste management facility or processed at the facility for recyclable materials.  
14

15 If specific classes or categories of municipal solid waste  
16 or recyclable materials were not clearly identified, paragraph (2) shall apply only to municipal solid waste generated by households, including single family residences  
17 and multi-family residences of up to 4 units.  
18

19 “(c) DURATION OF FLOW CONTROL AUTHORITY.—  
20 Flow control authority may be exercised pursuant to this  
21 section to any facility or facilities only until the later of  
22 the following:  
23

24 “(1) The expiration date of the bond referred to  
25 in subsection (a)(3)(A).

1           “(2) The expiration date of the contract or  
2           agreement referred to in subsection (a)(3)(B).

3           “(3) The adjusted expiration date of a bond is-  
4           sued for a qualified environmental retrofit.

5 Such expiration dates shall be determined based upon the  
6 terms and provisions of the bond or contract in effect on  
7 May 16, 1994. In the case of a contract described in sub-  
8 section (a)(3)(B) that has no specified expiration date, for  
9 purposes of paragraph (2) the expiration date shall be  
10 treated as the first date that the State or political subdivi-  
11 sion that is a party to the contract can withdraw from  
12 its responsibilities under the contract without being in de-  
13 fault thereunder and without substantial penalty or other  
14 substantial legal sanction.

15       “(d) MANDATORY OPT-OUT FOR GENERATORS AND  
16 TRANSPORTERS.—Notwithstanding any other provision of  
17 this section, no State or political subdivision may require  
18 any generator or transporter of municipal solid waste or  
19 recyclable materials to transport such waste or materials,  
20 or deliver such waste or materials for transportation, to  
21 a facility that is listed on the National Priorities List es-  
22 tablished under the Comprehensive Environmental Re-  
23 sponse, Compensation, and Liability Act of 1980 unless  
24 such State or political subdivision or the owner or operator  
25 of such facility has adequately indemnified the generator

1 or transporter against all liability under that Act with re-  
2 spect to such waste or materials.

3 “(e) EFFECT ON EXISTING LAWS.—

4 “(1) ENVIRONMENTAL LAWS.—Nothing in this  
5 section shall be interpreted or construed to have any  
6 effect on any other law relating to the protection of  
7 human health and the environment, or the manage-  
8 ment of municipal solid waste or recyclable mate-  
9 rials.

10 “(2) STATE LAW.—Nothing in this section shall  
11 be interpreted to authorize a political subdivision to  
12 exercise the flow control authority granted by this  
13 section in a manner inconsistent with State law.

14 “(3) OWNERSHIP OF RECYCLABLE MATE-  
15 RIALS.—Nothing in this section shall authorize any  
16 State or political subdivision to require any genera-  
17 tor or owner of recyclable materials to transfer any  
18 recyclable materials to such State or political sub-  
19 division, nor shall prohibit any persons from selling,  
20 purchasing, accepting, conveying, or transporting  
21 any recyclable materials, unless the generator or  
22 owner voluntarily makes such recyclable materials  
23 available to the State or political subdivision and re-  
24 linquishes any rights to, or ownership of, such recy-  
25 clable materials.

1       “(f) FACILITIES NOT QUALIFIED FOR FLOW CON-  
2 TROL.—No flow control authority may be exercised under  
3 the provisions of this section to direct solid waste or recy-  
4 clable materials to any facility pursuant to an ordinance  
5 if—

6               “(1) the ordinance was determined to be uncon-  
7 stitutional by a State or Federal court in October of  
8 1994;

9               “(2) the facility is located over a sole source aq-  
10 uifer, within 5 miles of a public beach, and within  
11 25 miles of a city with a population of more than  
12 5,000,000; and

13              “(3) the facility is not fully permitted and oper-  
14 ating in complete official compliance with all Fed-  
15 eral, State, and local environmental regulations.

16       “(g) LIMITATION ON REVENUE.—A State or quali-  
17 fied political subdivision may exercise the flow control au-  
18 thority granted in this section only if the State or qualified  
19 political subdivision limits the use of any of the revenues  
20 it derives from the exercise of such authority for the pay-  
21 ment of one or more of the following:

22               “(1) Principal and interest on any eligible bond.

