



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>06/26/07</b>	Bill No:	<a href="#"><b>AB 712</b></a>
Tax:	<b>Off-Road Vehicle Clean Air Fee</b>	Author:	<b>De Leon</b>
Related Bills:	<b>AB 1610 (Nunez)</b>		

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

## **Bill SUMMARY**

This bill 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 Integrated Waste Management (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 (PM) and criteria air pollutant emissions from in-use off-road vehicles.

## **SUMMARY OF AMENDMENTS**

The amendments since the previous version of the bill revise the fee start date from April 1, 2008, to April 1, 2009, and the fee repeal date from January 1, 2015, to January 1, 2016.

## **CURRENT LAW**

Under existing law, there is no fee imposed on a person disposing of solid waste at a disposal facility.

However, Public Resources Code Section 48000 does impose 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. The fee is currently set at \$1.40 per ton of solid waste disposed.

Section 48006 provides that the CIWMB may exempt from the IWM fee any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste. In addition, Section 48007 provides that recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing the IWM fee.

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.

## **PROPOSED LAW**

This bill would add Chapter 9.2 (commencing with Section 44299.25) to Part 5 of Division 26 of the Health and Safety Code to enact the Off-Road Solid Waste, Composting, and Recycling Vehicle Clean Air Program.

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Among other things, this bill would impose, on and after April 1, 2009, a fee of fifty cents (\$0.50) for each ton of solid waste submitted for disposal at a solid waste disposal facility. The fee would be imposed upon the person disposing of the solid waste at a disposal facility, which would be collected by the solid waste disposal facility operator and submitted to the Board in a manner consistent with the existing IWM fee.

The State Air Resources Board (ARB) would be required to reduce the fifty-cent per ton fee if it determines the projected revenues will exceed projected demands for payment and to notify the appropriate policy committees of the Legislature if the fee level is inadequate to meet payments.

The Board would collect and administer the fee in a manner consistent with the IWM Fee Law (Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code). The fees collected by the Board would be transferred to the Off-Road Solid Waste, Composting, and Recycling Vehicle Clean Air Account (Account), which this bill would establish within the Air Pollution Control Fund. The ARB would expend the funds deposited in the Account, upon appropriation by the Legislature, to assist an operator of an off-road solid waste, composting, and recycling vehicle in paying for the operator's eligible actual costs of complying with specified regulations to reduce diesel PM and criteria air pollutant emissions from in-use off-road vehicles.

This bill also prohibits no more than 4 percent of the funds deposited each fiscal year in the Account to be used for purposes of administering the Program, including those actual and necessary costs incurred by the Board for the collection of the fee.

The terms "disposal facility," "operator," and "solid waste" would be defined to have the same meanings as those terms are defined for purposes of the IWM fee, which are as follows:

- "Disposal facility" means any facility or location where disposal of solid waste occurs.<sup>1</sup>
- "Operator" means the person to whom the approval to operate a disposal site, transfer or processing station, or collection system is granted.<sup>2</sup>
- Except as provided, "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.<sup>3</sup>

The fee provisions would remain in effect until January 1, 2016, and as of that date repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

The bill would become effective January 1, 2008, but the fee would become operative on and after April 1, 2009.

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<sup>1</sup> Public Resources Code Section 40121

<sup>2</sup> Public Resources Code Section 40160

<sup>3</sup> Public Resources Code Section 40191

## BACKGROUND

Assembly Bill 939 (Chapter 1095, Statutes of 1989) enacted the *California Integrated Solid Waste Management Act of 1989*. 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 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 to generate sufficient revenues, as specified, but in an amount not to exceed \$1.40 per ton.

In 2001, AB 1078 (Chesbro) would have required the operator of the solid waste disposal facility to collect a Solid Waste Vehicle Clean Air fee for each ton of solid waste submitted for disposal by that operator at a solid waste disposal facility. That bill was referred to the Assembly Committee on Transportation, but was never heard.

## IN GENERAL

Diesel particulate matter was identified by the ARB as a toxic air contaminant in 1998. The ARB is proposing a regulation, which is scheduled for consideration on May 24, 2007, that would reduce emissions of diesel PM and oxides of nitrogen (NOx) from nearly 180,000 off-road diesel vehicles in the State. The regulation would achieve these emission reductions by requiring fleet owners to modernize their fleets and install exhaust retrofits. According to the ARB, the regulation is projected to achieve significant emission reductions, but at a significant cost to affected fleets. The scope of the regulation is far-reaching; vehicles of dozens of types used in over 8,000 fleets, in industries as diverse as construction, air travel, manufacturing, landscaping, and ski resorts, as well as by a considerable number of public agencies, would be affected.<sup>4</sup>

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Waste Management, Inc. and is intended to defray anticipated costs associated with regulations proposed by the ARB that would reduce emissions of diesel PM and NOx from off-road diesel vehicles in the state by requiring fleet owners to modernize their fleets and install exhaust retrofits.
2. **Summary of amendments.** The **June 26, 2007, amendments** impacting the Board revise the fee start date from April 1, 2008 to April 1, 2009, and the fee repeal date from January 1, 2015 to January 1, 2016. The **May 2, 2007, amendments** revised the repeal date from January 1, 2019, to January 1, 2015. The **April 10, 2007, amendments** deleted the provisions of the bill as introduced and instead proposed

<sup>4</sup> According to the ARB *Notice of Public Hearing to Consider the Adoption of a Proposed Regulation for In-Use Off-Road Diesel Vehicles and related materials* - <http://www.arb.ca.gov/regact/2007/ordiesl07/ordiesl07.htm>.

the Off-Road Solid Waste and Recycling Vehicle Clean Air Program. The introduced version of the bill did not impact the Board.

