



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>05/23/08</b>	Bill No:	<b><a href="#">AB 2640</a></b>
Tax:	<b>Integrated Waste Management Fee Green Material Fee</b>	Author:	<b>Huffman, Leno and Dymally</b>
Related Bills:	<b>AB 712 (De Leon) AB 2866 (De Leon)</b>		

***This analysis will only address the proposal's provisions which impact the State Board of Equalization (Board).***

## **Bill SUMMARY**

This bill would do the following:

- Exclude from the integrated waste management (IWM) fee solid waste that is green material used for alternative daily cover, as defined; and
- Impose a fee on an operator of a disposal facility based on the amount, by weight or volumetric equivalent, of all green material used for alternative daily cover at each disposal site in the same amount as the IWM fee to fund competitive grants to operators of new or existing green and food material composting facilities.

## **Summary of Amendments**

Since the previous analysis, this bill was amended to base the amount of the proposed fee on all green material used for alternative daily cover, instead of all green material used for beneficial reuse, at each disposal site and to require the proceeds from the new fee be deposited in the existing IWM Account.

## **CURRENT LAW**

Under current law, Division 30 (commencing with Section 40000) of the Public Resources Code, known as the *California Integrated Waste Management Act of 1989* (Act), imposes an IWM fee on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the California Integrated Waste Management Board (CIWMB), of all solid waste disposed of at each disposal site. Existing law provides that the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, is not considered disposal for purposes of the Act.

The amount of the fee is established by the CIWMB at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed \$1.40 per ton. The fee is currently set at \$1.40 per ton of solid waste disposed.

The IWM fee is collected by the Board and, after payment of refunds and administrative costs of collection, deposited in the Integrated Waste Management Account. The money in the account is used by the CIWMB, upon appropriation by the Legislature, for the following purposes:

- The administration and implementation of the Act, and

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- The state water board's and regional water board's administration and implementation of the *Porter-Cologne Water Quality Control Act* at solid waste disposal sites.

### **PROPOSED LAW**

Among other things, this bill would specifically exclude from the imposition of the IWM fee solid waste that is green material, as described, used for alternative daily cover.

This bill would also add Article 3 (commencing with Section 48030) to Chapter 2 of Part 7 of Division 30 of the Public Resources Code to impose a fee, commencing January 1, 2010, to be paid to the Board, in the same amount as the IWM fee upon each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the CIWMB, of all green material that is used for alternative daily cover at each disposal site. For purposes of the fee, green material would be defined in regulations adopted by the CIWMB pursuant to Section 40502 of the Public Resources Code.

The Board would be required to collect the green material fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

An operator of a disposal facility would be required to pay the green material fee quarterly, on or before the 25<sup>th</sup> day of the calendar month following the quarterly period for which the fee is due. Each payment of the fee would be required to be accompanied by a return, as prescribed by the Board, which would include the following information:

- The total amount of green material subject to the fee;
- The amount of the fee for the period covered by the return; and
- Other information that the Board determines to be necessary.

The revenues from the green material fees paid would, after payment of refunds and administrative costs of collection, be deposited in the existing IWM Account. The CIWMB would be required to expend those funds deposited in the IWM Account, upon appropriation by the Legislature, to provide competitive grants to operators of new or existing green and food material compositing facilities, as described.

This bill would become effective January 1, 2009, but the imposition of the green material fee would become operative January 1, 2010.

### **BACKGROUND**

Assembly Bill 939 (Chapter 1095, Statutes of 1989) enacted the Act. Among other things, AB 939 added Section 48000 to the Public Resources Code to require each operator of a solid waste landfill to pay a quarterly fee, in addition to the solid waste fee, to the Board based on all solid waste disposed of at each disposal site on or after

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January 1, 1990. The fee was initially set at \$0.50 per ton of waste disposed of during the period of January 1, 1990 through June 30, 1990. The fee for waste disposed of during the period of July 1, 1990 through June 30, 1991 was to be set by the CIWMB at an amount sufficient to generate revenues equivalent to the approved budget for the 1990-91 fiscal year, including a prudent reserve, but not to exceed \$0.75 per ton.

In 1993, AB 1220 (Chapter 656) consolidated the solid waste fee and the IWM fee into a single IWM fee. The IWM fee was set at \$1.34 per ton for the 1994-95 fiscal year. That bill also provided that commencing with the 1995-96 fiscal year, the amount of the fee established by the CIWMB be an amount sufficient to generate adequate revenues, as specified, but in an amount not to exceed \$1.40 per ton.

AB 1647 (Chapter 978, Statutes of 1996), among other things, added Section 41781.3 to the Public Resources Code to state that the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed, constitutes diversion through recycling and is not considered disposal for purposes of the Act.

#### IN GENERAL

Effective July 1, 1994, the IWM fee was set at \$1.34, pursuant to AB 1220. The CIWMB approved an increase in the fee at their June 2001, Board Meeting to \$1.40 per ton, the maximum allowed by statute, effective July 1, 2002.

#### COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide a mechanism to divert compostable organics used as alternative daily cover in the construction and operation at solid waste landfills, which deprives California agriculture and the environment of compostable organic material for compost and other higher and better uses.
2. **Summary of amendments. The May 23, 2008, amendments** base the amount of the proposed fee on all green material used for alternative daily cover, instead of all green material used for beneficial reuse, at each disposal site, require the proceeds from the new fee be deposited in the existing IWM Account, and make other clarifying changes. **The April 7, 2008, amendments** 1) moved the operative date of the green material fee from January 1, 2009, to January 1, 2010; 2) authorized the Board to administer and collect the proposed fee pursuant to the Fee Collection Procedures Law; and 3) specified a due date for the return and payment of the fee.
3. **How is the term "green material" defined?** This bill would require an operator of a disposal facility to pay a quarterly fee on all green material, as that term is defined in regulations adopted by the CIWMB. The term "green material" is currently defined in Section 17852(a)(21) of Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations as follows:

"Green Material" means any plant material that is separated at the point of generation, contains no greater than 1.0 percent of physical contaminants by weight, and meets the requirements of section 17868.5. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and construction and demolition wood waste. Green material does not include food material, biosolids, mixed solid waste, material processed from

commingled collection, wood containing lead-based paint or wood preservative, mixed construction or mixed demolition debris.