23               “(2) Principal and interest on a bond issued for  
24 a qualified environmental retrofit.



1           “(3) Payments required by the terms of a con-  
2           tract referred to in subsection (a)(3)(B).

3           “(4) Other expenses necessary for the operation  
4           and maintenance of designated facilities and other  
5           integral facilities necessary for the operation and  
6           maintenance of such designated facilities that are  
7           identified by the same eligible bond.

8           “(5) To the extent not covered by paragraphs  
9           (1) through (4), expenses for recycling, composting,  
10          and household hazardous waste activities in which  
11          the State or political subdivision was engaged before  
12          May 16, 1994, and for which the State or political  
13          subdivision, after periodic evaluation, beginning no  
14          later than one year after the enactment of this sec-  
15          tion, finds that there is no comparable qualified pri-  
16          vate sector service provider available. Such periodic  
17          evaluation shall be based on public notice and open  
18          competition. The amount and nature of payments  
19          described in this paragraph shall be fully disclosed  
20          to the public annually.

21          “(h) INTERIM CONTRACTS.—A lawful, legally binding  
22          contract under State law that was entered into during the  
23          period—

24                 “(1) before November 10, 1995, and after the  
25                 effective date of any applicable final court order no

1 longer subject to judicial review specifically invali-  
2 dating the flow control authority of such State or  
3 political subdivision, or

4 “(2) after such State or political subdivision re-  
5 frained pursuant to legislative or official administra-  
6 tive action from enforcing flow control authority and  
7 before the effective date on which it resumes en-  
8 forcement of flow control authority after enactment  
9 of this section,

10 shall be fully enforceable in accordance with State law.

11 “(i) AREAS WITH PRE-1984 FLOW CONTROL.—

12 “(1) GENERAL AUTHORITY.—A State that on  
13 or before January 1, 1984—

14 “(A) adopted regulations under a State  
15 law that required or directed transportation,  
16 management, or disposal of municipal solid  
17 waste from residential, commercial, institu-  
18 tional, or industrial sources (as defined under  
19 State law) to specifically identified waste man-  
20 agement facilities, and applied those regulations  
21 to every political subdivision of the State, and

22 “(B) subjected such waste management fa-  
23 cilities to the jurisdiction of a State public utili-  
24 ties commission,

1 may exercise flow control authority over municipal  
2 solid waste in accordance with the other provisions  
3 of this section and may exercise the additional flow  
4 control authority described in paragraph (2).

5 “(2) ADDITIONAL FLOW CONTROL AUTHOR-  
6 ITY.—A State that meets the requirements of para-  
7 graph (1) and any political subdivision thereof may  
8 exercise flow control authority over all classes and  
9 categories of municipal solid waste that were subject  
10 to flow control by such State or political subdivision  
11 thereof on May 16, 1994, by directing it from any  
12 existing waste management facility that was des-  
13 ignated as of May 16, 1994, or any proposed waste  
14 management facility in the State to any other such  
15 existing or proposed waste management facility in  
16 the State without regard to whether the political  
17 subdivision within which the municipal solid waste is  
18 generated had designated the particular waste man-  
19 agement facility or had issued a bond or entered into  
20 a contract referred to in subsection (a)(3) (A) or  
21 (B), respectively.

22 “(3) DEFINITION.—For purposes of this sub-  
23 section, the term ‘proposed waste management facil-  
24 ity’ means a waste management facility that was  
25 specifically identified in a waste management plan

1 prior to May 16, 1994, and for the construction of  
2 which—

3 “(A) revenue bonds were issued and out-  
4 standing as of May 16, 1994,

5 “(B) additional financing with revenue  
6 bonds was required as of the date of enactment  
7 of this section to complete construction, and

8 “(C) a permit had been issued prior to De-  
9 cember 31, 1994.

10 “(4) LIMITATION OF AUTHORITY.—The addi-  
11 tional flow control authority granted by paragraph  
12 (2) may be exercised to—

13 “(A) any facility described in paragraph  
14 (2) for up to 5 years after the date of enact-  
15 ment of this section, and

16 “(B) after 5 years after enactment of this  
17 section, only to those facilities and only with re-  
18 spect to the classes, categories, and geographic  
19 origin of waste directed to such facilities specifi-  
20 cally identified by the State in a public notice  
21 issued within 5 years after enactment of this  
22 section.