3. **Administration and collection.** This bill provides that the proposed fee be submitted to the Board in a manner consistent with the existing IWM Fee Law. The fee proposed by this bill cannot simply be collected in a manner consistent with the IWM Fee Law without substantial amendments to the existing law. Furthermore, it should be noted that the exemptions from the IWM fee would not apply to the fee proposed by this bill.

To allow for the fee to be collected pursuant to the IWM Fee Law and to allow for the existing IWM fee exemptions to be applied to the proposed fee, Board staff suggests amending this bill to impose an additional IWM fee under Public Resources Code Section 48000. The amendments should also require that the additional fee revenues be deposited into the Account, which would be created by this bill, and to authorize the payments of refunds on overpayments of the fee and reimburse the Board for its collection and administration of the fee from the Account.

However, if the author intends for the imposition of the fee to remain within the provisions of the Off-Road Solid Waste, Composting, and Recycling Vehicle Clean Air Program, the bill should be amended to authorize the Board to administer and collect the proposed fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001), of Division 2, of the Revenue and Taxation Code). The amendments should also include any exemptions intended by the author.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law 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.

If the bill is not amended to add the proposed fee to the existing IWM Fee Law, the following language is suggested:

44299.27. (c) The State Board of Equalization shall transfer the fees collected pursuant to this section to the account. For purposes of this article, the State Board of Equalization shall collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). All fees collected by the State Board of Equalization shall be collected and administered by the State Board of Equalization in a manner consistent with Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code.

The bill should also be amended to specify a due date for the fee and return and to authorize the payment of refunds on overpayments of the fee.

These suggested amendments are necessary for the Board to properly administer the proposed fee. If this measure is successfully signed into law in its current form, clean-up legislation will be needed before April 1, 2009, the start date for the

proposed fee. Board staff is available to work with the author's office in drafting appropriate amendments.

4. **The manner in which the Board is reimbursed should be changed to a direct appropriation.** The Board's administrative costs pursuant to this bill would be reimbursed by the ARB, which is inconsistent with other tax or fees the Board is required to administer and collect.

When the Board is required by statute to administer and collect a fee, the Board is reimbursed by a direct appropriation through the annual budget development process. Most programs administered by the Board are "direct appropriation programs," such as the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Cigarette and Tobacco Products Licensing Act of 2003, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Covered Electronic Waste Recycling Fee Law, Underground Storage Tank Maintenance Fee Law, Marine Invasive Species Fee Law, Natural Gas Surcharge Law, and Water Rights Fee Law.

This bill should be amended to change the method for reimbursing the Board for its costs to administer and collect the proposed fee to a direct appropriation from the Account through the annual budget development process to conform with other tax and fee programs the Board is required to collect and administer.

5. **Cost cap could be problematic.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the ARB expend, upon appropriation by the Legislature, no more than 4 percent of the funds deposited each fiscal year in the Account for purposes of administering the Program, including those actual and necessary costs incurred by the Board for the collection of the fee. Based on the current revenue estimate of \$21 million annually, funding for all Program administrative costs (which includes more than the Board's administrative costs) would be limited to \$840,000 annually. Since the implementation and administration costs have not yet been estimated by the Board, it is not known at this time if the cost cap would provide the Board with sufficient funding to administer the fee.
6. **Suggested technical amendments.** It is suggested that the bill be amended to provide Board staff sufficient time to notify fee payers of a fee rate change if the ARB reduces the fee based on a determination that projected revenues will exceed projected demands for payment.

It is also suggested that the bill be amended to provide the necessary authority for the Board to collect assessments, make refunds, or deposit funds from fees related to activities prior to the January 1, 2016, repeal date, but which are discovered after the statute has sunset.

7. **Legal challenges of any new fee program might be made on the grounds that the fee is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and

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others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the fees imposed are in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

8. **Related legislation.** AB 1610 (Nunez) would have increased the statutory cap on the IWM fee from \$1.40 to \$2.00 per ton. However, the bill was gutted with amendments outside the purview of the Board.

**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**

Solid waste disposal for 2006 amounted to 41.4 million tons. A \$0.50 per ton fee would generate \$21 million in annual revenue (41.4 million tons x \$0.50).

**REVENUE SUMMARY**

The revenue collected from imposing a \$0.50 per ton off-road vehicle clean air fee is estimated to be \$21 million annually.

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