



Date Amended:	<b>01/20/10</b>	Bill No:	<b><a href="#">AB 1004</a></b>
Tax:	<b>Solid Waste Postclosure Fee</b>	Author:	<b>Portantino</b>
Related Bills:			

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

**BILL SUMMARY**

Among other things, this bill would delay, from January 1, 2012, to July 1, 2012, the 12-cent per ton integrated waste management (IWM) fee increase imposed 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 Department of Resources Recycling and Recovery (CalRecycle), 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 fee is established by CalRecycle 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 CalRecycle, 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.

On and after January 1, 2012, the IWM fee will increase by 12 cents per ton upon each operator of a solid waste landfill that notifies CalRecycle that it elects to participate in the Fund, but the increase will only become operative if CalRecycle 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.

Proceeds from the 12 cent per ton fee will be deposited in the Fund, after payment of refunds and administrative costs of collection. The fees, revenues, and all interest

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earned will be available to CalRecycle, upon appropriation by the Legislature, to carry out the purposes of the Fund program.

#### PROPOSED LAW

Among other things, this bill would delay by six months the dates imposed with respect to activation of the Fund, including the date by which CalRecycle must receive letters of participation in the Fund from landfill operators, as specified, to determine if the increase in the fee would become operative, and the operative date of that increase if the 50 percent or more threshold of the total volume of waste disposed is met.

The bill also makes necessary agency name reference corrections from the California Integrated Waste Management Board (CIWMB) to CalRecycle.

This bill would become effective January 1, 2011.

#### 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 CalRecycle 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 CalRecycle 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 2009, AB 274 (Chapter 318) created the State Solid Waste Postclosure and Corrective Action Trust Fund, 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 CalRecycle related to compliance with postclosure and corrective action requirements. Among other things, that bill increases, on and after January 1, 2012, the IWM fee by an additional 12 cents per ton upon each operator of a solid waste landfill that elects to participate in the Fund.

**IN GENERAL**

Effective January 1, 2010, Senate Bill 63 (Chapter 21, Statutes of 2009), among other things, abolished the CIWMB and transferred its duties and responsibilities to CalRecycle, within the California Natural Resources Agency, which that bill also created.

**COMMENTS**

1. **Sponsor and purpose.** This bill is sponsored by Waste Management and is intended to provide CalRecycle additional time to implement the Fund program due to the organizational changes created by Senate Bill 63.
2. **Board staff does not foresee any administrative problems with this bill.** Delaying the IWM fee increase would not be problematic for the Board.

**COST ESTIMATE**

Enactment of this measure would not impact the Board’s administrative costs.

**REVENUE ESTIMATE**

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

There is no provision for an incentive which would induce operators to participate in this voluntary fee program. Therefore, participation is assumed to be zero. This estimate then projects a six month delay in revenue based on arbitrary figures for participation. The delayed revenue is calculated by multiplying the average yearly tonnage (40 million) by the arbitrary "Percent Participation" figure, then by the proposed fee (\$0.12), and then by 50% to arrive at a half-year figure. The results are summarized below.

Average Yearly Tonnage	40 million	40 million	40 million
Percent Participation	50%	75%	100%
Projected 6 month Revenue	\$1.2 million	\$1.8 million	\$2.4 million

**QUALIFYING REMARKS**

While the average yearly tonnage figure of 40 million is accurate, this has been trending downwards since 2005. It is likely that by the time the proposed fee is implemented the average yearly tonnage figure will be less by some 5 million tons.

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