

104TH CONGRESS  
2D SESSION

# H. RES. 349

Providing for the consideration of S. 534.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1996

Mr. BLILEY submitted the following resolution; which was considered under suspension of the rules

JANUARY 31, 1996

Failed to suspend the rules and agree to

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## RESOLUTION

Providing for the consideration of S. 534.

1       *Resolved*, That upon the adoption of this resolution,  
2 the Committee on Commerce shall be discharged from fur-  
3 ther consideration of the bill S. 534 and the House shall  
4 be considered to have struck out all after the enacting  
5 clause and inserted in lieu thereof an amendment consist-  
6 ing of the text contained in section 2 of this resolution,  
7 the bill shall be considered to have passed the House, as  
8 amended, and the House shall be considered to have in-  
9 sisted on the House amendment and requested a con-  
10 ference with the Senate thereon.

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 is amended by adding after sec-  
6 tion 4010 the following new section:

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

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

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

24 “(2) Such flow control authority is imposed  
25 through the adoption or execution of a law, ordi-  
26 nance, regulation, resolution, or other legally binding

1 provision or legally binding official act of the State  
2 or political subdivision that—

3 “(A) was in effect on May 16, 1994,

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

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

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

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

22 “(B) executed a legally binding contract or  
23 agreement that obligates it to deliver a mini-  
24 mum quantity of waste or recyclable materials  
25 to one or more such designated waste manage-

1           ment facilities or facilities for recyclable mate-  
2           rials and that obligates it to pay for that mini-  
3           mum quantity of waste or recyclable materials  
4           even if the stated minimum quantity of such  
5           waste or recyclable materials is not delivered  
6           within a required timeframe.

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

17                 “(1) in the case of any designated waste man-  
18                 agement facility or facility for recyclable materials  
19                 that was in operation as of May 16, 1994, only if  
20                 the facility concerned received municipal solid waste  
21                 or recyclable materials in those classes or categories  
22                 within 2 years prior to May 16, 1994, or the effec-  
23                 tive date of such injunction or other court order or  
24                 action,

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

8           “(3) only to the extent of the maximum volume  
9           authorized by State permit to be disposed at the  
10          waste management facility or processed at the facil-  
11          ity for recyclable materials.

12 If specific classes or categories of municipal solid waste  
13 or recyclable materials were not clearly identified, para-  
14 graph (2) shall apply only to municipal solid waste gen-  
15 erated by households, including single family residences  
16 and multi-family residences of up to 4 units.

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

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

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

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

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

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

1 “(e) EFFECT ON EXISTING LAWS.—

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

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

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

24 “(f) FACILITIES NOT QUALIFIED FOR FLOW CON-  
25 TROL.—No flow control authority may be exercised under

1 the provisions of this section to direct solid waste or recy-  
2 clable materials to any facility pursuant to an ordinance  
3 if—

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

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

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

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

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

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

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

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

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

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

22                 “(1) before November 10, 1995, and after the  
23                 effective date of any applicable final court order no  
24                 longer subject to judicial review specifically invali-

1 dating the flow control authority of such State or  
2 political subdivision, or

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

9 shall be fully enforceable in accordance with State law.

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

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

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

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

24 may exercise flow control authority over municipal  
25 solid waste in accordance with the other provisions

1 of this section and may exercise the additional flow  
2 control authority described in paragraph (2).

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

20 “(3) DEFINITION.—For purposes of this sub-  
21 section, the term ‘proposed waste management facil-  
22 ity’ means a waste management facility that was  
23 specifically identified in a waste management plan  
24 prior to May 16, 1994, and for the construction of  
25 which—

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

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

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

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

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

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

21           “(5) DURATION OF AUTHORITY.—The authority  
22 to direct municipal solid waste to any facility pursu-  
23 ant to this subsection shall terminate with regard to  
24 such facility in accordance with subsection (c).

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

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

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

14       “(m) EFFECTIVE DATE.—The provisions of this sec-  
15 tion shall take effect with respect to the exercise by any  
16 State or political subdivision of flow control authority on  
17 or after the date of enactment of this section, and such  
18 provisions shall also apply to the exercise by any State  
19 or political subdivision of flow control authority before  
20 such date of enactment unless the exercise of such author-  
21 ity has been declared unconstitutional by a final judicial  
22 decision that is no longer subject to judicial review.

