



2023 ASSEMBLY BILL 492

October 12, 2023 - Introduced by Representatives MURSAU and SCHMIDT,
cosponsored by Senator JACQUE. Referred to Committee on Local Government.

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

Analysis by the Legislative Reference Bureau

Proof of financial responsibility for municipal solid waste facilities

This bill provides an alternative method for a municipality to establish the proof of financial responsibility required for a solid waste facility.

Under current law, the owner or operator of a solid or hazardous waste storage, treatment, or disposal facility (owner or operator) must maintain proof of financial responsibility to ensure the availability of funds for compliance with closure and long-term care requirements and, if necessary, for taking any required corrective action in the event of a spill or leak. The standard method for proving financial responsibility is to obtain, for example, a bond, deposit, escrow account, or

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irrevocable trust that is payable to or established for the benefit of the Department of Natural Resources. Alternatively, current law allows an owner or operator that is a for-profit business or a public heat, light, water, or power utility to establish proof of financial responsibility to ensure compliance with closure and long-term care requirements using a net worth test. The net worth test requires, among other things, a certain level of net worth, liabilities to net worth ratio, and credit worthiness.

This bill allows a municipality that owns or operates a solid waste facility to use an alternative method to establish proof of financial responsibility to ensure compliance with closure and long-term care requirements and any required corrective action, similar to the method allowed for local governments under federal law. Under the bill, a municipality may prove financial responsibility by showing either that all of its outstanding general obligation bonds have a rating of at least "Baa" if issued by Moody's or at least "BBB" if issued by Standard & Poor's, or that its ratio of cash plus marketable securities to total expenditures is 0.05 or greater and that its ratio of annual debt service to total expenditures is 0.20 or lower. Under the bill, if a solid waste facility is owned or operated by more than one municipality, any of the municipalities may establish proof of financial responsibility on behalf of itself and the other owners or operators. The bill also requires DNR to establish additional rules relating to the alternative method established under this bill.

Payment of closure, long-term care, and corrective action costs

This bill also allows DNR to pay costs associated with closure and long-term care requirements and any required corrective action for a solid or hazardous waste storage, treatment, or disposal facility that has established proof of financial responsibility using either the net worth test or the alternative method for municipal facilities that is created under the bill. The bill allows DNR to pay these costs if the owner or operator 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 either 1) the owner or operator's failure to comply is due to bankruptcy, insolvency, or other inability to pay the costs, or 2) DNR determines that the failure to comply presents an imminent or substantial danger to human health or the environment.

To cover these costs, the bill allows DNR to transfer moneys from an existing appropriation account, which is funded from the segregated waste management fund, to a new appropriation account dedicated to this purpose. Under the bill, DNR must request approval from the Joint Committee on Finance for any transfers that are intended to support payments for a facility that exceed \$300,000, and must notify JCF of all other transfers.

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:

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

2 20.370 (4) (dq) *Solid waste management — waste management fund.* From the
3 waste management fund, all moneys received in the waste management fund, except
4 moneys appropriated under pars. (dr), (dt), (dy) and (dz), for the purpose of
5 administering a program of corrective action, closure, and long-term care of and
6 environmental repairs to solid and hazardous waste facilities under s. 289.68.

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

8 20.370 (4) (dr) *Solid waste management — department action on corrective*
9 *action, closure, and long-term care.* From the waste management fund, all moneys
10 received under s. 289.68 (4m) (b) for the purpose of administering a program of
11 corrective action, closure, and long-term care of solid and hazardous waste facilities
12 under s. 289.68 (4m) (a).

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

14 289.41 (3) (c) *Changes.* The owner or operator may change from one standard
15 method of establishing proof of financial responsibility under par. (a) to another or
16 standard method under par. (a), to an alternative method under sub. (3m), or to a net
17 worth method of establishing proof of financial responsibility under sub. (4).

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

19 289.41 (3m) ALTERNATIVE METHOD OF ESTABLISHING FINANCIAL RESPONSIBILITY FOR
20 SOLID WASTE DISPOSAL FACILITIES; MINIMUM FINANCIAL STANDARDS FOR MUNICIPALITIES. (a)
21 *Alternative method requirements.* A municipality may establish proof of financial
22 responsibility for solid waste disposal facilities as required under sub. (2) by applying
23 to the department and meeting the alternative method requirements. The
24 department shall establish by rule the minimum financial requirements for a
25 municipality to establish proof of financial responsibility under this subsection. If

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1 a facility is owned or operated by more than one municipality, any such municipality
2 may establish proof of financial responsibility under this subsection on behalf of
3 itself and the other municipalities that are owners or operators. A municipality that
4 seeks to establish proof of financial responsibility under this subsection shall satisfy
5 the minimum financial requirements established by rule and all of the following
6 requirements:

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

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

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

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

19 289.41 (11) (a) 4. The department may request the department of justice to
20 initiate court action against the owner or operator to recover moneys sufficient to pay
21 the cost of complying with the closure and long-term care requirements ~~of the~~
22 specified in any rule, order, plan of operation, or other plan approval or approved plan
23 under s. 291.29. Any moneys recovered in this type of action or as a settlement in
24 anticipation of this type of action shall be credited to the waste management fund.

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

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1 289.68 (1) PAYMENTS FROM THE WASTE MANAGEMENT FUND. The department may
2 expend moneys in the waste management fund only for the purposes specified under
3 subs. (3) to (6) and 1991 Wisconsin Act 39, section 9142 (2w). The department may
4 expend moneys appropriated under s. 20.370 (4) (dq) for the purposes specified under
5 subs. (3) and (5) and 1991 Wisconsin Act 39, section 9142 (2w). The department may
6 expend moneys appropriated under s. 20.370 (4) (dt) for the purposes specified under
7 sub. (4). The department may expend moneys appropriated under s. 20.370 (4) (dy)
8 and (dz) for the purposes specified under sub. (6). The department may expend
9 moneys appropriated under s. 20.370 (4) (dr) for the purposes specified under sub.
10 (4m).

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

12 289.68 (4m) PAYMENTS OF CLOSURE, LONG-TERM CARE, AND CORRECTIVE ACTION
13 COSTS. (a) *Payments.* The department may expend moneys appropriated under s.
14 20.370 (4) (dr) to pay costs associated with closure, long-term care requirements, and
15 corrective action for a facility that has established proof of financial responsibility
16 under s. 289.41 (3m) or (4), if the owner or operator of the facility has failed to comply
17 with closure, long-term care, or corrective action requirements specified in any rule,
18 order, plan of operation, or other plan approval and if any of the following applies:

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

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

23 (b) *Transfer of funds; joint finance approval.* The department may transfer
24 money from the appropriation account under s. 20.370 (4) (dq) to the appropriation
25 account under s. 20.370 (4) (dr) for the purposes specified under par. (a). The

ASSEMBLY BILL 492**SECTION 7**

1 department shall notify the joint committee on finance of transfers that are intended
2 to support payments for a facility under par. (a) that do not exceed \$300,000. The
3 department may not make any transfers that are intended to support payments for
4 a facility under par. (a) that exceed \$300,000 without approval from the joint
5 committee on finance.

6 **SECTION 8. Nonstatutory provisions.**

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

20 (END)