Chapter 3.1 of Division 7 of Title 14 of the California Code of Regulations was adopted by the CIWMB pursuant to and for the purpose of implementing the Act. Since this bill would amend the Act to impose the green material fee, it appears the definition of green material in the existing regulation would be used for the purpose of imposing the proposed green material fee.

4. **How does this bill impact the IWM fee?** Under existing law, waste removed from the waste stream and reused, recycled, or composted off-site, including but not limited to, green material used for alternative daily cover at each disposal site, is excluded from the IWM fee. Accordingly, this measure would not impact current IWM fee revenues. However, this bill would subject green material used for alternative daily cover at each disposal site, which is currently excluded from the IWM fee, to a new green material fee in the same amount as the IWM fee. The IWM fee is currently set at \$1.40 per ton of solid waste disposed.

The use of *other* solid waste, not including green material, for alternative daily cover in the construction and operation of a solid waste landfill which reduces or eliminates the amount of solid waste being disposed would continue to be excluded from the imposition of the IWM fee.

5. **Would this measure impose additional fee reporting requirements on disposal facility operators?** The proposed green material fee is very similar to the existing IWM fee in that both the due date for the return and payment of the fee are consistent. Although this bill would require a disposal facility operator to report and pay a fee on an additional material, the existing language in the bill would allow the Board to parallel the IWM fee where possible to make its administration of, and a disposal facility operator's reporting requirements for, the fee as efficient as possible.

For example, the Board could streamline the green material fee registration process for disposal facility operators since they are already registered under the IWM fee program and the reporting and payment for the green material fee and IWM fee could be combined since the return and payment due dates are identical.

6. **Cost cap would be problematic.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the Board would be reimbursed for its administrative costs for collecting the new fee. However, Section 48033 would limit the Board's reimbursement to an amount not to exceed one-half of one percent of the total revenues deposited, or anticipated to be deposited, in the existing IWM Account. Based on the current revenue estimate of \$3.6 million annually, the Board would be reimbursed for costs up to \$18,000 annually. This amount would not provide the Board with sufficient funding to properly implement or collect the proposed fee.
7. **Suggested technical amendment.** It is suggested amending Section 48030(a)(2), which allows the Board to require payment of the fee and filing of the return for other than quarterly periods, to properly reference the paragraphs that impose the payment and return filing due date.

48030. (a)(2) Notwithstanding paragraphs (3) and (4) ~~(4)~~, the state board may require the payment of the fee imposed pursuant to this section and the filing of returns for other than quarterly periods.

8. **Related bills.** AB 712 (De Leon) would impose, on and after April 1, 2009, a fifty-cent (\$0.50) per ton fee upon a person disposing of solid waste at a disposal facility to be paid to the Board in a manner consistent with the IWM Fee Law. The revenues would be used to assist an operator of an off-road solid waste, composting, and recycling vehicle in complying with regulations to reduce diesel particulate matter and criteria air pollutant emissions from in-use off-road vehicles. That bill is currently held under submission in the Senate Appropriations Committee.

In addition, AB 2866 (De Leon) would establish a fixed IWM fee amount equal to \$2.00 per ton and require the Board to deposit sixty cents of the IWM fee imposed in the existing IWM Account.

It should be noted that double joining language may be necessary since AB 2866 and AB 2640 both amend Section 48000 of the Public Resources Code.

### **COST ESTIMATE**

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending; however, it is estimated the costs would be substantial (over \$250,000 and under \$1 million).

However, if this measure is amended to instead impose an additional IWM fee under Public Resources Code Section 48000 with those additional revenues deposited into the Account, it is estimated costs would be minor (less than \$50,000).

**REVENUE ESTIMATE**

**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Under current law, each operator of a disposal facility pays an IWM fee based on the amount, by weight or volumetric equivalent, as determined by the CIWMB, of all solid waste disposed of at each disposal site. Further, the use of alternative daily cover is not considered disposal and is currently exempt from the fee. The amount of the fee is established by the CIWMB at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed \$1.40 per ton. The fee is currently set at \$1.40 per ton of solid waste disposed.

This bill would, on and after January 1, 2010, require an operator of a disposal facility to pay a fee quarterly to the Board that is based on the amount, by weight or volumetric equivalent, as determined by the CIWMB, of all green material, that is used for alternative daily cover, at each disposal site. Although the bill does not define ‘green material,’ CIWMB adopted regulations defining that term as discussed earlier (Comment 3).

The CIWMB has estimated green material waste used for alternative daily cover to be 2.6 million tons. Based on the CIWMB estimate (2.6 million tons) and the current IWM fee (\$1.40), estimated fiscal year revenue would be \$3.6 million (2.6 million tons × \$1.40 per ton = \$3.6 million).

**REVENUE SUMMARY**

The revenue impact from imposing a fee in the amount of \$1.40 per ton on green material used for alternative daily cover would amount to an estimated \$3.6 million in fiscal year revenue.

**Qualifying Remark.** Since the CIWMB has adopted a Strategic Directive to reduce the amount of organics in the waste stream by 50 percent by year 2020, this amount will decrease over time.

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