

# State of Wisconsin



2019 Senate Bill 91

Date of enactment: **March 3, 2020**

Date of publication\*: **March 4, 2020**

## 2019 WISCONSIN ACT 151

AN ACT *to amend* 283.84 (1m) (d) and 283.84 (3r); and *to create* 16.9685, 283.84 (1) (f), 283.84 (1) (g), 283.84 (1e), 283.84 (1m) (e) and 283.84 (5) of the statutes; **relating to:** buying and selling water pollution credits through a central clearinghouse.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 16.9685 of the statutes is created to read:

**16.9685 Clean water clearinghouse. (1)** In this section, "credits" means water pollution credits that may be traded under s. 283.84 (1) (f) and (g).

(2) The department shall solicit services from a single clearinghouse to perform the functions under subs. (3), (5), and (6). The department may not enter into a contract with a clearinghouse under this section unless the department determines that all of the following requirements have been met:

(a) The clearinghouse has established or is capable of establishing the contract terms, conditions, and information required to document and enforce transactions under sub. (3) (a) and (c) in a commercially reasonable manner.

(b) The clearinghouse has established a policy that requires a commercially reasonable amount of financial reserves, insurance, reserve credit pool, or other risk management mechanism for use in the event that a party defaults on an agreement under sub. (3) (a).

(c) The clearinghouse has established a commercially reasonable process for soliciting and entering into transactions under sub. (3) (a) and (c).

(d) The clearinghouse has established a clearly defined fee structure describing the manner in which and

the amount that the clearinghouse will be paid for facilitating and executing transactions under sub. (3) (a) and (c).

(e) The clearinghouse has the capability to facilitate and execute transactions under sub. (3) (a) and (c).

(f) The clearinghouse has satisfied all other applicable requirements to transact business in this state.

(g) The department of natural resources has approved the contract.

(3) The clearinghouse with which the department enters into a contract under sub. (2) shall be the primary entity responsible for facilitating a financially stable market for the activities described in this subsection and sub. (5) and shall do all of the following:

(a) Produce credits by entering into contracts with other parties to undertake water pollution reduction activities. Each credit generated by a contracting party under this paragraph shall require the party to undertake at least 1.2 times that amount in water pollution reduction activities.

(b) Maintain a bank of credits produced or to be produced under par. (a).

(c) Sell credits produced under par. (a) to any person.

(d) Use methods approved by the department of natural resources to determine the amount of credits that may be produced by various water pollution reduction activities. These methods may include tables and models

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

based on the best available scientific protocols. The clearinghouse may recommend additional methods to the department of natural resources.

(e) When contracting with a party under par. (a), determine the amount of credits that may be produced by the water pollution reduction activities by using the methods approved under par. (d).

(f) When contracting with a party under par. (a), do all of the following:

1. Seek to minimize transaction costs.
2. Seek to maximize the performance of the water pollution reduction activities.
3. Seek to reduce the overall amount of pollutants introduced into the applicable hydrologic area, as defined under s. 283.84 (1m) (e) 2.
4. Require a maintenance schedule approved by the department of natural resources to ensure that the credits are maintained throughout the time for which they are certified under sub. (4).

(g) Before making a credit available for sale for use under s. 283.84 (1) (f), verify the credit by reporting to the department of natural resources any pertinent information regarding the credit and the related water pollution reduction activities, including the location of the activities; the type of practice or technology used; any maintenance schedule; the frequency of inspections; the duration for which the credit is valid; and the amount of credits generated by the water pollution reduction activities.

(h) Establish and maintain a centralized registry of all credits generated and sold in this state and of the verification of all such credits that have been incorporated into permits under ch. 283. The clearinghouse shall maintain an Internet-based platform to facilitate the location of potential credit buyers, available credits, and any other information that will facilitate credit transactions. The clearinghouse shall report this and other pertinent trading information annually to the department and to the department of natural resources. The clearinghouse shall enter into a data-sharing agreement with the department of natural resources to facilitate the clearinghouse's ability to collect and make publicly available pertinent information relating to water quality improvement programs administered in this state.

(4) No later than 45 days after reviewing the information provided under sub. (3) (g) and (h), the department of natural resources shall certify the amount of credits and the duration of the credits available for sale.

(5) The clearinghouse with which the department enters into a contract under sub. (2) may do any of the following:

(a) Charge fees and use funds received for general program operations of the clearinghouse, including costs associated with facilitating transactions, purchasing credits, and repayment of funds granted or loaned to the clearinghouse.

