



Jeff Mursau

STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Assembly Committee on Local Government
AB 492- Establishing Financial Responsibility for Municipal Solid Waste Facilities

November 16, 2023

Chairman Novak and Committee Members -

Thank you for the opportunity to testify in support of AB 492, 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. You will hear today from a waste facilities manager in my district who will share with you the burden the current method places on municipal landfills. The process 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 and any corrective action, 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.

This bill is nearly identical to a bill passed unanimously by this committee in 2019 (AB 838). However, at that public hearing, the DNR expressed some concerns regarding closure and long term care requirements. We worked with the agency on finding language that would address those concerns while maintaining the overall intent of the bill.

In this bill, we included a provision allowing DNR to pay costs associated with closure, long-term care, and any required corrective actions associated with solid or hazardous waste should the owner or operator fail to comply with the requirements. In order for the DNR to cover the costs they would need to request approval from the Joint Finance Committee to transfer money from a new appropriation account funded from monies in the waste management account.

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.



Assembly Committee on Local Government

2023 Assembly Bill 492

Establishing proof of financial responsibility for municipal solid waste facilities

November 16, 2023

Good morning Chair Novak and members of the Committee. My name is Kate Strom Hiorns, and I am the Recycling and Solid Waste Section Manager for the Wisconsin Department of Natural Resources, with me today to help answer questions is Michael Schmit, Business Services Section Manager for the Waste and Materials Management Program. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 492, relating to methods for establishing proof of financial responsibility for municipal solid waste facilities.

This bill would require the department to promulgate by rule an alternative method of establishing owner financial responsibility, or OFR, for municipally owned solid waste facilities that is similar to the existing net worth test available for private facility owners. OFR exists to ensure financial resources are available to perform required closure, long-term care, and corrective action at solid waste facilities, such as landfills, incinerators, and transfer, storage, and processing facilities. OFR ensures that the facility owners, not taxpayers, pay for closure and long-term care of their facility.

Currently, 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 a third-party for the availability of funds by maintaining a letter of credit, bond, or insurance. Alternatively, privately owned facilities may use a method known as the “net worth test” to establish OFR. The net worth test is not an option for municipally owned facilities. The net worth test requires facility owners to demonstrate that they meet minimum financial standards. If they meet and maintain these financial standards, they are not required to set aside, or pay for the availability of, additional financial resources.

Waste management is a competitive business, and this bill would help level the playing field between private and public owners of solid waste facilities. However, it should be taken into consideration that any facility, private or municipally owned, using the net worth test or similar, presents a potential risk to Wisconsin taxpayers. This bill could lead to additional facilities lacking immediately accessible OFR funding to respond to corrective actions, closure, and long-term care needs. It should also be noted that the department cannot use OFR set aside for one facility to fund another facility’s costs.

We appreciate that the bill authors included a suggestion that was made by the department on a previous version of the bill that allows the use of the waste management fund to cover costs of closure, long-term care and corrective action. While this added safeguard is a welcomed change to the legislation, the bill’s fiscal estimate does note that the waste management fund no longer receives revenue and would not be able to cover all potential costs for facilities that would be allowed to use a net worth method of OFR under this bill.

Finally, if the bill passes and a net worth test OFR option is expanded to municipally owned solid waste facilities, the department would need to look to federal and other state examples for rulemaking, as well as utilize portions of existing OFR standards and code language that are in place for private companies.

On behalf of the Department of Natural Resources, we would like to thank you for your time today. We would be happy to answer any questions you may have.

2023 ASSEMBLY BILL 492

- Paul Klose – Manager, Mar-Oco Landfill, Crivitz - A partnership between Marinette and Oconto counties started in 1990.
- Two main goals:
 - 1) environmental protection (crack down on fewer dumps)
 - 2) reasonable municipal solid waste disposal costs for tax payers
- Assembly Bill 492 assists with goal #2
- While Mar-Oco currently operates in the black, the current financial responsibility system ties up a great deal of our “liquid” cash in Long Term Care so it affects day to day operations (explain cash build up).
- We currently invest money in CD’s for the long term care of the facility for after closure (currently @ \$2.1 million need \$4 million).
Cumbersome DNR paperwork to move money. To move a CD you need double the worth.
- We also need to have money (or a mechanism) in place to properly close the facility at any point in time. Mar-Oco Landfill utilizes a Letter of Credit for this.
- Letter of Credit for \$1.75 million estimated closure costs @1% costs \$17,500/year. (Over \$1/ton increase)
- If we assume no fee increase for the next 14 years X Letter of credit fee this cost is at nearly \$250,000. And exceed with increases.

- Based on correspondence I received, the DNR is concerned the municipally owned SW facilities would be lacking immediately accessible OFR funding. Their own system that is currently in place prevents us from having "immediately" accessible funds as discussed earlier with CD transfer. The funds will not be released from the department until any corrective measures are finished and approved. So we'll have to come up with the money on our own anyway & then get reimbursed. ALSO....

