

立法會

Legislative Council

LC Paper No. LS26/03-04

Paper for the House Committee Meeting on 19 December 2003

Legal Service Division Report on Waste Disposal (Amendment) (No. 2) Bill 2003

I. SUMMARY

- 1. Objects of the Bill** To amend the Waste Disposal Ordinance (Cap. 354) to—

 - (a) provide statutory basis for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities; and
 - (b) strengthen the control against illegal disposal of waste.

- 2. Comments** The Bill provides for an accounting arrangement for use of the waste sorting facilities. The Bill further proposes to strengthen control against illegal disposal of waste by empowering the court to order the person convicted of illegal disposal of waste to remove the waste on Government land; by empowering the Director of Environmental Protection to enter without warrant any places, other than domestic premises and dwelling place on private land, to remove the waste deposited illegally in specified circumstances; and by making it an offence for the driver of a vehicle (not being a public transport carrier), and his employer being vicariously liable, to deposit waste from the vehicle.

- 3. Public Consultation** The relevant advisory committees and trades support the charging scheme in principle. However, the construction industry considers that the level of the charges is too high. The waste haulers object to the charging arrangement.

- 4. Consultation with LegCo Panel** The Panel on Environmental Affairs was briefed on the proposal to introduce a landfill charging scheme on construction and demolition waste on 25 February, 27 May and 24 June 2002 as well as 28 April and 24 November 2003.

- 5. Conclusion** The proposal in the Bill to introduce a charging scheme for disposal of construction waste is controversial. Members are recommended to set up a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend the Waste Disposal Ordinance (Cap. 354) ("the Ordinance")
to—

- (a) provide statutory basis for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities; and
- (b) strengthen the control against illegal disposal of waste.

LegCo Brief Reference

2. ETWB(E)55/03/113(2003) issued by the Environmental Transport and Works Bureau on 3 December 2003.

Date of First Reading

3. 17 December 2003.

Comments

4. The Bill proposes to provide statutory basis for introducing a charging scheme for the disposal of construction waste at landfills, sorting facilities and public fill reception facilities. Under the Bill, the term "construction waste" is defined to mean "any substance, matter or thing defined as construction waste by regulations made under section 33 [of the Ordinance], but does not include chemical waste.". As an accounting arrangement for use of the waste sorting facilities as Government facilities to be funded by the Government but operated by private sector contractors, the Bill proposes to use the sorting charge to remunerate the operator(s) of the sorting facilities before crediting the remaining proceeds to the general revenue. According to the LegCo Brief, details of the charging scheme and related powers to implement the charging scheme will be provided for in subsidiary legislation to be made under the Ordinance after enactment of the Bill. The Bill also proposes to empower the Director of Environmental Protection ("the Director") to refuse to accept any waste at a designated waste disposal facility in such circumstances as the Director may think fit. The Director's decision to turn away or charge a waste load is not subject to appeal to the Appeal Board established under section 25 of the Ordinance.

5. The Bill further proposes to strengthen control against illegal disposal of waste:—

- (a) by empowering the court to order the person convicted of illegal disposal of waste to remove the waste on Government land. In cases where the removal work has already been carried out by Government, the court could order the convicted person to pay all or part of the removal cost incurred by Government as appropriate;
- (b) by empowering the Director to enter without warrant any places, other than domestic premises and dwelling place on private land, to remove the waste deposited illegally in cases where there is an imminent risk of serious environmental impact and immediate remedial actions are required. The Director shall only enter domestic premises and dwelling place on private land when a warrant is obtained. The Director would be entitled to apply to the court to recover from the convicted person the cost of removing the waste; and
- (c) by revising the existing offence of unlawful depositing of waste to make available the exception of having lawful authority or excuse or the permission of the owner or occupier of the land regardless of where the waste is deposited; to further stipulate that the driver of a vehicle (not being a public transport carrier - defined under the Bill) from which waste is deposited as well as the employer of that driver are to be regarded as the persons causing waste to be deposited; and to provide for the statutory defences of reasonable precautions and due diligence to a defendant charged with the offence of illegal disposal of waste.

Public Consultation

6. According to paragraph 24 of the LegCo Brief, from May to November 2003, the Administration consulted all the relevant advisory committees and trades on the proposed charges and the detailed arrangement of the charging scheme. All the consulted organizations support the charging scheme in principle. However, the construction industry considers that the level of the charges is too high. The waste haulers continue to be the strongest objector and have reiterated their objection to the charging arrangement.

Consultation with LegCo Panel

7. The Panel on Environmental Affairs was briefed on the proposal to introduce a landfill charging on construction and demolition waste (C&D) on 25 February, 27 May and 24 June 2002 as well as 28 April and 24 November 2003. Deputations were invited to express their views at the meeting on 24 June 2002.

8. It was noted that waste haulers were strongly opposed to the charging arrangements, under which disposal charges for C&D waste arising from ad hoc renovation projects would be levied through waste haulers which, in their views, might give rise to cash flow and bad debt problems. To allay the concern on cash flow problems, the Administration put forward a number of measures such as billing waste haulers on a monthly basis, offering them a credit period and waiving the requirement for security deposit. Notwithstanding, waste haulers remained opposed to any form of participation in the scheme. They counter-proposed that the direct settlement system applicable to major C&D waste producers be extended to all waste producers, including developers, contractors as well as property management companies. For minor works, payment should be borne by the waste producers concerned through the respective management companies without involving waste haulers.

9. While supporting the introduction of landfill charging scheme taking into account the polluter-pays principle and agreeing that the charging scheme should be put in place as soon as possible without delay, members stressed the need for the Administration to further consult the trades with a view to reaching a consensus on the charging arrangement.

Conclusion

10. The proposal in the Bill to introduce a charging scheme for disposal of construction waste is controversial. The construction industry and waste haulers have already expressed concerns over the arrangements. Members are recommended to set up a Bills Committee to study the Bill in detail. Meanwhile, the Legal Service Division will be continuing with the scrutiny of the legal and drafting aspects of the bill.

Prepared by

Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
17 December 2003