

**MICHIGAN CHAMBER OF COMMERCE**  
**ANALYSIS OF GRANHOLM TAX PLAN, PART IV**  
**TAX ON CANADIAN TRASH?**  
**OR TAX ON MICHIGAN FAMILIES AND BUSINESSES?**

**April 18, 2005**

*This document analyzes the financial implications of the proposed tax on solid waste advocated by Governor Granholm and Democratic lawmakers. This is Part IV of the Michigan Chamber's four-part series analyzing recently proposed tax increases by the Granholm Administration. Parts I and II examine the overall changes in tax policy recommended by the Granholm Administration, including the "tax restructuring" proposals. Part III focuses on the indirect taxes proposed by the Governor's so-called "Water Legacy Act" that establishes costly new rules and regulations. All four analyses are available on the Michigan Chamber's website at [www.michamber.com/ba/taxplan.asp](http://www.michamber.com/ba/taxplan.asp).*

**Introduction**

There are two types of taxation: direct and indirect. Direct taxation comes in the form of traditional taxes, like the Single Business Tax or property taxes. Indirect taxes come in the form of government rules and regulations, such as the Michigan Department of Labor and Economic Growth's proposed state level ergonomics standard. Both methods of taxation impose real and significant costs on job providers. The proposed solid waste surcharge has undesirable elements of both a direct and an indirect tax and should not be adopted.

On February 22, 2005, Michigan Department of Environmental Quality (DEQ) Director Steve Chester testified in front of the Senate Natural Resources Committee on solid waste and recycling. In his testimony, Chester announced the Granholm Administration's support for a "surcharge on all waste disposed of in Michigan" as a way to deter out-of-state waste and promote recycling. Chester did not endorse a specific dollar amount, but said the administration was open to any of the legislative proposals that had been discussed. This legislative session, two proposals have been discussed: Senate Bill 256, sponsored by State Senator Liz Brater (D-Ann Arbor), and a yet-to-be-introduced plan announced on February 19th by the House Democrats. Senate Bill 256 would impose a \$6 per ton tax on solid waste, while the House Democrats' plan would impose a \$7.50 per ton tax. These plans would impose between \$100 million and \$150 million in new taxes, with the vast majority being paid by Michigan residents and businesses. In addition, the legislation would do little, if anything, to accomplish the stated goal of reducing Canadian waste.

## **Impact on Michigan Taxpayers**

At a time when Michigan's economy is struggling, our state's families and businesses don't need another tax increase. Yet, this is exactly what the Governor is advocating with a \$100 million to \$150 million garbage tax. Taking money out of the hands of families and businesses and giving it to state and local government to support new and yet-to-be defined recycling and other governmental programs is not the way to grow Michigan's economy.

- **Michigan Taxpayers Would Pay Lion's Share of Tax** – SB 256 and the House Democratic plan are large tax increases that would hit Michigan taxpayers hard. Despite what some lawmakers say, the majority of the proposed trash tax would not be paid by out-of-state generators. Michigan communities and businesses generate more than 70 percent of the waste disposed in Michigan. Additionally, while some of the tax may be passed through to out-of-state generators, contracts between Michigan landfills and some out-of-state generators protect the generators from having to pay new taxes, surcharges, fees, etc. So, again, Michigan taxpayers would shoulder the bulk of any new taxes.
- **Business, Government, And Universities Could Be Hit The Hardest** – A \$7.50 a ton surcharge would require cities to pay a substantial amount of money. For example, the city of Sterling Heights (pop. 124, 000) would pay approximately \$450,000 and the city of St. Clair Shores (pop. 63,000) approximately \$210,000. A mid-sized state university (25,000 students) would pay about \$26,000. Taxpayers will ultimately pay for higher costs incurred by governmental units.

Grocery stores, restaurants, and hospitals could see increases in the range of \$500 to \$10,000 depending on their volumes of waste. Depending on the details of the legislation, it is manufacturers who generate heavy byproducts that could stand to lose the most with costs in the tens of thousands of dollars. Some businesses will pass along the additional cost of waste disposal to their customers in the price of goods and services. Others operating in a highly competitive market may have to cut costs (wages, benefits) to remain economically viable.

## **The Law of Unintended Consequences**

The proposed legislation is being promoted as a way to discourage Canadian garbage from entering Michigan. In fact, it is not likely to achieve this result. It may, however, have the unintended consequences of increasing illegal dumping in Michigan and requiring Michigan taxpayers to pay Toronto's portion of the tax.

- **Garbage Tax Will Encourage Illegal Dumping** – The Governor has indicated that the way to attract young residents back to Michigan is to have “cool cities.” Cost of living is an important consideration in choosing a place to live. New garbage taxes would add to the already high cost of living in many of Michigan’s urban areas. There is also the possibility that illegal dumping would likely make cities less desirable. One municipal official testified against a \$3 garbage tax in 2003 before the Senate Natural Resources Committee, arguing that when garbage taxes go up people either keep things in their basements or put the garbage in their back lots. The National Center for Environmental Decision-Making Research notes that: “A study of the costs and benefits to illegal dumpers found that the cost of legal disposal must be decreased and the cost of illegal dumping penalties must be increased to reduce the volume of illegal dumping.”  
<http://www.ncedr.org/guides/litter/default.html>.<sup>1</sup> Instead, the Governor’s proposed plan does the opposite.

