



1995 ASSEMBLY BILL 997

March 7, 1996 – Introduced by Representatives PLOMBON, MUSSER, RYBA, HANSON, ALBERS and WILDER, cosponsored by Senators MOEN, RUDE and SCHULTZ. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 20.370 (2) (dt), 20.370 (2) (dz), 25.45 and 144.443 (3) (c); and
2 **to create** 144.443 (3m), 144.443 (11) (a) 5. and 144.443 (11) (am) 5. of the
3 statutes; **relating to:** creating a fiscal capacity method for political
4 subdivisions to establish proof of financial responsibility for compliance with
5 closure, long-term care and corrective action requirements for solid waste
6 disposal facilities and hazardous waste facilities, failure to comply with closure,
7 long-term care and corrective action requirements and making an
8 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the owner or operator of a solid waste disposal facility (landfill) or a hazardous waste disposal facility is required to maintain proof of financial responsibility for the costs of closing the facility and of caring for the facility after it is closed (for example, monitoring groundwater quality). The owner or operator of a hazardous waste storage or treatment facility is required to maintain proof of financial responsibility for the costs of closing the facility. The owner or operator of a hazardous waste storage, treatment or disposal facility from which a discharge has occurred is required to maintain proof of financial responsibility for the costs of corrective action to protect human health and the environment from the discharge. Current law authorizes several methods for providing proof of financial responsibility, including providing a bond or a letter of credit. A business or utility may provide proof of financial responsibility by satisfying specified financial tests, including measures of net worth and creditworthiness.

This bill establishes a fiscal capacity method for cities, villages, towns and counties (political subdivisions) to establish proof of financial responsibility related

to the ownership or operation of a landfill or hazardous waste facility. A political subdivision may provide proof of financial responsibility under this method by satisfying tests related to the amount of its indebtedness; the property tax levy that would be required to pay for closure, long-term care and corrective action requirements; and the political subdivision's bond ratings.

If a political subdivision that uses the fiscal capacity method of providing proof of financial responsibility fails to comply with closure, long-term care or corrective action requirements, this bill requires the department of administration to collect the amounts necessary to pay for compliance by deducting those amounts from any state payments due the political subdivision.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.370 (2) (dt) of the statutes is amended to read:

2 20.370 (2) (dt) *Solid waste management — closure and long-term care.* From
3 the waste management fund, all moneys received under s. 144.443 (11) (a) 1., 3. ~~and,~~
4 4. and 5. for compliance with closure and long-term care requirements under s.
5 144.443 (11) (b) 1.

6 **SECTION 2.** 20.370 (2) (dz) of the statutes is amended to read:

7 20.370 (2) (dz) *Solid waste management — corrective action; moneys recovered*
8 *from assessments and legal action.* From the waste management fund, all moneys
9 received under s. 144.443 (11) (am) 3. ~~and,~~ 4. and 5. for compliance with corrective
10 action requirements under s. 144.443 (11) (bm).

11 **SECTION 3.** 25.45 of the statutes is amended to read:

12 **25.45 Waste management fund.** There is established a separate nonlapsible
13 trust fund designated as the waste management fund, to consist of the tonnage fees
14 imposed under s. 144.441 (3), 1989 stats., except for tonnage fees paid by a
15 nonapproved facility, as defined in s. 144.441 (1) (c); waste management base fees
16 imposed under s. 144.441 (5), 1989 stats.; and all moneys received or recovered under

1 s. 144.443 (11) (a) 1., 3. ~~or~~, 4. and 5. and (am) 1., 3. ~~and~~, 4. and 5. Moneys in the waste
2 management fund shall be used for the purposes specified under s. 144.441 (6) (d)
3 to (h).

4 **SECTION 4.** 144.443 (3) (c) of the statutes is amended to read:

5 144.443 (3) (c) *Changes.* The owner or operator may change from one standard
6 method of establishing proof of financial responsibility under par. (a) to another or
7 to a ~~net worth~~ method of establishing proof of financial responsibility under sub. (3m)
8 or (4).

9 **SECTION 5.** 144.443 (3m) of the statutes is created to read:

10 144.443 (3m) FISCAL CAPACITY METHOD OF ESTABLISHING PROOF OF FINANCIAL
11 RESPONSIBILITY FOR POLITICAL SUBDIVISIONS. (a) *Definition.* In this subsection,
12 “political subdivision” means a city, village, town or county.

