



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

Date Amended:	07/15/10	Bill No:	AB 1004
Tax:	Solid Waste Postclosure and Corrective Action Fee	Author:	Portantino
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 whose owner elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund (Fund).

SUMMARY OF AMENDMENTS

Since the last analysis, this bill was amended to, among other things, revise the delayed operative date for the IWM fee increase and change the trigger for that increase.

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

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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 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 owners, as specified, to determine if the increase in the fee would become operative, and the operative date of that increase.

In addition to the delayed date, the bill would also amend Section 48000 to make changes to who is subject to the increased fee. Currently, the fee increase would be imposed upon each operator that itself notifies CalRecycle of its election to participate in the Fund. This bill would revise the language to impose the increased fee upon each operator of a solid waste landfill whose owner notifies CalRecycle of its election to participate in the Fund. A corresponding change from operator to owner was also made for purposes of the criteria that must be met for the fee increase to become operative.

This bill would also amend Section 48010 to change from the operator, to the owner, of a landfill electing to participate in the Fund whose name, address and other information necessary to administer and collect the fee must be provided by CalRecycle to the Board.

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

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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 will increase, 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. **Summary of amendments.** The **July 15, 2010, amendments** change the delayed operative date from one year to six months and revise the criteria for the increased IWM fee to become operative to reflect existing law, except that the letters of participation would be from landfill owners rather than operators.

The **June 2, 2010, amendments** revise from July 1, 2012, to January 1, 2013, the operative date for the IWM fee increase and change the trigger to increase the IWM fee to an owner of a solid waste landfill that has notified the CalRecycle that it elects to participate in the Fund.

3. **CalRecycle information to Board should identify feepayers.** This bill would impose the increased IWM fee upon each operator of a solid waste landfill whose owner notifies CalRecycle that it elects to participate in the Fund. Since the imposition of the fee would be triggered based on a landfill owner's election to participate in the Fund, the bill would also revise the information provided to the Board from CalRecycle to instead include landfill owner information. However, the increased IWM fee is imposed on the operator, not the owner. Accordingly, this bill should be amended to provide the Board the information necessary to notify and register each operator that would be subject to the increased fee. The following language is suggested:

48010. (a)(4) The Department of Resources Recycling and Recovery shall provide to the state board the name and address, and any other information necessary to administer and collect the fee imposed pursuant to paragraph (2) of subdivision (b) of Section 48000, of every operator of a solid waste landfill whose owner has elected~~owner of a landfill electing~~ to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund on or before August 31, 2012.

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COST ESTIMATE

This measure would not impact the Board's administrative costs. However, last year's AB 274, which created the State Solid Waste Postclosure and Corrective Action Trust Fund, as explained earlier, will result in administrative costs to implement the provisions of the program, which include informing 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 were estimated to be \$535,000 for fiscal year 2011-12, and this current measure would simply change the period in which the Board will incur these costs.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

According to the California Integrated Waste Management Board, California disposes of, on average, about 40,000,000 tons of waste per year. There is no provision in the bill for an incentive which would induce operators to participate in this voluntary fee program, and the fee would only be collected if CalRecycle determines there are enough participants. This estimate then projects revenue based on arbitrary figures for participation at 50% and 75%. The potential revenue is calculated by multiplying the average yearly tonnage (40 million) by the arbitrary "Percent Participation" figure, then by the proposed fee (\$0.12) [40 mil x (percent participation) x \$0.12]. The results are summarized below.

REVENUE SUMMARY

Revenues by Percent Participation based on \$0.12 per ton fee			
Average Yearly Tonnage		40 million	40 million
Percent Participation		50%	75%
Projected Revenue		\$2,400,000	\$3,600,000

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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