



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-8466

USER FEES FOR RECYCLING

House Bill 5410 (Substitute H-1)
First Analysis (2-11-92) Floor Copy

Sponsor: Rep. Mary C. Brown
Committee: Towns and Counties

THE APPARENT PROBLEM:

In the past few years, in response to concerns that many of the resources being used in the state were not renewable and that landfills may not be available forever, many cities, counties, and townships have moved rapidly toward the implementation of recycling and waste reduction programs. In order to help local units of government that couldn't afford the costs of developing and maintaining these programs, Public Act 138 of 1989 amended the Urban Cooperation Act to allow counties with populations of 690,000 or more to charge user fees of up to \$25 per year on each household. It quickly came to light, however, that Public Act 138 contained no provision that would permit counties to raise fees to keep pace with inflation. More important, the act contains no provision that would allow counties to enforce collection of these fees. The City of Kalamazoo, for example, experienced a delinquency rate of 32.2 percent in the collection of fees for 1991. The city claims that, as a result -- since the act contains no enforcement mechanism -- it had to abandon the user fee method of financing its recycling program, and resort, instead, to increasing the city's solid waste millage in the following year. Legislation has been proposed to help counties deal with delinquent payments for recycling user fees, and to permit user fees to be increased in proportion to inflation levels.

THE CONTENT OF THE BILL:

House Bill 5410 would amend the Urban Cooperation Act to permit local units of government to alter the method by which recycling rates or charges are calculated to index the rate to the Consumer Price Index (CPI); to add delinquent recycling rates or charges to tax bills; and to clarify that the rate or charge would be imposed, not on the household that occupied a dwelling unit, but on the owner of a property that was used primarily for residential purposes. The bill would also clarify current provisions regarding referendums.

Maximum rates or charges. Currently, under the act, a county may, by resolution, impose a surcharge of up to \$2 per month or \$25 per year on each household for the collection of materials for recycling or composting. The bill would replace the term "surcharge" with the term "rate or charge," and would require that the Department of Natural Resources (DNR) annually adjust the maximum rate or charge that a county may impose. Beginning January 1, 1993, the maximum rate or charge would be adjusted on January 1 of each year by multiplying the current maximum rate or charge authorized under the act (\$25 for each dwelling unit occupied by a single household), by the increase or decrease between the Consumer Price Index (CPI) for the 12-month period ending on the preceding October 31 and the corresponding CPI of one year earlier, rounded up to the nearest multiple of 50 cents. The maximum rate or charge for 1993 would be calculated as follows:

$$(\text{CPI for year ending 10-31-92} - \text{CPI for year ending 10-31-91}) \times \$25 = \text{maximum rate or charge for 1993.}$$

The CPI would mean the annual average percentage increase in the Detroit Consumer Price Index for all items, as reported by the U.S. Department of Labor. The adjusted maximum rate or charge would be announced by the DNR on or before December 15 of each year, and provided upon request.

Delinquent rates or charges. The bill would permit a local government that had the responsibility for collecting a rate or charge under an interlocal agreement to do either of the following:

a) Annually certify amounts that were delinquent for three months or more to the proper tax collecting officer. The amounts would be entered in a separate column on the next tax roll, and considered a lien against the property that included

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the dwelling unit for which the rate or charge was imposed.

b) Certify the rate or charge to the proper tax collecting officer, to be entered directly in a separate column on the next tax roll against the property, for initial collection in the same manner as property taxes. The amounts entered on the tax roll would become a lien against the property that included the dwelling unit for which the rate or charge was imposed.

A rate or charge entered in a separate column on the tax roll that was not paid before February 15 would be returned to the county treasurer and collected in the same manner as delinquent taxes. In addition, the payment of a rate or charge could be enforced by discontinuing collection services to the property that included the dwelling unit for which the rate or charge was imposed. None of the provisions of the bill would limit a local governmental unit's authority to collect a rate or charge by any other legal debt collection means.