13 (b) *Criteria for fiscal capacity method.* A political subdivision may establish
14 proof of financial responsibility required under sub. (2) (a), (c) or (d) by applying to
15 the department and meeting all of the following criteria:

16 1. The aggregate amount of indebtedness of the political subdivision is less
17 than the maximum indebtedness allowed under s. 67.03 (1), by an amount that is at
18 least 6 times the estimated total costs of compliance with the closure and any
19 long-term care requirements specified in the plan of operation or the approved plan
20 under s. 144.64 (2m) plus 6 times the costs of any corrective action required under
21 s. 144.735.

22 2. The estimated annual cost of compliance with the closure and any long-term
23 care requirements specified in the plan of operation or the approved plan under s.
24 144.64 (2m) plus the costs of any corrective action required under s. 144.735, if paid
25 entirely by property tax revenues, will not require a property tax levy of more than

1 10 cents per \$1,000 of the value of taxable property located in the political
2 subdivision as equalized for state purposes.

3 3. In the most recent bond ratings before the determination under par. (d) is
4 made, the political subdivision has not received a bond rating of less than "A" from
5 the Moody's investor service or less than "A" from Standard and Poor's corporation.

6 (c) *Application.* A political subdivision that seeks to establish proof of financial
7 responsibility utilizing the fiscal capacity method shall submit an application to the
8 department as a part of the initial license application and annually thereafter, that
9 includes all information necessary to demonstrate compliance with par. (b).

10 (d) *Department determination under fiscal capacity method.* 1. If the
11 department determines that a political subdivision complies with the criteria in par.
12 (b), then the department shall find that the political subdivision satisfies the
13 requirements for proof of financial responsibility for the year.

14 2. If the department determines that the political subdivision does not comply
15 with par. (b), the department shall issue findings of fact to support this
16 determination and provide the political subdivision with an opportunity for a
17 hearing.

18 3. In order to continue to meet the fiscal capacity requirements each year, a
19 political subdivision shall reapply under par. (c). Subsequent determinations by the
20 department shall take into consideration any changes in the plan of operation and
21 adjustments to the estimated total cost of compliance with closure and any
22 long-term care or corrective action requirements because of inflation or other
23 changes.

1 4. Whenever the department has reason to believe that a political subdivision
2 no longer satisfies the fiscal capacity requirements, it may require the political
3 subdivision to submit information and materials to show compliance.

4 5. If a political subdivision does not comply with the criteria in par. (b) during
5 the annual review or at any special review, the political subdivision shall establish
6 proof of financial responsibility utilizing one of the standard methods under sub. (3)
7 within 90 days after the department issues its findings.

8 (e) *Variances.* The department may not grant a variance to any requirement
9 of this subsection.

10 (f) *Joint ownership.* If a solid waste disposal facility or hazardous waste facility
11 is owned or operated by more than one political subdivision, any of the political
12 subdivisions may seek to establish proof of financial responsibility under this
13 subsection. The requirements of this subsection apply to each political subdivision
14 in proportion to its interest in the facility.

15 **SECTION 6.** 144.443 (11) (a) 5. of the statutes is created to read:

16 144.443 (11) (a) 5. And if the owner or operator received approval to use the
17 fiscal capacity method of proving financial responsibility under sub. (3m), the
18 department shall notify the department of administration of the amount, as
19 determined under sub. (3m), necessary to pay for the costs of complying with the
20 closure and long-term care requirements of the plan of operation or approved plan
21 under s. 144.64 (2m). After receiving notice from the department, the department
22 of administration shall collect the amounts due by deducting those amounts from any
23 state payments due the political subdivision or may add a special charge to the
24 amount of taxes apportioned to and levied upon the county under s. 70.60. The
25 department of administration shall deposit those amounts in the waste management

1 fund. The amounts collected under this subdivision from state payments due the
2 political subdivision shall be collected from the amount of payments due after
3 collection of any principal repayment or interest payments under s. 144.2415 (11) (b).

4 **SECTION 7.** 144.443 (11) (am) 5. of the statutes is created to read:

5 144.443 (11) (am) 5. And if the owner or operator received approval to use the
6 fiscal capacity method of proving financial responsibility under sub. (3m), the
7 department shall determine the amounts necessary to pay for the costs of complying
8 with corrective action requirements under s. 144.735 and shall notify the
9 department of administration of those amounts. After receiving notice from the
10 department, the department of administration shall collect the amounts due by
11 deducting those amounts from any state payments due the political subdivision or
12 may add a special charge to the amount of taxes apportioned to and levied upon the
13 county under s. 70.60. The department of administration shall deposit those
14 amounts in the waste management fund. The amounts collected under this
15 subdivision from state payments due the political subdivision shall be collected from
16 the amount of payments due after collection of any principal repayment or interest
17 payments under s. 144.2415 (11) (b).

18 (END)