



**House  
Legislative  
Analysis  
Section**

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## RESIDENTIAL RECYCLING FEES

House Bill 4421 with committee  
amendments  
First Analysis (4-20-93)

Sponsor: Rep. Mary C. Brown  
Committee: Local Government

### ***THE APPARENT PROBLEM:***

The Solid Waste Management Act (Public Act 641 of 1978) gives counties the responsibility for planning the regulation of solid waste (through the development of county solid waste management plans) and for reducing the amount of garbage sent to incinerators and landfills. When some counties and townships couldn't afford to develop and maintain waste reduction and recycling programs, which, reportedly, are expensive to initiate, the legislature enacted Public Act 138 of 1989. The act amended the Urban Cooperation Act to allow counties to impose surcharges of up to \$2 a month or \$25 a year on each household in the county in order to pay for waste reduction or recycling programs. However, P.A. 138 failed to define "household," and had no provisions for enforcing the collection of recycling surcharges nor for allowing counties to raise these surcharges in order to keep pace with inflation. These problems reportedly have resulted in high delinquency rates in the payment of recycling surcharges in some places and even, in at least one case, abandonment of the P.A. 138 surcharge altogether in favor of a higher solid waste millage. Legislation has been introduced that would address these, and other, issues.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Urban Cooperation Act (Public Act 7 of the Extra Session of 1967) to do the following: (Note: The bill's language is unclear in several instances; see ARGUMENTS.)

- \* repeal the provision allowing counties to charge up to \$2 a month or \$25 a year per household for recycling, and instead allow counties, with voter approval, to impose specified maximum "rates or charges" on "the users and beneficiaries" of residential waste reduction and recycling programs;
- \* set the statutory maximum annual residential waste reduction or recycling rates or charges at either \$25 or, for counties implementing such

programs after the bill took effect, an "adjusted amount" based on the Consumer Price Index;

- \* allow voters to decide whether or not to tie the statutory maximum amount to changes in the Consumer Price Index;

- \* clarify that residential waste reduction or recycling rates or charges would be imposed on individual households (i.e. "dwelling units"), but that the responsibility for paying these rates or charges was with the property owner;

- \* allow local governments to enforce collection of residential waste reduction or recycling rates or charges by letting the local units add them to the tax rolls as liens against the residential property and to collect them in the same way as property taxes are collected; and

- \* put a one-month deadline on when a local unit of government had to withdraw from an interlocal agreement (such as a county recycling program) after passage of a voter-initiated referendum on the issue of termination.

Maximum rates or charges. Currently, under the act, a county may, by resolution, impose a surcharge of up to \$2 a month or \$25 a year on each household for the collection of materials for recycling or composting. The bill would specify that, upon voter approval, municipalities that had not imposed such a surcharge on or before the effective date of the act could impose "rates or charges" on the users and beneficiaries of residential waste reduction and recycling programs.

Residential waste reduction or recycling rates or charges would be imposed on each household ("on a dwelling unit intended to be occupied by a single household"), but would be the responsibility of the

House Bill 4421 (4-20-93)

property owner (and not, in the case of rentals, the tenant's responsibility).

Initially, the statutory maximum rate or charge would be set at a flat \$25 or an "adjusted amount" that was based on the Consumer Price Index (CPI). Counties charging residential waste reduction or recycling fees before the bill took effect would have as their statutory maximum \$25. Counties charging such fees after the bill took effect automatically would have as their statutory maximum, an "adjusted amount" as determined for the year in which the charges first were imposed.

Although the language is unclear, apparently the bill intends to allow counties, with the approval of a majority of the voters, to change from a flat maximum to an annually increasing maximum tied to increases in the CPI (regardless of whether the initial flat maximum was \$25 or the "adjusted amount"). The bill also apparently would reiterate that ten percent of the qualified voters could petition their local unit of government to hold an election on whether or not to use an "adjusted amount" as a maximum rate.

