



## 2019 SENATE BILL 91

March 13, 2019 - Introduced by Senators COWLES, PETROWSKI, BERNIER, DARLING, FEYEN, JACQUE, JOHNSON, LARSON, MARKLEIN, MILLER, OLSEN, RINGHAND, SCHACHTNER, STROEBEL and TESTIN, cosponsored by Representatives KITCHENS, OLDENBURG, GRUSZYNSKI, TAUCHEN, KRUG, BROOKS, CONSIDINE, DUCHOW, EDMING, EMERSON, FELZKOWSKI, FIELDS, HEBL, KURTZ, LOUDENBECK, MACCO, MURSAU, NYGREN, OTT, PRONSCHINSKE, QUINN, RAMTHUN, ROHRKASTE, SANFELIPPO, SINICKI, SKOWRONSKI, SNYDER, SPREITZER, SPIROS, STEFFEN, STUCK, SUMMERFIELD, TITTL, TUSLER and VRUWINK. Referred to Committee on Natural Resources and Energy.

1     **AN ACT** *to amend* 283.84 (1m) (d); and *to create* 16.9685, 283.84 (1) (f), 283.84  
2           (1) (g), 283.84 (1m) (e) and 283.84 (5) of the statutes; **relating to:** buying and  
3           selling water pollution credits through a central clearinghouse.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a system for buying and selling water pollution credits through a central clearinghouse.

Under current law, the Department of Natural Resources administers a program for trading water pollution credits between sources of water pollution. Under the program, DNR may authorize a person (permit holder) who holds a water pollution discharge elimination system (WPDES) permit or a storm water discharge permit to discharge a pollutant above the levels authorized in the permit if the permit holder enters into an agreement with another party under which the other party will reduce water pollution. The agreement must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same water basin.

Under this bill, DNR may authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder purchases credits from a clearinghouse that has contracted with the Department of Administration. The purchase of credits must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same area, as determined

**SENATE BILL 91**

by DNR. That area must be the largest area possible within this state to facilitate implementation of the water pollution trading program while achieving water quality standards and any federally approved total maximum daily load allocations. The bill also allows DNR to authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder enters into a contract with a third party that works with other sources of water pollution to reduce the amount of water pollution that those other sources cause.

The bill requires DOA to solicit vendors to operate as the single clearinghouse in this state for the purpose of buying and selling water pollution credits. The department may not contract with a clearinghouse unless the clearinghouse has established certain policies and procedures specified under the bill. Under the bill, the term of a contract between DOA and a clearinghouse is five years.

Under the bill, the clearinghouse that contracts with DOA must generate credits by entering into agreements with parties to reduce pollution; maintain a bank of credits; sell credits to any person; establish and maintain a centralized registry of credits generated and sold in this state; and maintain an Internet-based platform to facilitate the location of potential buyers, available credits, and other information that will facilitate credit transactions. Credits must be generated with the clearinghouse at a ratio of one credit for every 1.2 units, at a minimum, of pollution reduction. When the clearinghouse contracts with a party for pollution reduction activities, the clearinghouse must also seek to minimize transaction costs, maximize the performance of the pollution reduction activities, and reduce the overall amount of pollutants introduced into the applicable area.

The bill also allows DOA to contract with the clearinghouse to further the implementation of any adaptive management, multidischarger variance, water quality trading, or future market-based water quality programs in this state.

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

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

1           **SECTION 1.** 16.9685 of the statutes is created to read:  
2           **16.9685 Clean water clearinghouse.** (1) In this section, “water pollution  
3 prevention or environmental enhancement services” means any activity, practice, or  
4 project undertaken by any person who certifies that it will result in a quantifiable  
5 reduction of a specified pollutant in the overall mass balance of water pollution over  
6 a specified period of time.