23       “(n) DEFINITIONS.—For the purposes of this sec-  
24 tion—

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

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

18          “(3) DESIGNATE; DESIGNATION, ETC.—The  
19          terms ‘designate’, ‘designated’, ‘designating’, and  
20          ‘designation’ mean a requirement of a State or polit-  
21          ical subdivision, and the act of a State or political  
22          subdivision, individually or collectively, to require  
23          that all or any portion of the municipal solid waste  
24          or recyclable materials that is generated within the  
25          boundaries of the State or any political subdivision

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

12 “(4) ELIGIBLE BOND.—The term ‘eligible bond’  
13 means—

14 “(A) a revenue bond specifically to finance  
15 one or more designated waste management fa-  
16 cilities, facilities for recyclable materials, or spe-  
17 cifically and directly related assets, development  
18 or finance costs, as evidenced by the bond docu-  
19 ments; or

20 “(B) a general obligation bond, the pro-  
21 ceeds of which were used solely to finance one  
22 or more designated waste management facili-  
23 ties, facilities for recyclable materials, or spe-  
24 cifically and directly related assets, development

1           or finance costs, as evidenced by the bond docu-  
2           ments.

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

13          “(6) MUNICIPAL SOLID WASTE.—The term  
14          ‘municipal solid waste’ means any solid waste gen-  
15          erated by the general public or by households, in-  
16          cluding single residences and multifamily residences,  
17          and from commercial, institutional, and industrial  
18          sources, to the extent such waste is essentially the  
19          same as waste normally generated by households or  
20          was collected and disposed of with other municipal  
21          solid waste as part of normal municipal solid waste  
22          collection services, consisting of paper, wood, yard  
23          waste, plastics, leather, rubber, and other combus-  
24          tible materials and noncombustible materials such as  
25          metal and glass, including residue remaining after

1 recyclable materials have been separated from waste  
2 destined for disposal, and including waste material  
3 removed from a septic tank, septage pit, or cesspool  
4 (other than from portable toilets), except that the  
5 term does not include any of the following:

6 “(A) Any waste identified or listed as a  
7 hazardous waste under section 3001 of this Act  
8 or waste regulated under the Toxic Substances  
9 Control Act.

10 “(B) Any waste, including contaminated  
11 soil and debris, resulting from—

12 “(i) response or remedial action taken  
13 under the Comprehensive Environmental  
14 Response, Compensation, and Liability Act  
15 of 1980,

16 “(ii) any corrective action taken under  
17 this Act, or

18 “(iii) any corrective action taken  
19 under any comparable State statute.

20 “(C) Construction and demolition debris.

21 “(D) Medical waste listed in section 11002  
22 of this Act.

23 “(E) Industrial waste generated by manu-  
24 facturing or industrial processes, including

1 waste generated during scrap processing and  
2 scrap recycling.

3 “(F) Recyclable materials.

4 “(G) Sludge.

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

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

13 “(A) any process which produces any ma-  
14 terial defined as ‘recycled’ under section 1004;  
15 and

16 “(B) any process by which materials are  
17 diverted, separated from, or separately man-  
18 aged from materials otherwise destined for dis-  
19 posal as solid waste, by collecting, sorting, or  
20 processing for use as raw materials or feed-  
21 stocks in lieu of, or in addition to, virgin mate-  
22 rials, including petroleum, in the manufacture  
23 of usable materials or products.

24 “(9) RECYCLABLE MATERIALS.—The term ‘re-  
25 cyclable materials’ means any materials that have

1       been separated from waste otherwise destined for  
 2       disposal (either at the source of the waste or at  
 3       processing facilities) or that have been managed sep-  
 4       arately from waste destined for disposal, for the pur-  
 5       pose of recycling, reclamation, composting of organic  
 6       materials such as food and yard waste, or reuse  
 7       (other than for the purpose of incineration). Such  
 8       term includes scrap tires to be used in resource re-  
 9       covery.

10           “(10) WASTE MANAGEMENT FACILITY.—The  
 11       term ‘waste management facility’ means any facility  
 12       for separating, storing, transferring, treating, proc-  
 13       essing, combusting, or disposing of municipal solid  
 14       waste.”.

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

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

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HRES 349 ATH—2