The "adjusted" maximum amount that counties could charge for residential waste reduction or recycling programs would be determined by multiplying the current adjusted amount by the percentage increase or decrease in the CPI over the previous year.

For example, the adjusted amount for 1995, if the CPI for 1994 were greater than the CPI for 1993, would be (C), the result of (A) times (B), where:  
(A) = [(the CPI for the fiscal year ending October 31, 1994) minus (the CPI for the fiscal year ending October 31, 1993)],

(B) = (the current "adjusted amount" [since there is no such figure, apparently the intent of the bill is to use, until December 31, 1994, the \$25 flat maximum]), and

(C) = the adjusted amount for 1995.

The bill also would require the Department of Natural Resources (DNR) to announce the adjusted amount on or before December 15 of each year (starting in 1994) as well as to provide this amount upon request.

**Tax roll liens.** The bill would allow local governments to discontinue residential waste reduction and recycling services to households not

paying the required rate or charge. Local governments also could either enter delinquent surcharges on the tax rolls as liens against the property of owners who had not paid, or enter such charges directly on the tax rolls. The county treasurer could collect the surcharges along with property taxes or delinquent property taxes. The bill would specify that property could not be sold for delinquent residential waste reduction or recycling rates or charges unless it also could be sold for delinquent property taxes. 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.** Although the act's existing language is unclear, currently the act appears to allow voters to file petitions with their local units of government for referenda on the questions of entering or continuing in recycling programs mandated by resolution of the county board of commissioners.

The bill would set a one-month deadline for when local units of government would have to end their participation in an existing mandatory waste reduction or recycling program after a referendum had been held (and the majority of voters voted to end participation in the program).

MCL 124.508a

### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

### **ARGUMENTS:**

#### **For:**

The bill would cut down on the high delinquency rates experienced by some local governments by clarifying from whom recycling surcharges are to be collected and who is responsible for paying these surcharges. One reason that local units of governments have difficulty in collecting user fees for recycling programs is because currently the act allows counties to impose such fees on "households," but does not define "household." This often leads to confusion over the question of who is responsible for the payment of the recycling surcharge. For example, it 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? What is more, in the case of

renters, it is difficult, if not impossible, to enforce the collection of delinquent surcharges on such transient residents. The bill would eliminate this confusion -- and overcome this obstacle -- by specifying that the recycling rate or charge would be imposed on the property owner, rather than the household occupying the dwelling.

***For:***

By allowing local governments to use tax liens as an enforcement mechanism, the bill would put some "teeth" into the act, and likely would cut down on the high delinquency rates. (Reportedly, up to a third of the people assessed have failed or refused to pay the recycling fees.) What is more, a precedent for using tax liens for user fees already has been set by the federal government, in the Waste Management and Resource Recovery Finance Act, which allows services provided by waste management facilities, and already allows communities to place surcharges on the tax roll as a lien on the premises of users who are delinquent in paying fees. By allowing local governments to do this in the case of delinquent recycling rates or charges, the bill would give local governments a way of recouping their recycling or waste reduction program costs from households that refused to pay the rates or charges. Since everyone in a community benefits from these services, all should be required to pay their share of the costs.

***For:***

The bill would add a much needed amendment to the Urban Cooperation Act, bringing it into compliance with the state constitution by clearly requiring that local recycling taxes (regardless of what they were called) be approved by the voters before being imposed. Opponents of Public Act 138 of 1989 have argued that local governments have called recycling taxes "fees" or "charges" in an attempt to avoid the voter-approval requirement of Article XI, Section 31 of the Michigan constitution. They point out that, while most or all of these recycling "fees," like true fees, are placed in a special fund which can only be used for the purpose for which the fee was charged, nevertheless they fail the second test for a fee: True fees must be voluntary payments made only by those people who choose to use the service for which the fee is charged. Recycling "fees" fail this test because they are mandatory charges on all property within a class (usually residential), regardless of whether or not the owner or occupant of the property actually uses the service. These "fees" then become a tax lien on

the property, and if unpaid, are certified onto the property tax roll for collection in the same manner and at the same time as general property taxes. To add insult to injury, some local ordinances also have required people to turn over their garbage, neatly sorted, to only the municipally-contracted trash hauler, and even provide for inspection of garbage by municipal employees in order to impose fines and other penalties for noncompliance! In one particularly outrageous example, recycling fees first appeared on a man's water bill, even though he didn't receive any water service!