- **Garbage Tax Will Not Keep Waste Out Of Michigan** – The proposed legislation is designed to discourage Canadian garbage by raising the cost of disposal. However, as reported by MIRS on Feb 23, 2005, the legislation will not achieve its goal:

“Geoff **RATHBONE**, director of policy and planning for Toronto's solid waste management, said his city signed a 20-year contract with Republic Services to haul away its garbage at a fixed price. The contract specifically says any new taxes or fees would be Republic's responsibility, not the city of Toronto's.”

Given the inability of Michigan to extraterritorially apply its laws, if the landfill is required to pay this, it will be forced to pass on the cost to its Michigan customers. Supporters of the trash tax contend that some of the burden of this tax will fall on Canadian trash. In some cases, the tax may be passed along to Canadian customers; in other cases, that may not be possible, depending on contractual terms. This could result in a larger share of the tax being paid by Michigan facilities and customers!

- **Garbage Tax Could Negatively Impact Exportation of Michigan’s Waste** Canadian officials who visited the Michigan Chamber in 2003 indicated that an increase in the tax on solid waste from Canada entering into Michigan could prompt consideration of retaliatory action by Canadians to increase the tax on hazardous waste from Michigan entering into Canada. In 2003, Michigan exported more than 102 million pounds of hazardous waste to Canada.

## **Courts Likely to Strike Down Surcharge**

In 2004, the Michigan Chamber of Commerce issued a White Paper entitled, "Pending Legislation Regarding The Imposition Of \$3 Per Ton Surcharge On Generators Of Solid Waste." The paper was authored by Arthur Siegal with the law firm Jaffe, Raitt, Heuer & Weiss, P.C. Mr. Siegal was part of the legal team that successfully represented Fort Gratiot Landfill before the United States Supreme Court against the Michigan Department of Natural Resources. Mr. Siegal concluded that the proposed surcharge will be struck down by the courts.<sup>2</sup>

- **Proposed Surcharge Is An Invalid, Unstated Tax** – The surcharge would be used to fund activities unrelated to the regulation of waste disposal and unrelated to any service provided to generators of waste, haulers or landfills (these functions are already funded by the State's existing waste fees). In other words, it would be used to fund a new \$100 million to \$150 million government program. For the surcharge to be a legal surcharge/fee, it must grant a corresponding benefit to the person paying it, which is not shared by other members of society, such as a hunter paying for the processing of his application for a hunting license. Because, here, the surcharge provides no corresponding benefit to the person paying it, and because the money generated would be used to fund a new public program, the surcharge is really a tax in disguise.
- **Proposed Surcharge Violates Commerce Clause** – Attorney Arthur Siegal also noted in his White Paper that, in addition to being an illegal tax, the surcharge violates the United States Constitution. The legislation, while arguably non-discriminatory on its face, very clearly is intended to decrease the amount of solid waste transported into Michigan from Canada and other states. Under the Commerce Clause, states may not enact legislation that would impair the free flow of interstate and international commerce, of which solid waste is a part. Additionally, because out-of-state solid waste generators are paying into a fund from which they receive absolutely no benefit, while their domestic counterparts receive substantial benefits such as tax incentives, the legislation violates well-settled Commerce Clause principles. As such, the legislation cannot withstand Commerce Clause scrutiny and should not be enacted.

## **Conclusion**

Increasing taxes is not the way to attract new jobs and investment to Michigan. That is why the Michigan Legislature should reject the plan advocated by Governor Granholm and Democratic legislators to raise garbage taxes by \$100 million to \$150 million. Raising taxes on garbage disposal would hurt Michigan taxpayers and have little impact on the amount of material entering

Michigan. Furthermore, the proposed legislation could have the unintended consequence of increasing illegal dumping and requiring Michigan taxpayers to pay Toronto's portion of the tax. For further information, or if you have any questions, please call Doug Roberts, Jr., Director of Environmental & Regulatory Affairs for the Michigan Chamber, or Rich Studley, Michigan Chamber Senior Vice President of Government Relations, at (517) 371-2100.

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<sup>1</sup>See also *Survey of the Costs Associated with Illegal Dumping in Philadelphia*, Pennsylvania Economy League, Inc., Eastern Division, June, 1995, at 20 ("The cost of illegal dumping must be raised or the cost of dumping legally must be lowered"), *Illegal Dumping Prevention Guidebook*, U.S. Environmental Protection Agency Region 5, EPA 905-B-97-001, March 1998 ("Illegally dumped wastes are primarily non-hazardous materials that are dumped to avoid either disposal fees or the time and effort required for proper disposal.").

<sup>2</sup>The full White Paper can be viewed at the following address [www.michamber.com/nr/studies.asp](http://www.michamber.com/nr/studies.asp).