(b) Hold excess funds in trust for the purpose of making grants, in collaboration with county land conservation offices, the department of natural resources, or the department of agriculture, trade and consumer protection, for targeted water pollution prevention, water pollution remediation, and other environmental enhancement projects that improve the water quality of this state.

(c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain the reserve credit pool for the purpose of maintaining a risk management mechanism under sub. (2) (b).

(d) Conduct research on other innovative approaches to environmental improvement.

(6) Upon the recommendation of the department of natural resources, the department may contract with the clearinghouse under sub. (2) to further the implementation of any adaptive management, water quality trading, or future market-based water quality programs in effect in this state.

(7) The term of a contract entered into under sub. (2) shall be 5 years. The department may terminate a contract entered into under sub. (2) if the clearinghouse fails to meet any of the requirements under this section or rules promulgated under s. 283.84. The department shall give the clearinghouse at least 120 days' notice of the default and a right to cure before terminating a contract under this subsection.

(8) If the contract with the clearinghouse is terminated or the clearinghouse ceases to function, the department of natural resources shall continue to administer all credit transactions then in effect until a new clearinghouse contract is established or until the terms of the individual parties' contracts expire.

(9) Before the end of the 4th year of any contract entered into under sub. (2), the department of natural resources shall evaluate the clearinghouse and shall report its evaluation to the department.

**SECTION 2.** 283.84 (1) (f) of the statutes is created to read:

283.84 (1) (f) Reaches a binding, written agreement with a clearinghouse that holds a valid contract under s. 16.9685 to purchase credits from the clearinghouse, if the clearinghouse has consulted with the department about the agreement to the extent required under the contract under s. 16.9685.

**SECTION 3.** 283.84 (1) (g) of the statutes is created to read:

283.84 (1) (g) Reaches a binding, written agreement approved by the department with a 3rd party under which the 3rd party agrees to work with one or more persons, other than the permit holder, to reduce the amount of water pollution that those persons cause below the levels of water pollution that those persons cause when the agreement is reached. If an agreement is reached under this paragraph, the person who is required to obtain a permit or the 3rd party shall notify the clearinghouse that

holds a valid contract under s. 16.9685, if any, and shall report to the clearinghouse, in the time and manner specified by the department, any information that the department, in consultation with the department of administration, determines is reasonable and necessary for the operation of the centralized registry under s. 16.9685 (3) (h). The 3rd party shall also verify the credit by reporting to the department of natural resources any pertinent information regarding the agreement and the related water pollution reduction activities, including the location of the activities; the type of practice or technology used; any maintenance schedule; the frequency of inspections; the duration for which the credit is valid; and the amount of credits generated by the water pollution reduction activities.

**SECTION 3m.** 283.84 (1e) of the statutes is created to read:

283.84 (1e) No later than 45 days after reviewing the information provided under s. 16.9685 (3) (g) and (h), the department shall certify the amount of credits and the duration of the credits available for sale.

**SECTION 4.** 283.84 (1m) (d) of the statutes is amended to read:

283.84 (1m) (d) The Except as provided under par. (e) 1., the increase in pollutants and the reduction in pollutants occur within the same basin or portion of a basin, as determined by the department.

**SECTION 5.** 283.84 (1m) (e) of the statutes is created to read:

283.84 (1m) (e) 1. If the person has entered into an agreement under sub. (1) (f) or (g), the increase in pollutants and the reduction in pollutants occur within the

same applicable hydrologic area, as determined by the department.

2. In this paragraph, “applicable hydrologic area” means the largest area possible within this state to facilitate implementation of this section while achieving water quality standards and any applicable federally approved total maximum daily load allocations.

**SECTION 5m.** 283.84 (3r) of the statutes is amended to read:

283.84 (3r) The department shall include terms and conditions related to agreements under sub. (1) in new and reissued permits. The department shall determine how to incorporate credits purchased under sub. (1) (f) and the terms and conditions related to agreements entered into under sub. (1) (g) into new and reissued permits.

**SECTION 6.** 283.84 (5) of the statutes is created to read:

283.84 (5) The department may enter into a memorandum of understanding with the federal environmental protection agency relating to the administration of this section and s. 16.9685 in relation to the operations of a central clearinghouse.

**SECTION 7. Nonstatutory provisions.**

(1) The department of natural resources shall consult with the federal environmental protection agency regarding the generation and use of water pollution credits under s. 283.84 (1) (f) and (g) in watersheds subject to total maximum daily loads that have been federally approved or for which federal approval is pending, with the goal of maximizing the opportunities for the generation and use of long-term and permanent credits.