Such government charges are quite different from those made for entry into a public park, the purchase of a lottery ticket, or measured service charge from a municipal utility -- all of which are true user fees. Mandatory recycling fees have been virtually indistinguishable from property taxes, and the bill would acknowledge this fact by requiring voter approval before any new recycling taxes could be imposed.

***Response:***

It is not enough to require only that new recycling program fees (that is, those instituted after the bill took effect) be required to get voter approval. The amendment to existing law would be adequate only if it required that any recycling program fees instituted since the adoption of the 1978 Headlee amendments to the constitution be approved by voters.

***Against:***

The committee amendment requiring a vote before a county could begin charging fees for residential waste reduction or recycling programs would completely undo Public Act 138 of 1989 as it now stands. In addition, it also would impose additional costs on taxpayers (in the form of unwanted or unnecessary referenda) rather than saving them money. The bill should not be advanced in its present form.

***Against:***

The bill, like the 1989 amendment (Public Act 138) to the Urban Cooperation Act, is not needed, since local units of government already can finance residential waste reduction and recycling programs either through true user fees or through regular property taxes. A recycling program could be financed through the revenue from authorization tags or special bags, which residents would be free to buy or not. Such revenue would be clearly distinct from tax revenue, and therefore would not

require a vote under the Headlee provisions. Local units of government already levying property taxes, which must be voted by the citizens and which are subject to constitutional limits, could finance municipal waste reduction and recycling programs through property tax revenue: either by reallocating revenue from the existing authorized millage, or, with voter approval, by imposing new millages. In fact, reportedly the city of Kalamazoo, after experiencing high delinquency rates under its recycling surcharge program, abandoned that method of financing and instead increased its solid waste millage.

#### ***Against:***

It is not necessary to require a vote before adopting waste reduction and recycling program rates or charges, since there already are provisions in the act allowing for voter referenda if just ten percent of voters in a local governmental unit petition to have a referendum held on whether or not to enter into or to continue such programs.

#### ***Response:***

The act does allow for petitions for a referendum on the question of entering into an "interlocal agreement," but does so only after the fact. People should be able to vote before such programs are adopted, and given a chance to choose between either reducing their garbage output or imposing a tax on themselves. What is more, the act currently requires that ten percent of the qualified voters ("voting in the last general election prior to the adoption of the interlocal agreement be the governing body") petition for a referendum, a figure which in some cases, such as some subdivisions, may be difficult or impossible to attain. It would be better to allow voters to decide before, rather than after, the fact, particularly given the enforcement mechanisms that the bill would allow (namely, liens on property).

#### ***Against:***

Amendments adopted by the House Local Government committee have rendered the bill's language ambiguous. For example, the bill was amended to say that a county could impose certain rates or charges on users or beneficiaries of residential waste reduction or recycling programs "upon the approval of the electors of the municipality, if the municipality [was] not imposing such a surcharge on or before the effective date of the act." Taken literally, since the act being amended is the Urban Cooperation Act of 1967, the bill would apply to all counties that had not

imposed such waste reduction or recycling surcharges before 1967, and would require local government voter approval for all such programs begun after 1967. This could mean that municipalities with such programs already in place might have to hold elections on the question of continuing their programs, rather than, as presumably was intended, requiring merely that only municipalities beginning such programs after the effective date of the bill would require prior voter approval. The same amendment also uses terms that either are not currently used in the act or that the bill apparently intended to strike from the act's existing language: For example, the amendment refers to "municipalities," though the act does not use this term and instead defines "local governmental unit." Also, the amendment refers to a "surcharge," even though the bill, as introduced, had deleted this word and replaced it with the phrase "rate or charge."