1           “(5) DURATION OF AUTHORITY.—The authority  
2           to direct municipal solid waste to any facility pursu-  
3           ant to this subsection shall terminate with regard to  
4           such facility in accordance with subsection (c).

5           “(j) SAVINGS CLAUSE.—Nothing in this section is in-  
6           tended to have any effect on the authority of any State  
7           or political subdivision to franchise, license, or contract for  
8           municipal solid waste collection, processing, or disposal.

9           “(k) APPLICATION OF FLOW CONTROL AUTHOR-  
10          ITY.—The flow control authority granted by this section  
11          shall be exercised in a manner that ensures that it is ap-  
12          plied to the public sector if it is applied to the private  
13          sector.

14          “(l) PROMOTION OF RECYCLING.—The Congress  
15          finds that, in order to promote recycling, anyone engaged  
16          in recycling activities should strive to meet applicable  
17          standards for the reuse of recyclable materials.

18          “(m) EFFECTIVE DATE.—The provisions of this sec-  
19          tion shall take effect with respect to the exercise by any  
20          State or political subdivision of flow control authority on  
21          or after the date of enactment of this section, and such  
22          provisions shall also apply to the exercise by any State  
23          or political subdivision of flow control authority before

1 such date of enactment unless the exercise of such author-  
2 ity has been declared unconstitutional by a final judicial  
3 decision that is no longer subject to judicial review.

4 “(n) DEFINITIONS.—For the purposes of this sec-  
5 tion—

6 “(1) ADJUSTED EXPIRATION DATE.—The term  
7 ‘adjusted expiration date’ means, with respect to a  
8 bond issued for a qualified environmental retrofit,  
9 the earlier of the final maturity date of such bond  
10 or 15 years after the date of issuance of such bonds.

11 “(2) BOND ISSUED FOR A QUALIFIED ENVIRON-  
12 MENTAL RETROFIT.—The term ‘bond issued for a  
13 qualified environmental retrofit’ means a revenue or  
14 general obligation bond, the proceeds of which are  
15 dedicated to financing the retrofitting of a resource  
16 recovery facility or a municipal solid waste inciner-  
17 ator necessary to comply with section 129 of the  
18 Clean Air Act, provided that such bond is presented  
19 for sale before the expiration date of the bond or  
20 contract referred to in subsection (a)(3) (A) and (B)  
21 respectively that is applicable to such facility and no  
22 later than December 31, 1999.

23 “(3) DESIGNATE; DESIGNATION, ETC.—The  
24 terms ‘designate’, ‘designated’, ‘designating’, and

1       ‘designation’ mean a requirement of a State or polit-  
2       ical subdivision, and the act of a State or political  
3       subdivision, individually or collectively, to require  
4       that all or any portion of the municipal solid waste  
5       or recyclable materials that is generated within the  
6       boundaries of the State or any political subdivision  
7       be delivered to one or more waste management fa-  
8       cilities or facilities for recyclable materials identified  
9       by the State or a political subdivision thereof. The  
10      term ‘designation’ includes bond covenants, official  
11      statements, or other official financing documents is-  
12      sued by a political subdivision issuing an eligible  
13      bond in which it identified a specific waste manage-  
14      ment facility as being the subject of such bond and  
15      the requisite facility for receipt of municipal solid  
16      waste or recyclable materials generated within the  
17      jurisdictional boundaries of that political subdivision.

18               “(4) ELIGIBLE BOND.—The term ‘eligible bond’  
19      means—

20                       “(A) a revenue bond specifically to finance  
21                      one or more designated waste management fa-  
22                      cilities, facilities for recyclable materials, or spe-  
23                      cifically and directly related assets, development  
24                      or finance costs, as evidenced by the bond docu-  
25                      ments; or

1           “(B) a general obligation bond, the pro-  
2           ceeds of which were used solely to finance one  
3           or more designated waste management facili-  
4           ties, facilities for recyclable materials, or spe-  
5           cifically and directly related assets, development  
6           or finance costs, as evidenced by the bond docu-  
7           ments.

