



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

DRAFT

Date Amended:	<a href="#">Chapter 318</a>	Bill No:	<b>AB 274</b>
Tax:	<b>Solid Waste Postclosure Fee</b>	Author:	<b>Portantino</b>
Related Bills:	<b>SB 25 (Padilla)</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, 2012, this bill would increase the integrated waste management (IWM) fee by an additional 12 cents per ton upon each operator of a solid waste landfill that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund (Fund).

**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
- 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.

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***This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position***

**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 establish the Fund, which this bill would create in the State Treasury to pay for corrective action and postclosure activities not performed by the owner or operator of a solid waste landfill. Participation in the Fund would be voluntary, and an operator electing to participate would be required to submit a written notice to the CIWMB on or before July 1, 2011.

This bill would also amend Section 48000 of the Public Resources Code to increase, on and after January 1, 2012, the amount of the IWM fee by 12 cents per ton upon each operator of a solid waste landfill that notifies the CIWMB that it elects to participate in the Fund. Proceeds from the fee would be deposited, after payment of refunds and administrative costs of collection, in the Fund. The fees, revenues, and all interest earned would be available to the CIWMB, upon appropriation by the Legislature, to carry out the purposes of the Fund program.

The increased fee would only become operative if the CIWMB receives, on or before July 1, 2011, letters of participation in the Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 2010. On or before August 31, 2011, the CIWMB would be required to notify the Board if the increased fee will become operative, and if so, provide the Board the name, address, and any other information necessary to administer and collect the increased fee, of every operator of a landfill electing to participate in the Fund.

This bill would become effective January 1, 2010, and the increased fee would become operative as of January 1, 2012, if the CIWMB receives letters of participation in the Fund from landfill operators representing at least 50 percent of the total volume of waste disposed of in 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 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.

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**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. **Key amendments.** The **September 4, 2009, amendments** revised the date by which the CIWMB is required to notify the Board if the increased fee will become operative. The **September 1, 2009, amendments** allowed for the solid waste postclosure fee to be imposed as an increase to the existing IWM fee and collected pursuant to the IWM Fee Law. The amendments also require the CIWMB to notify the Board if the fee will become operative and provide the names, addresses, and any other information necessary, of all operators electing to participate in the Fund.
3. **Board staff does not foresee any administrative problems with this bill.** Increasing the current IWM fee would not be problematic for the Board.
4. **Is the Board required to collect back fees and penalties?** Section 48010(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 before being allowed to participate. The bill does not, however, specify the agency responsible for collecting the back fees and penalty. In its current form, it appears the fees and penalty would be paid to the CIWMB at the time of the operator's election.
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.

**COST ESTIMATE**

The Board would incur administrative costs to implement the provisions of this bill, which include informing the feepayers, reprogramming the Integrated Revenue Information System (the Board's computer system), revising returns and publications, accounting for and depositing fee revenues into the new Fund, and answering inquires from the public. These costs are estimated to be \$535,000 for fiscal year 2011-12.

**REVENUE 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.

This estimate projects revenue based on arbitrary figures for participation, beginning at 50%, the minimum participation, based on amount disposed of, in order for the fee to become operative. 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	50%	75%	100%
Projected Revenue	\$2.4 million	\$3.6 million	\$4.8 million

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