

1 [Landfill Liabilities]

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3 **Resolution supporting the reform of California’s Landfill Financial Assurance Rules to**  
4 **ensure that the risks of long term landfill liabilities do not become a financial obligation**  
5 **of the state and local governments and their taxpayers.**

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7 WHEREAS, the California Integrated Waste Management Board is considering a  
8 request from its staff to reform current financial assurance rules because of their concern that  
9 those rules will not achieve their intended function of protecting state and local governments  
10 from the enormous costs of remediating failed landfills in the future; and

11 WHEREAS, Sierra Club California and the Grassroots Recycling Network have  
12 commissioned a report by the report for a Competitive Waste Industry, entitled “Day of  
13 Reckoning: Protecting California Taxpayers from the Looming Landfill Crisis” in response to  
14 the California Integrated Waste Management Board’s request for public comment regarding  
15 the appropriate length of the post-closure period for municipal solid waste landfills; and,

16 WHEREAS, the report notes that the traditional debate regarding financial assurance  
17 for landfill closure has focused on whether “the post-closure period [should] be longer than 30  
18 years” and “[whether] the current assurance mechanisms for routine care during the post-  
19 closure period are adequate;” and,

20 WHEREAS, the report states that this manner of framing a debate overlooks the real  
21 issues for the State if it is to protect itself from billions of dollars in liabilities at orphaned  
22 landfill sites which had been privately owned; and,

23 WHEREAS, the report asserts that the care period for landfills is infinite given that  
24 liners will ultimately fail even after the post-closure period - barriers only postpone, but do not  
25 prevent pollution; and,

1           WHEREAS, current landfill financial assurance only covers minor routine care, things  
2 such as mowing the lawn, monitoring samples and delivering leachate to sewage plants, but  
3 the full range of possible costs from abandoned sites may be 100 times greater; and,

4           WHEREAS, these costs consist of remedial corrective actions and third party injuries  
5 that are likely to arise after the standard post-closure period; and,

6           WHEREAS, the report proposes an innovative market-based insurance approach it  
7 calls “Extended Environmental Impairment Landfill Insurance” which is designed to address  
8 long-term landfill liabilities during and beyond the post-closure period; and,

9           WHEREAS, its recommendations call for retention of the full value of insurance funds  
10 until the end of the post-closure period because of the significant probability of unanticipated  
11 costs and the requirement that payments into trust funds be accelerated using a “sum-of-the-  
12 years” digits approach, amongst other things; and,

13           WHEREAS, the recommendations contained in the report are intended to ensure that  
14 the public is protected from the potentially exorbitant costs associated with the long-term care  
15 of landfills; now, therefore be it

16           RESOLVED, that the Board of Supervisors hereby recommends that the California  
17 Integrated Waste Management Board pursue action to implement long-term and  
18 comprehensive landfill financial assurance mechanisms for privately-owned landfills which:

- 19           • Retain the full value of the assurance funds in the mechanism until the end of the post-  
20 closure period because there is a significant probability that unanticipated maintenance  
21 expenses will arise;
- 22           • Require that payments into trust funds be accelerated using a mechanism such as  
23 sum-of-the-years digits;
- 24           • Require that, if a surety bond and letter of credit is cancelled, the State shall be  
25 assumed to have exercised its right to claim the funds under the mechanism on the

1           120<sup>th</sup> day following notice of cancellation unless the State affirmative acts to forego its  
2           right to do so prior to that time;

- 3           • Prohibit financial tests, which are based upon the owner's balance sheet, as not  
4           perceptibly better than captive insurance, which the Board has previously disfavored.

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