



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended:	<b>07/09/09</b>	Bill No:	<b><a href="#">AB 274</a></b>
Tax:	<b>Solid Waste Postclosure Fee</b>	Author:	<b>Portantino</b>
Related Bills:	<b>SB 25 (Padilla) SB 730 (Wiggins)</b>		

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

**BILL SUMMARY**

On and after January 1, 2011, this bill would impose a fee on each operator of a solid waste landfill, if that operator elects to participate in the State Solid Waste Postclosure Trust Fund (Fund), based on the amount, by weight or volumetric equivalent, of all solid waste disposed of at each disposal site.

**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 Integrated Waste Management (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
- 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 add Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of the Public Resources Code to impose, on and after January 1, 2011, on an operator of a solid waste landfill a quarterly fee based on the amount, by weight or volumetric equivalent, of all solid waste disposed of at each disposal site if that operator notifies the CIWMB of its election to participate in the Fund. The amount of the fee would be twelve cents (\$0.12) per ton.

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The fee would be paid to the Board quarterly and collected in the same manner as the existing IWM fee. The CIWMB and the Board would also be required to ensure that all the fees for solid waste imposed pursuant to the bill that are collected at a transfer station are paid to the Board.

Proceeds from the fee would be deposited by the Board in the Fund, which this bill would create in the State Treasury. The CIWMB would be authorized to expend moneys in the Fund, upon appropriation by the Legislature, to pay for corrective action and postclosure activities that have not been performed by the operator of a solid waste landfill participating in the Fund, but only upon a determination by the CIWMB that certain conditions are met.

This bill would become effective January 1, 2010, and the fee would become operative as of January 1, 2011. However, the fee would not become operative unless the CIWMB receives, on or before July 1, 2010, letters of participation in the Fund from landfill operators representing at least 50 percent of the total annual waste disposal volume in 2009.

#### **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 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 its 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 create a dedicated funding mechanism to protect the General Fund from expenditures resulting from the failure of the owner or operator of a closed solid waste landfill, who was required to maintain evidence of financial ability, to comply with a final order from the CIWMB related to compliance with postclosure and corrective action requirements.
2. **Administration and collection.** This bill provides that the proposed fee be collected by the Board in the same manner as the existing IWM Fee. The IWM Fee is collected and administered by the Board pursuant to the IWM Fee Law (Part 23 of Division 2 of the Revenue and Taxation Code). However, the fee proposed by this bill cannot simply be collected in the same manner as the existing IWM Fee without substantial amendments to the existing IWM Fee 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 Fund, which would be created by this bill, and authorize the payment of refunds on overpayments of the fee and reimburse the Board for its collection and administration of the fee from the Fund.

However, if the author intends for the imposition of the fee to remain within the provisions of Article 2.1 (commencing with Section 48010) of Chapter 2 of Part 7 of Division 30 of the Public Resources Code, 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:

48011. (e) The State Board of Equalization shall collect the fees imposed pursuant to this section in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) 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 and reimbursement of the Board's administrative costs from the Fund.

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

3. **Would the proposed fee be subject to adjustment?** Proposed Section 48010(c) requires the CIWMB to notify the Board the first day of the period in which the rate shall take effect and of any rate change adopted. However, no language is included in the bill that would authorize the CIWMB to adjust the twelve cent (\$0.12) per ton fee specified. If the author intended for this fee to be adjusted, such language should be incorporated into the bill. Furthermore, this language should provide the Board sufficient time to program computers, revise returns and notify landfill operators of a fee rate change if the CIWMB adjusts the fee.

Current Section 48000, which imposes the existing IWM fee, contains language identical to the notification language contained in this bill. However, Section 48000 provides language that allows the CIWMB to establish a rate "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 one dollar and forty cents (\$1.40) per ton."

4. **Suggested amendments.** Section 48011(b) provides that an operator electing to participate in the Fund after the fee goes into effect must pay all back fees and a 5 percent penalty. However, the bill does not specify the agency responsible for collecting these fees. In its current form, it's not clear if the back fees and penalty would be paid to the CIWMB at the time of the election or if the Board would collect these fees and penalty upon notification from the CIWMB of the operator's election. The author may wish to consider clarifying this ambiguity.

In addition, Section 40010(b) makes a reference to the CIWMB as the agency responsible for depositing proceeds from the fee in the Fund. However, the agency required to deposit the fee proceeds should be the agency collecting the fees, which is the Board. The following language is suggested:

48010. (b) The fee shall be twelve cents (\$0.12) per ton and shall be collected in the same manner as the solid waste disposal fee. The ~~board~~ State Board of Equalization shall deposit proceeds from this fee in the State Solid Waste Postclosure Trust Fund, which is hereby created in the State Treasury. Fee revenues and all interest earned shall be available to the board, upon appropriation by the Legislature, to carry out the purposes of this article.

5. **Related legislation.** SB 25 (Padilla) would increase the IWM fee by \$0.73 per ton, with potential cost of living increases, to fund illegal dumping prevention programs.

SB 730 (Wiggins) would require an operator of a transfer or processing station to pay a quarterly IWM fee on all solid waste that the operator transfers out of the state for disposal.

**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 Fund, it is estimated costs would be minor (less than \$50,000).

**EVENUE ESTIMATE**

**BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

According to data from the CIWMB, over the last three years the average solid waste disposed of annually statewide is about 40 million tons.

There is no provision in this bill for an incentive which would induce operators to participate with this voluntary fee program. Therefore, participation is assumed to be zero. This estimate then projects revenue based on arbitrary figures for participation. Revenue is calculated by multiplying the average yearly tonnage (40 million) by the arbitrary "Percent Participation" figure, and then by the proposed fee (\$0.12). The results are summarized below.

**REVENUE SUMMARY**

Percent Participation	5%	10%	20%
Projected Revenue	\$0.24 million	\$0.48 million	\$0.96 million

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