

State of Wisconsin



2023 Senate Bill 624

Date of enactment: **March 14, 2024**

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2023 WISCONSIN ACT 107

AN ACT *to amend* 20.370 (4) (dq), 289.41 (3) (c), 289.41 (11) (a) 4. and 289.68 (1); and *to create* 20.370 (4) (dr), 289.41 (3m) and 289.68 (4m) of the statutes; **relating to:** method for establishing proof of financial responsibility for municipal solid waste facilities; payments for closure, long-term care, and corrective action costs for certain solid or hazardous waste facilities; extending the time limit for emergency rule procedures; providing an exemption from emergency rule procedures; granting rule-making authority; and making an appropriation.

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

SECTION 1. 20.370 (4) (dq) of the statutes is amended to read:

20.370 (4) (dq) *Solid waste management — waste management fund.* From the waste management fund, all moneys received in the waste management fund, except moneys appropriated under pars. (dr), (dt), (dy) and (dz), for the purpose of administering a program of corrective action, closure, and long-term care of and environmental repairs to solid and hazardous waste facilities under s. 289.68.

SECTION 2. 20.370 (4) (dr) of the statutes is created to read:

20.370 (4) (dr) *Solid waste management — department action on corrective action, closure, and long-term care.* From the waste management fund, all moneys received under s. 289.68 (4m) (b) for the purpose of administering a program of corrective action, closure, and long-term care of solid and hazardous waste facilities under s. 289.68 (4m) (a).

SECTION 3. 289.41 (3) (c) of the statutes is amended to read:

289.41 (3) (c) *Changes.* The owner or operator may change from one standard method of establishing proof of financial responsibility under par. (a) to another ~~or standard method under par. (a)~~, to an alternative method under sub. (3m), or to a net worth method of establishing proof of financial responsibility under sub. (4).

SECTION 4. 289.41 (3m) of the statutes is created to read:

289.41 (3m) ALTERNATIVE METHOD OF ESTABLISHING FINANCIAL RESPONSIBILITY FOR SOLID WASTE DISPOSAL FACILITIES; MINIMUM FINANCIAL STANDARDS FOR MUNICIPALITIES. (a) *Alternative method requirements.* A municipality may establish proof of financial responsibility for solid waste disposal facilities as required under sub. (2) by applying to the department and meeting the alternative method requirements. The department shall establish by rule the minimum financial requirements for a municipality to establish proof of financial responsibility under this subsection. If a facility is owned or operated by more than one municipality, any such municipality may establish proof of financial responsibility under this subsection on behalf of itself and the other municipalities that are owners or operators. A municipality that seeks to

* 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."

establish proof of financial responsibility under this subsection shall satisfy the minimum financial requirements established by rule and all of the following requirements:

1. If the municipality has any outstanding, rated, general obligation bonds, none have been rated lower than “Baa” as issued by Moody’s Investors Service or “BBB” as issued by Standard & Poor’s Corporation.

2. The municipality’s most recent audited annual financial statement shows a ratio of cash plus marketable securities to total expenditures of not less than 0.05, and a ratio of annual debt service to total expenditures of not greater than 0.20.

(b) *Failure to meet alternative method requirements.* If at any time the department determines that a municipality does not meet the minimum financial requirements under par. (a) 1. and 2. and established by rule, the municipality shall, within 45 days of the department’s determination, establish proof of financial responsibility using one of the standard methods under sub. (3).

SECTION 5. 289.41 (11) (a) 4. of the statutes is amended to read:

289.41 (11) (a) 4. The department may request the department of justice to initiate court action against the owner or operator to recover moneys sufficient to pay the cost of complying with the closure and long-term care requirements of the specified in any rule, order, plan of operation, or other plan approval or approved plan under s. 291.29. Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

SECTION 6. 289.68 (1) of the statutes is amended to read:

289.68 (1) PAYMENTS FROM THE WASTE MANAGEMENT FUND. The department may expend moneys in the waste management fund only for the purposes specified under subs. (3) to (6) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (4) (dq) for the purposes specified under subs. (3) and (5) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (4) (dt) for the purposes specified under sub. (4). The department may expend moneys appropriated under s. 20.370 (4) (dy) and (dz) for the purposes specified under sub. (6). The department may expend moneys appropriated under s. 20.370 (4) (dr) for the purposes specified under sub. (4m).

SECTION 7. 289.68 (4m) of the statutes is created to read:

289.68 (4m) PAYMENTS OF CLOSURE, LONG-TERM CARE, AND CORRECTIVE ACTION COSTS. (a) *Payments.* The department may expend moneys appropriated under s. 20.370 (4) (dr) to pay costs associated with closure, long-term care requirements, and corrective action for a facility that has established proof of financial responsibility under s. 289.41 (3m) or (4), if the owner or operator of the facility has failed to comply with closure, long-term care, or corrective action requirements specified in any rule, order, plan of operation, or other plan approval and if any of the following applies:

1. The owner or operator’s failure to comply is due to bankruptcy, insolvency, or other inability to pay the costs.

2. The department determines that the failure to comply presents an imminent or substantial danger to human health or the environment.

(b) *Transfer of funds; joint finance approval.* The department may transfer money from the appropriation account under s. 20.370 (4) (dq) to the appropriation account under s. 20.370 (4) (dr) for the purposes specified under par. (a). The department shall notify the joint committee on finance of transfers that are intended to support payments for a facility under par. (a) that do not exceed \$300,000. The department may not make any transfers that are intended to support payments for a facility under par. (a) that exceed \$300,000 without approval from the joint committee on finance.

SECTION 8. Nonstatutory provisions.

(1) EMERGENCY RULES. The department of natural resources shall use the procedure under s. 227.24 to promulgate rules under s. 289.41 (3m) no later than the first day of the 7th month beginning after the effective date of this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the first day of the 36th month beginning after the effective date of the emergency rules or the date on which permanent rules take effect, whichever is earlier. Rules promulgated under this subsection shall, at a minimum, reflect the minimum financial requirements established in s. 289.41 (3m) and in 40 CFR 258.74 (f), as amended. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.