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STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Assembly Committee on Local Government
AB 838- Method for Establishing Financial Responsibility for Municipal Solid Waste
Facilities

February 5, 2020

Chairman Novak and Committee Members -

Thank you for the opportunity to testify in support of AB 838, related to establishing proof of financial responsibility for solid waste facilities owned or operated by a municipality.

Currently, municipalities with landfills need to show proof of financial responsibility to ensure the availability of funds for compliance with closure and long-term care requirements. For municipal landfills, the standard method is to obtain a bond, deposit funds with the State, establish an escrow account or obtain an irrevocable letter of credit payable to or established for the benefit of the Department of Natural Resources. This is incredibly time-consuming, burdensome and results in unnecessary costs to the municipalities.

Under a state law enacted in 1982, privately owned landfills, as well as public utilities are able to establish proof of financial responsibility using a net worth test. Electric cooperatives were added to statute in 1991. Generally, the net worth test requires a certain level of net worth, liabilities to net worth ratio, and credit worthiness. Presumably, public landfills were initially excluded because there wasn't a good way to measure a municipality's net worth in 1981. However, times have changed.

Under this bill, a municipality could use an alternative method to ensure compliance with closure and long-term care requirements similar to that allowed for local governments under federal law. The municipality may prove financial responsibility by either:

- 1) Meeting a certain rating establish by Moody (at least "Baa") or Standard & Poor's (at least "BBB")
- 2) Ratio of cash plus marketable securities to total expenditures is greater than 0.05 and its ratio of annual debt service to total expenditures is 0.20 or lower

Additionally, if a facility is owned or operated by more than one municipality, any municipality may establish proof of financial responsibility on behalf of itself and the other owners or operators.

Once again, thank you for holding a public hearing on this important piece of legislation. I am happy to answer any questions you may have.

Public Hearing

Committee on Local Government

Testimony on AB838 Proof of Financial Responsibility for Solid Waste Facilities owned or operated by a Municipality.

I thank you for the opportunity to speak in support of Assembly Bill 838 Related to the method for establishing proof of financial responsibility for solid waste facilities owned and operated by municipalities. Let me introduce myself. I'm John Lefebvre, County Administrator for Marinette County. Prior to becoming County Administrator I served for over three decades as the Landfill Director for a small municipal landfill called the Mar-Oco Landfill which is jointly owned by **Marinette** and **Oconto** Counties.

Financial Responsibility for solid waste facilities is required for two reasons: The first being Closure - A landfill owner must ensure that they have the financial capacity to fund the closure activities which consists of installation of a gas collection system, composite final cover system and seeding and mulching of all disturbed areas. The second requirement is for long-term care which consists of all activities that will take place in the 40 years after closure. This includes but is not limited to maintenance/replacement of all equipment, maintaining site vegetation, operation of the gas collection and leachate collection systems, leachate hauling and disposal costs, environmental monitoring and record keeping/reporting.

The Problem: An inequity exists. A net worth test method of providing financial responsibility for long-term care and/or closure exists for any for-profit business or public utility which holds a license for any solid or hazardous waste facility. However no such opportunity exists for municipalities who are fiscally responsible and good stewards of the taxpayer's dollars.

Failure to provide some type of option for municipalities which is similar to for-profit business and public utilities is unnecessarily burdensome for the municipality, causes additional work for municipal staff, and is a waste of taxpayer dollars.

Federal law allows municipalities to demonstrate their fiscal responsibility in the same fashion as what is being proposed in SB838. If the municipality is able to

utilize a fiscal responsibility test the municipality would not need to spend countless hours providing the WDNR with updated account balances and annually increasing the account balances as determined by the WDNR. In addition, the municipality would be free to invest landfill funds as they determine appropriate.

So why is this freedom to invest without WDNR regulations and oversight important? Since being licensed in 1985 Mar-Oco has utilizes a letter of credit in the amount of \$900,000 to satisfy the financial responsibility requirement for closure. This estimated closure amount is reviewed annual by the WDNR. In 2019 and the previous 34 years the Mar-Oco Landfill paid a local lending institution \$4,500 per year to provide a \$900,000 letter of credit and in mid-2019 the WDNR notified the Mar-Oco that the \$900,000 was no longer sufficient and needed to be increased. In 2020 Mar-Oco obtained a new letter with a face value of 1 million dollars at a cost of \$5,500 per year. By utilizing a letter of credit as Mar-Oco's form of financial responsibility it allows Mar-Oco to invest their funds without WDNR involvement and allows the Mar-Oco to use the funds it has set aside for closure when the time comes without the need to borrow funds for closure. It's important to understand that the WDNR will only release the closure funds after the closure work has been completed and approved by the WDNR which is 3-6 months after the work has been completed. The estimated cost of maintaining this letter of credit throughout the entire site life of the Mar-Oco Landfill is over \$200,000.