There are other problems with the bill's language. Although the bill would provide a way to calculate the "adjusted amount" that certain local units could use as their maximum charge, the calculation requires that some initial "adjusted amount" be specified before any "adjusted amount" can be calculated. Apparently the intent of the bill is to use the \$25 fee specified in subsection (3)(a) for the initial calculation, but the bill does not so specify.

The bill also would add, in the subsection regarding statutorily allowable maximum rates or charges, a provision for a voter-initiated referendum on the question of whether to "apply" an "adjusted amount." In the first place, the act already has a subsection (8) that provides for referenda, so it is unclear why this referendum provision appears where it does. On one reading, at least, the provision is redundant. On the other hand, the provision could be taken to mean that for local units of government not already using an "adjusted amount" (which, under the bill's provisions, would mean all local units already imposing recycling charges before the bill took effect), ten percent of the voters could initiate a petition on whether or not to change from a flat \$25 rate to an "adjusted amount." This would then also raise the question of whether or not a local unit not using an "adjusted amount" maximum could initiate a move to using such a maximum without a voter-initiated referendum.

The bill has a provision allowing voters to approve a "continuing application" of an "adjusted amount"

as determined for the year in which the charge would be imposed. Apparently this provision was intended to allow all local units to change from a flat maximum fee to an annually increasing fee (based on the CPI) with a single vote. However, if a local unit were not already using an "adjusted amount" maximum (again, those units with existing fees when the bill took effect), it would appear that this provision would not apply. That is, it would seem that in order for local units with an existing \$25 maximum to move to an annually increasing "adjusted amount," the unit would have to hold two elections: the first, a voter-initiated referendum on whether to move from the \$25 maximum to an "adjusted amount" maximum, and the second on whether to continue to apply that maximum adjusted amount.

Before further action is taken on the bill, the bill's language needs to be clarified.

#### ***Against:***

The original referenda language in Public Act 138 of 1989 (which amended the Urban Cooperation Act) is ambiguous and needs clarifying. At the very least, voters should be able to initiate petitions requiring local units of government to implement recycling programs, as well as to initiate petitions on the question of whether or not to terminate existing programs (as the act currently allows).

Currently, under the amended Urban Cooperation Act, counties can impose recycling surcharges without prior voter approval. The referenda provisions of the 1989 amendments allow voters to initiate petitions for referenda after such surcharges are in place, though just what questions may be considered appears unclear. The first sentence of the subsection on referenda says that petitions may be initiated on the question of "entering" an interlocal agreement, but the second sentence refers to referenda on the questions of whether to "reject entrance into" an interlocal agreement or to "terminate" such an agreement. Moreover, the first part of the first sentence refers to "entering" an interlocal agreement, but the second part of the sentence refers to filing petitions following adoption of a resolution to impose recycling surcharges or following "any increase" in the surcharge. Thus it would seem that this subsection allows for referenda on the question of whether or not (a) to enter into (or to reject entrance into) a mandatory recycling program, (b) to terminate participation in an existing program, or (c) to accept an increase in

fees for an existing program. The bill would appear to add a fourth question, namely whether or not to use a CPI-adjusted amount as the maximum recycling rate (instead of the bill's proposed \$25 maximum for local units with existing mandatory recycling programs).

It thus appears that, even if voters can petition for referenda on any of the above three questions, the act has no provisions for allowing voters to initiate referenda that would require local units of government to begin recycling programs (in the absence of county resolutions).

Before moving on the bill, the existing referenda provisions should be clarified.

#### ***POSITIONS:***

The Michigan Municipal League supported the bill as introduced, but opposes the bill as reported by the Committee on Local Government. (3-31-93)

The Michigan Association of Counties supported the bill as introduced, but opposes the bill as reported by the Committee on Local Government. (3-31-93)

The Michigan Townships Association supported the bill as introduced, but opposes the bill as reported by the Committee on Local Government. (3-31-93)