**SENATE BILL 91**

1           **(2)** The department shall solicit services from a single clearinghouse to perform  
2 the functions under subs. (3) to (5). The department may not enter into a contract  
3 with a clearinghouse under this section unless the department determines that all  
4 of the following requirements have been met:

5           (a) The clearinghouse has established or is capable of establishing the contract  
6 terms, conditions, and information required to document and enforce transactions  
7 under sub. (3) (a) and (c) in a commercially reasonable manner.

8           (b) The clearinghouse has established a policy that requires a commercially  
9 reasonable amount of financial reserves, insurance, reserve credit pool, or other risk  
10 management mechanism for use in the event that a party defaults on an agreement  
11 under sub. (3) (a).

12           (c) The clearinghouse has established a commercially reasonable process for  
13 soliciting and entering into transactions under sub. (3) (a) and (c).

14           (d) The clearinghouse has established a clearly defined fee structure describing  
15 the manner in which and the amount that the clearinghouse will be paid for  
16 facilitating and executing transactions under sub. (3) (a) and (c).

17           (e) The clearinghouse has the capability to facilitate and execute transactions  
18 under sub. (3) (a) and (c).

19           (f) The clearinghouse has satisfied all other applicable requirements to  
20 transact business in this state.

21           (g) The clearinghouse and the department have consulted with the department  
22 of natural resources about the terms of the contract.

23           **(3)** The clearinghouse with which the department enters into a contract under  
24 sub. (2) shall be the primary entity responsible for facilitating a financially stable

**SENATE BILL 91****SECTION 1**

1 market for the activities described in this subsection and sub. (4) and shall do all of  
2 the following:

3 (a) Produce credits by entering into contracts with other parties to undertake  
4 water pollution prevention or environmental enhancement services. Each credit  
5 generated by a contracting party under this paragraph shall require the party to  
6 undertake at least 1.2 times that amount in water pollution prevention or  
7 environmental enhancement services.

8 (b) Maintain a bank of credits produced or to be produced under par. (a).

9 (c) Sell credits produced under par. (a) to any person.

10 (d) Seek to establish, with the approval of the department of natural resources,  
11 methods for determining the amount of credits that may be produced by various  
12 water pollution prevention or environmental enhancement services. These methods  
13 may include tables and models based on the best available scientific protocols.

14 (e) When contracting with a party under par. (a), determine the amount of  
15 credits that may be produced by the water pollution prevention or environmental  
16 enhancement services by using the methods established under par. (d) or, if such  
17 methods are not available, by using environmental impact modeling approved by the  
18 department of natural resources.

19 (f) When contracting with a party under par. (a), seek to do all of the following:

20 1. Minimize transaction costs.

21 2. Maximize the performance of the water pollution prevention or  
22 environmental enhancement services.

23 3. Reduce the overall amount of pollutants introduced into the applicable  
24 hydrologic area, as defined under s. 283.84 (1m) (e) 2., over time.

**SENATE BILL 91**

1 (g) Establish and maintain a centralized registry of all credits generated and  
2 sold in this state and of the verification of all such credits and maintain an  
3 Internet-based platform to facilitate the location of potential credit buyers, available  
4 credits, and any other information that will facilitate credit transactions. The  
5 clearinghouse shall report this and other pertinent trading information annually to  
6 the department and to the department of natural resources. The clearinghouse shall  
7 enter into a data-sharing agreement with the department of natural resources to  
8 facilitate the clearinghouse's ability to collect and make publicly available pertinent  
9 information relating to water quality improvement programs administered in this  
10 state.

11 (4) The clearinghouse with which the department enters into a contract under  
12 sub. (2) may do any of the following:

13 (a) Charge fees and use funds received for general program operations of the  
14 clearinghouse, including costs associated with facilitating transactions, purchasing  
15 water pollution prevention or environmental enhancement services, and repayment  
16 of funds granted or loaned to the clearinghouse.