For long-term care Mar-Oco utilizes a deposit with the WDNR and escrow account(s). The combined balance in these long-term care accounts totals approximately \$1.65 million. When comparing the rate of return on these long-term care investments to other investments held by Marinette County the annual percentage yield of the long-term care investments is approximately 1% lower than other Marinette County's investments. So assuming, on the conservative side, an average balance in the long-term care account of \$1.5 million over the anticipated 80 years (40 years of site life and 40 year long-term care period) these long-term care investments will yield an estimated \$1.8 million less in revenue.

It is my belief that unless this law is changed it will cost Mar-Oco over 2 million dollars in combined lost investment revenue and unnecessary letter of credit fees.

Yesterday I listened to the WDNR testimony on SB714 the companion bill to AB838. The WDNR identified concerns that a municipality may default. I can tell you that I'm aware of two privately owned closed solid waste facilities located within Marinette County that both private owners have walked away from their obligation yet I'm not aware of any municipality within the State of Wisconsin that a municipality has walked away from their obligation. The WDNR suggested that if an inequity exists between for-profit businesses and municipalities consideration should be given to eliminating the net worth test for the for-profit businesses since the net worth test puts the taxpayers of the State of Wisconsin at risk. This hearing isn't about the business net worth test it is about creating a financial assurance mechanism that can be used by municipalities to save the taxpayers' dollars. The WDNR also mentioned that by passing this proposed legislation more inequity may exist. How can that be every municipality will have the same opportunity what the municipality does with this opportunity is up to them. And last but not least the WDNR stated that one year the municipality may meet the financial responsibility test but the next year it may not. The WDNR was concerned that if this happens the municipality may not have the necessary funds to establish an escrow account or a deposit with the Department. If the municipality does not have the funds needed to establish an account they can obtain a bond or a letter of credit. In addition, why is there an implication by the WDNR that if a municipality uses this financial responsibility test that municipality will not set dollars aside for closure and/or long-term care? This is just sound business practice. What my concerns have always been is that the municipalities don't have the freedom to manage their own investments and because of this are losing millions of dollars of potential investment revenue.

One has to ask why municipal landfills are held to a higher standard than the for-profit businesses and/or utilities. It is much less likely that a municipality will ever be in a position where it defaults on a landfill closure or long-term care obligation than a for-profit business or utility. I urge you to support Assembly Bill 838 which provides municipalities with the freedom to manage their own landfill investments.



Wisconsin Counties Solid Waste Management Association

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Good morning. Thank you Chair Novak and members of the Local Government Committee for this opportunity to speak. And thank you to the sponsors and co-sponsors of AB838.

My name is Meleesa Johnson. I am the director of the Marathon County Solid Waste Department and was elected to the Executive Committee of the Wisconsin Counties Solid Waste Management Association or WCSWMA. I have served in that capacity for 14 years and am here today representing WCSWMA. WCSWMA works on behalf of all municipally-owned solid waste facilities, including landfills, compost operations, collection operations and material recovery facilities. WCSWMA's mission is to promote effective and environmentally sound solid waste management systems and resource recovery efforts. We provide networking and educational opportunities for our members and also advocate for legislation and regulations that are in the best interests of our public sector members.

Today I am here to speak in strong support of AB838. AB838, if signed into law, would grant municipally-owned landfills the same flexibility in providing owner financial responsibility, or OFR, as is enjoyed by our private sector partners.

Wisconsin statute section 289.41(1m)(b)1 indicates that all landfill owners "shall maintain proof of financial responsibility...during the operation of the approved facility and for 40 years after the closing of the approved facility." Standard methods of providing financial responsibility include:

- A performance or insurance bond
- Cash deposit
- Established escrow account (with investments limited to federal bonds and certain state bonds)
- Irrevocable letter of credit
- Or other methods deemed satisfactory to the DNR.

Additionally, statute requires that the funds/bonds be made "payable to or established for the benefit" of the DNR.

An alternative method of providing OFR is to demonstrate the landfill "company" has adequate "net worth" to cover the closure and long-term care financial liability. Adequacy of a company's net worth is determined by DNR using an accounting process prescribed by statute.