Referendum Provisions. Currently, under the act, a county must enter into an interlocal agreement with local units of government before it imposes a recycling fee, and petitions for a referendum election on the question of entering the interlocal agreement may be filed no later than six months following adoption of the county's resolution to impose the surcharge. A local governmental unit must hold a referendum if ten percent of the electors petition to reject or terminate an interlocal agreement. Under the bill, a local governmental unit would cease to be a party to an interlocal agreement one month after the date of an election if the referendum was held after the local governmental unit had entered into an interlocal agreement and the electors voted to terminate it.

MCL 124.508a

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill would have no fiscal implications for the state. (2-11-92)

ARGUMENTS:

For:

One reason that local units of government have difficulty in collecting user fees for recycling

programs is that, currently, the act permits counties to impose such fees on "households," but provides no definition of "household." This often leads to confusion over the question of who is responsible for the payment of the fees. For example, is the owner of an apartment building responsible for this payment for each household in the building, or should each occupied unit be required to pay? The bill would eliminate this confusion by specifying that the user fee would be imposed on each dwelling unit that is occupied by a single household. This will make it easier for local governments to identify the title holders of properties when it is necessary to add delinquencies to the tax roll. Moreover, without this provision, local governments could not enforce policies that permitted them to discontinue service to a non-payer, since it would be almost impossible to discriminate in this way among several tenants in one building.

For:

The concept of allowing a community to place surcharges on the tax roll, as a lien on the premises of users who are delinquent in paying fees, has already been introduced under a provision of the Waste Management and Resource Recovery Finance Act that permits municipalities to charge fees for the use of the services provided by waste management facilities. This concept would help local governments recoup their recycling or waste reduction program costs from households that refused to pay the user fees. Since everyone in a community benefits from these services, all should be required to pay a share of the cost.

Against:

At present, after a county adopts a resolution to impose a recycling fee, the act requires that a local unit of government hold a referendum election on the question of entering an interlocal agreement with the county. House Bill 5410 would amend this to require that, if the referendum were held after the interlocal agreement and been entered into, and the electors voted to terminate the interlocal agreement, then the agreement would cease to be effective one month after the election. This provision of the bill does not go far enough. The act should be amended further, to permit a county, when it adopted a resolution to impose a recycling fee, to also require that a referendum election be held on the question of entering an interlocal agreement for recycling services. Without this provision, a county could be placed in the position, after adopting a resolution to impose a recycling

fee, of having expended unnecessary funds to start work on a recycling program, only to have the voters reject the agreement.

Against:

The formula contained in the bill (Consumer Price Index for previous year, minus the Consumer Price Index for one year earlier, multiplied by \$25) is self implementing. Therefore, there would be no need for the Department of Natural Resources involvement in determining the new maximum rate each year.

Against:

The bill would permit local governments to impose a "rate or charge" for the collection of materials for recycling or composting. This "rate or charge" is simply a tax disguised as a "user fee." The provisions of the bill are therefore unconstitutional, since the Headlee amendments to the state constitution prohibit local governments from increasing the rate of a tax above the rate authorized by law or charter without the approval of a majority of the qualified electors.

Response:

The law has distinguished between "fees" and "taxes" in several instances where the collection of a fee or assessment was challenged on the grounds that it constituted a tax and therefore was unconstitutional. In Dukesherer Farms v. Department of Agriculture (1979), the court ruled that, while taxes are collected for the general use of governments, or in order to benefit the general public, fees, on the other hand, provide a specific, tangible, benefit. In addition, taxes are paid into the general public treasury, while fees are kept apart and deposited in segregated accounts. A fee imposed for the collection of materials for recycling or composting meets the latter criteria, since it would be used to provide a service or a tangible benefit.

POSITIONS:

The Allegan County Solid Waste Planning Committee supports the bill. (2-6-92)

The Grand Rapids Board of Public Works supports the bill. (2-6-92)

Representatives of the following groups testified before the House Towns and Counties Committee in support of the bill (2-6-92): Michigan Association of Counties; Michigan Townships Association; and the City of Kalamazoo.

The Michigan Waste Industries Association has no position on the bill. (2-10-92)

The Michigan Municipal League has no position on the bill. (2-10-92)