17 (b) Hold excess funds in trust for the purpose of making grants, in collaboration  
18 with county land conservation offices, the department of natural resources, or the  
19 department of agriculture, trade and consumer protection, for targeted water  
20 pollution prevention, water pollution remediation, and other environmental  
21 enhancement projects that improve the water quality of this state.

22 (c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain  
23 the reserve credit pool for the purpose of maintaining a risk management mechanism  
24 under sub. (2) (b).

**SENATE BILL 91****SECTION 1**

1 (d) Conduct research on other innovative approaches to environmental  
2 improvement.

3 (5) The department, in consultation with the department of natural resources,  
4 may contract with the clearinghouse under sub. (2) to further the implementation  
5 of any adaptive management, multidischarger variance, water quality trading, or  
6 future market-based water quality programs in effect in this state.

7 (6) The term of a contract entered into under sub. (2) shall be 5 years. The  
8 department may terminate a contract entered into under sub. (2) if the clearinghouse  
9 fails to meet any of the requirements under this section or rules promulgated under  
10 s. 283.84. The department shall give the clearinghouse at least 120 days' notice of  
11 the default and a right to cure before terminating a contract under this subsection.

12 **SECTION 2.** 283.84 (1) (f) of the statutes is created to read:

13 283.84 (1) (f) Reaches a binding, written agreement with a clearinghouse that  
14 holds a valid contract under s. 16.9685 to purchase credits from the clearinghouse,  
15 if the clearinghouse has consulted with the department about the agreement to the  
16 extent required under the contract under s. 16.9685.

17 **SECTION 3.** 283.84 (1) (g) of the statutes is created to read:

18 283.84 (1) (g) Reaches a binding, written agreement approved by the  
19 department with a 3rd party under which the 3rd party agrees to work with one or  
20 more persons, other than the permit holder, to reduce the amount of water pollution  
21 that those persons cause below the levels of water pollution that those persons cause  
22 when the agreement is reached. If an agreement is reached under this paragraph,  
23 the person who is required to obtain a permit or the 3rd party shall notify the  
24 clearinghouse that holds a valid contract under s. 16.9685, if any, and shall report  
25 to the clearinghouse, in the time and manner specified by the department, any

**SENATE BILL 91**

1 information that the department, in consultation with the department of  
2 administration, determines is reasonable and necessary for the operation of the  
3 centralized registry under s. 16.9685 (3) (g).

4 **SECTION 4.** 283.84 (1m) (d) of the statutes is amended to read:

5 283.84 (1m) (d) The Except as provided under par. (e) 1., the increase in  
6 pollutants and the reduction in pollutants occur within the same basin or portion of  
7 a basin, as determined by the department.

8 **SECTION 5.** 283.84 (1m) (e) of the statutes is created to read:

9 283.84 (1m) (e) 1. If the person has entered into an agreement under sub. (1)  
10 (f), the increase in pollutants and the reduction in pollutants occur within the same  
11 applicable hydrologic area, as determined by the department.

12 2. In this paragraph, “applicable hydrologic area” means the largest area  
13 possible within this state to facilitate implementation of this section while achieving  
14 water quality standards and any applicable federally approved total maximum daily  
15 load allocations.

16 **SECTION 6.** 283.84 (5) of the statutes is created to read:

17 283.84 (5) The department may enter into a memorandum of understanding  
18 with the federal environmental protection agency relating to the administration of  
19 this section and s. 16.9685 in relation to the operations of a central clearinghouse.

20 **SECTION 7. Nonstatutory provisions.**

21 (1) As soon as possible after the effective date of this act, the department of  
22 natural resources shall review any methods established by the clearinghouse under  
23 s. 16.9685 (3) (d) and any environmental impact modeling proposed by the  
24 clearinghouse under s. 16.9685 (3) (e) and shall approve such methods and models  
25 if they have been developed according to any applicable requirements under the

**SENATE BILL 91**

**SECTION 7**

1 federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and any  
2 regulations or guidance documents adopted consistent with that act.

3 (END)