8           “(5) FLOW CONTROL AUTHORITY.—The term  
9           ‘flow control authority’ means the authority to con-  
10          trol the movement of municipal solid waste or volun-  
11          tarily relinquished recyclable materials and direct  
12          such solid waste or voluntarily relinquished recycla-  
13          ble materials to one or more designated waste man-  
14          agement facilities or facilities for recyclable mate-  
15          rials within the boundaries of a State or within the  
16          boundaries of a political subdivision of a State, as in  
17          effect on May 16, 1994.

18          “(6) MUNICIPAL SOLID WASTE.—The term  
19          ‘municipal solid waste’ means any solid waste gen-  
20          erated by the general public or by households, in-  
21          cluding single residences and multifamily residences,  
22          and from commercial, institutional, and industrial  
23          sources, to the extent such waste is essentially the  
24          same as waste normally generated by households or  
25          was collected and disposed of with other municipal



1 solid waste as part of normal municipal solid waste  
2 collection services, consisting of paper, wood, yard  
3 waste, plastics, leather, rubber, and other combus-  
4 tible materials and noncombustible materials such as  
5 metal and glass, including residue remaining after  
6 recyclable materials have been separated from waste  
7 destined for disposal, and including waste material  
8 removed from a septic tank, septage pit, or cesspool  
9 (other than from portable toilets), except that the  
10 term does not include any of the following:

11 “(A) Any waste identified or listed as a  
12 hazardous waste under section 3001 of this Act  
13 or waste regulated under the Toxic Substances  
14 Control Act.

15 “(B) Any waste, including contaminated  
16 soil and debris, resulting from—

17 “(i) response or remedial action taken  
18 under the Comprehensive Environmental  
19 Response, Compensation, and Liability Act  
20 of 1980,

21 “(ii) any corrective action taken under  
22 this Act, or

23 “(iii) any corrective action taken  
24 under any comparable State statute.

1           “(C) Medical waste listed in section 11002  
2           of this Act.

3           “(D) Industrial waste generated by manu-  
4           facturing or industrial processes, including  
5           waste generated during scrap processing and  
6           scrap recycling.

7           “(E) Recyclable materials.

8           “(F) Sludge.

9           Such term also includes construction and demolition  
10          debris.

11          “(7) POLITICAL SUBDIVISION.—The term ‘polit-  
12          ical subdivision’ means a city, town, borough, coun-  
13          ty, parish, district, or public service authority or  
14          other public body created by or pursuant to State  
15          law with authority to present for sale an eligible  
16          bond or to exercise flow control authority.

17          “(8) RECYCLE AND RECYCLING.—The terms  
18          ‘recycle’ and ‘recycling’ mean—

19               “(A) any process which produces any ma-  
20               terial defined as ‘recycled’ under section 1004;  
21               and

22               “(B) any process by which materials are  
23               diverted, separated from, or separately man-  
24               aged from materials otherwise destined for dis-  
25               posal as solid waste, by collecting, sorting, or

1 processing for use as raw materials or feed-  
2 stocks in lieu of, or in addition to, virgin mate-  
3 rials, including petroleum, in the manufacture  
4 of usable materials or products.

5 “(9) RECYCLABLE MATERIALS.—The term ‘re-  
6 cyclable materials’ means any materials that have  
7 been separated from waste otherwise destined for  
8 disposal (either at the source of the waste or at  
9 processing facilities) or that have been managed sep-  
10 arately from waste destined for disposal, for the pur-  
11 pose of recycling, reclamation, composting of organic  
12 materials such as food and yard waste, or reuse  
13 (other than for the purpose of incineration). Such  
14 term includes scrap tires to be used in resource re-  
15 covery.

16 “(10) WASTE MANAGEMENT FACILITY.—The  
17 term ‘waste management facility’ means any facility  
18 for separating, storing, transferring, treating, proc-  
19 essing, combusting, or disposing of municipal solid  
20 waste.”.

21 (b) TABLE OF CONTENTS.—The table of contents for  
22 subtitle D of the Solid Waste Disposal Act is amended  
23 by adding the following new item after the item relating  
24 to section 4010:

“Sec. 4011. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.”.

