



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 547

**Senate
Amendment 1**

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2013 Senate Bill 547 relates to regulation of phosphorus pollution.

2013 Senate Bill 547

Senate Bill 547 creates the framework for a statewide variance from wastewater discharge limits for phosphorus. The framework focusses on sources of phosphorus discharge that cannot meet current discharge limits without making major facility upgrades (referred to in this Amendment Memo as “affected sources”). It makes the variance available to affected sources if it is found that it is not feasible for those sources to meet current discharge limits without causing substantial and widespread adverse social and economic impacts on a statewide basis (referred to in this Amendment Memo as a “finding of infeasibility”).

The bill directs the Department of Administration (DOA) to study the feasibility of affected sources meeting current discharge limits, considering certain calculations and information. If DOA makes a finding of infeasibility, the finding remains in effect until DOA finds that it is no longer accurate.

When a finding of infeasibility is in effect, an affected facility is eligible for a variance from its phosphorus discharge limits if it certifies that it cannot achieve compliance without a major facility upgrade. The variance consists of two principal elements:

- A schedule by which the affected source must, over 20 years, come into compliance with its phosphorus discharge limits.
- At the choice of the affected facility, one of the following mechanisms to accomplish reductions of phosphorus pollution from non-point sources in the watershed where the affected facility is located:

- Making payments to a county in an amount equal to \$50 per pound of phosphorus discharged by the affected source in excess of the amount it would discharge if it met its discharge limit, to implement projects to accomplish a reduction in phosphorus pollution in the same water basin as the affected facility.
- Entering into an agreement with the Department of Natural Resources (DNR) to implement such projects, itself.
- Entering into an agreement with a third party to implement such projects.

Senate Amendment 1

Senate Amendment 1 makes various changes to the bill.

Preliminary Finding of Feasibility or Infeasibility

With regard to DOA's preliminary feasibility finding, the amendment does the following:

- Specifies that DOA may make separate findings for different categories of sources.
- Specifies that calculations are to be based on water quality based effluent limitations, as opposed to other forms of effluent limitations.
- Requires DOA to make its preliminary determination no more than 240 days (rather than 60 days, as in the bill) after the effective date of the bill.

Review of a Finding of Infeasibility

The bill requires DOA to review a finding of infeasibility every five years, beginning in 2019. The amendment directs DNR to determine if a review of a finding of infeasibility is needed every three years, as part of its review of water quality standards, and directs DOA to review a finding of infeasibility once in 2024 and whenever DNR determines that a review of the finding is needed.

Under the bill, DOA must produce a report regarding any changes in the technology available for controlling phosphorus discharges from point sources and regarding the effluent limitations for phosphorus that are reasonably achievable. The report must include certain determinations regarding phosphorus control technology and must include a determination of whether the original finding of infeasibility is still accurate. If DOA concludes that the original finding is still accurate, DOA must decide if it is appropriate to apply more stringent phosphorus effluent limitations to affected facilities and, if so specify the new limits in the report.

The amendment requires, instead, that DOA prepare a report to determine whether the original finding of infeasibility is still accurate. It requires inclusion of the same determinations regarding phosphorus control technology, but specifies that DNR provide

those determinations to DOA, and directs DNR, rather than DOA, to decide if more stringent phosphorus effluent limitations should be imposed.

Role of U.S. Environmental Protection Agency

The amendment recognizes the role of the U.S. Environmental Protection Agency (EPA) in overseeing state water pollution control programs, by directing DNR to seek EPA's approval for approval or continuation of a variance under the bill.

Availability of Variance

The amendment clarifies that a variance is available only to point sources of phosphorus to which a finding of infeasibility applies.

The amendment specifies that, if a finding of infeasibility is in effect, DNR must approve an application for a variance unless it finds that the applicant's certification that it cannot comply with the phosphorus discharge limit without a major facility upgrade is substantially inaccurate. It also requires the DNR to take final action on an application for a variance within 30 days of receiving the application, and specifies that the application is considered to be approved if DNR fails to meet this deadline.

Variance Provisions

The amendment specifies that, in addition to compliance with the numeric limits specified in the bill, DNR may require an affected facility to which it grants a variance to optimize performance of the point source in controlling phosphorus discharges.

The amendment also specifies that, if an affected facility does not elect to apply for a variance when a finding of infeasibility is initially made, but later elects to apply for such a variance, the facility will be subject to a phase-in of the phosphorus limits on a schedule as if it had applied for the variance when the finding of infeasibility had originally been made.

Payments to Counties

For those affected facilities that elect to make payments to counties under the variance, the amendment caps the amount that a facility may be required to pay at \$640,000 per year.

The amendment allows a county to use funds received under a variance for modeling and monitoring of phosphorus discharges. It also requires counties to prepare plans for the use of such funds.

Project Plans

Under the amendment, if an affected facility elects to implement projects or to contract with a third party to implement projects to reduce non-point sources of phosphorus pollution in the watershed where the facility is located, the following apply:

- If a project includes activities for which performance standards and prohibitions have been established under the state's non-point pollution control program, the project must comply with those performance standards and prohibitions.
- The party that implements the project must submit annual reports to DNR that quantify phosphorus reductions achieved by the project. If DNR determines that a project is not effectively reducing the amount of phosphorus entering the waters of the state, it may terminate the project.

Bill History

2013 Senate Bill 547 was introduced on February 3, 2014, by Senator Cowles and others. Senate Amendment 1 was offered by Senator Farrow on February 12, 2014.

On February 13, 2014, the Senate Committee on Government Operations, Public Works, and Telecommunications voted to recommend adoption of Senate Amendment 1 and passage of 2013 Senate Bill 547, as amended, by votes of Ayes, 4; and Noes, 3.

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