Wisconsin municipal solid waste landfills fall into two categories; those owned by the municipalities, most of which are enterprise funds and use no tax dollars, and those owned by private companies (including publically-traded companies). Privately owned landfills are able to use any of the standard methods of OFR and also are at liberty to use the net worth method.

However, because statute indicates that the net worth method is for "companies" and defines "companies" as "any business operated for profit and any public utility which is applying for or holds a license for the operation of a solid or hazardous waste disposal facility...", it has been determined that municipally owned landfills are not companies and do not qualify for the net worth method.

As a result of this prohibition, municipally owned landfills are put at a financial disadvantage. Municipally owned landfills have no alternative but to bear the annual expense of bonds or letters of credit or are required to have tens of millions of dollars in cash in deposits or escrows. This is an enormous amount of capital tied up in untouchable funds, capital that could be used to fund community programs, facility improvements or provide general liquidity.



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Just a quick example of how this impacts my department: The OFR requirements for closure are that the costs of closure, at its worse-case scenario of open space, be covered immediately upon opening of a new landfill. In 2014 Marathon County opened its newest landfill, Bluebird Ridge. Because we had yet to receive any operational dollars (no income because we had not yet received waste), before we accepted the first ton of waste we had to either have \$3.4 million in cash/investments, an insurance bond or letter of credit. We opted for a letter of credit, as we didn't have the \$3.4 million. That letter of credit has cost my department over \$200,000 since 2014. This expense is mandatory even though we have half of the amount set aside from our operational income, we cannot reduce the letter of credit, as statute requires only one method of OFR.

WCSWMA understands the need for and supports the requirements of OFR. However, would like to see municipally owned landfills have the latitude to use the net worth method as outline in AB838.

Again, my sincere appreciation for this opportunity.



Assembly Committee on Local Government

2019 Assembly Bill 838

*Establishing proof of financial responsibility for solid waste facilities owned or operated
by a municipality and granting rule-making authority
February 5, 2020*

Good morning Chairman Novak and members of the Committee. My name is Kate Strom Hiorns, and I am the Recycling and Solid Waste Section Chief with the Wisconsin Department of Natural Resources. This is David Albino, Business Support and Information Technology Section Chief with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 838 (AB 838).

This bill requires the Department to promulgate, by rule, an alternative method of establishing OFR (Owner Financial Responsibility), similar to a net worth test, for municipally owned facilities. OFR exists to ensure solid waste facility owners, such as landfills, incinerators, and transfer, storage, and processing facilities, have enough financial resources to comply with facility closure and long-term care requirements. This ensures the facility owner, not the department or taxpayers, pays for closure and long-term care. OFR is facility specific, and the Department cannot use OFR set aside for one facility towards a different facility.

Facility owners demonstrate OFR compliance by establishing an interest-bearing account such as an escrow account, irrevocable trust, or a deposit with the Department. Owners may also elect to pay for the availability of funds, similar to insurance, by receiving a letter of credit or a bond. The other method, known as the "net-worth test," is not currently available to municipally owned facilities. The net worth test requires the owner to demonstrate they are "big enough" to cover their closure and long-term care costs. This test doesn't require the owner to set aside or pay for the availability of any financial resources.

Any facility, private or municipally owned, using the net worth test, presents a risk to Wisconsin taxpayers and the Department. The Department has no statutory authority or funding source to cover costs of closure and long-term care for any facility that fails to do so itself. The Department cannot use OFR set aside for one facility to fund another facility's closure or long-term care costs. AB 838 does not provide a clear path forward outside of enforcement provisions in circumstances where a municipality passes the net worth test one year, fails the next, and is unable to use an alternate mechanism. Not having OFR in place would result in revocation or suspension of the facility's operating license since holding such a license is partially conditioned on satisfying OFR requirements.

If a municipality incurred unexpected, large, facility-related costs and did not set aside funds for OFR, it would typically utilize limited levy or other funding sources, or issue debt if possible. The Department's concern is that entities that fail a net worth test would not have the resources to establish OFR via one of the other mechanisms. The lack of authority for municipalities to use a net worth test, while this option is available to private companies, is inequitable. However, this bill may introduce a different inequity among municipalities, where some are able to pass a net worth test and others not. One option may be to eliminate the net worth test for OFR to any solid waste facility and protect taxpayers from the risk of needing to fund proper closure and maintenance activities at these sites. If this bill were enacted in its current form, the Department could utilize existing OFR standards and code language that are in place for private companies in order to expand the net worth test for OFR to municipally owned solid waste facilities.

On behalf of the Bureau of Waste and Materials Management, I would like to thank you for your time today. We would be happy to answer any questions you may have.