- Any facility with the bond ratings proposed in the draft legislation will have the means to obtain the funding needed to address any corrective action.

- Largest normal year cost of doing business expense is dealing with leachate. Second biggest cost is DNR fees. (almost \$13/ton) This bill is a good thing for responsible management of taxpayer dollars

Written & verbal comments RE: AB492

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Thank you Chair Novak and members of the Committee for allowing me the opportunity to provide these comments. I wish to extend a personal thank you to Representatives Mursau and Schmidt for authoring this bill and for continuing to pursue the net worth option for municipally owned solid waste facilities.

I am here today as a private citizen and represent no group or organization. I am here today as a retired waste resources professional, with 2 decades of experience operating county-owned solid waste departments. During that time, I also had the distinct honor of serving in leadership in a number of statewide solid waste and recycling organizations. I have also served on the 2005 Blue Ribbon Taskforce on Waste Materials Recovery and Disposal, and more frequently served on the DNR's Waste & Materials Management Study Group, co-chairing that group for 5 years.

In early February 2020 I sat before you and testified, on behalf of the Wisconsin Counties Solid Waste Management Association, in support of the then AB838, introduced by Rep Mursau. Today I am here to again testify in support of the bill that will give the same flexibility in providing owner financial responsibility, or OFR, as is enjoyed by our private sector partners.

During my time as director of the Marathon County Solid Waste Department I operated 3 landfills and numerous programs, such as a medication drop box program and a comprehensive household hazardous waste program. We provided environmental consulting services to municipalities and helped them keep their waste and recycling costs affordable. We served customers in 19 counties, from the large corporate waste haulers to small townships. And even though the department is a part of county government, we never used a dime of county tax levy... we operated as an enterprise fund.

As you know, Wisconsin tells us 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 OFR include:

- A performance or insurance bond
- Cash deposit
- Established escrow account
- 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. 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. These 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.

Two examples of how this restriction has impacted my former department:

The OFR requirements for closure are that the costs of closure, at its worse-case scenario of open area, 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 sitting around. That letter of credit has cost my former department, in real dollars, nearly \$400,000 in management fees since 2014.

Much of Marathon County's OFR is set aside in escrows. About \$16 million is invested in the statutorily required federal treasury notes or T-bills. Generally, these are safe havens for investment. However, during the massive increase in inflation during 2021 and 2022, those escrows had both realized and unrealized losses in the range of a half million dollars. At the same time, the cost estimates for closure and long-term care were recalculated to reflect the 7-8% inflation. This meant not only did those investment become less valuable, but the statute required us to add more to the escrows to make up for inflation. A double whammy.

As I was leaving the AB838 hearing, in 2020, I had a conversation with a senior DNR staff person. That person said they were opposed to the bill because there was no way to guarantee municipalities would honor their obligation to properly manage their solid waste facilities. The person asked, "How can we be sure municipalities will honor their statutory obligations?" I said, "We may have a statutory obligation, but more importantly, we have a moral obligation to our neighbors, our families and our friends to do the right thing. We are not a corporation with headquarters in Delaware or Florida or Texas. We live here. This is our Wisconsin."

Thank you for your time and consideration.

11/16/2023
Committee on Local Government
Assembly Bill 492
Testimony in Support

John Welch, representing:
Dane County
Solid Waste Association of North America - Wisconsin Badger Chapter
Wisconsin Counties Solid Waste Management Association

Mr. Chairman and members of the Committee, thank you for the opportunity to speak with you today about Assembly Bill 492. My name is John Welch. I am the Director of the Dane County Department of Waste and Renewables, and I have over 15 years of experience in the waste and recycling industry. I am also representing a couple of other organizations today, as I am the President of the Wisconsin Badger Chapter of the Solid Waste Association of North America and Vice-Chair of the Wisconsin Counties Solid Waste Management Association. My testimony today is on behalf of Dane County and the hundreds of members of SWANA and WCSWMA throughout this state.

This Bill is a common sense measure aimed at leveling the playing field for municipal waste facilities. As part of current Statutes and WDNR code, most waste facilities in Wisconsin are required to provide proof of Owner Financial Responsibility, or OFR. In simple terms, OFR are funds or proof of funds, which are sufficient for the State to properly close and maintain a landfill or other waste facility, if the owner of that facility were to walk away. OFR helps ensure the State and its citizens are not left holding the bag if a waste facility owner fails to meet their obligations.

There are several ways that a facility owner can meet OFR requirements. For example, they can have money sitting in designated accounts, they can have a surety bond, or they can obtain a letter of credit. Under current Statutes, a facility operator can also use the net worth test method, but only if they are a company that meets the definition in s. [289.41 \(1\) \(b\)](#).

In practice, this means that privately owned landfills are allowed to use the net worth test method, but municipally owned facilities are not allowed to use that same method to meet OFR obligations. The net worth test method allows a facility owner to use their organization's net worth to meet their OFR obligations without having to actually set aside funds or pay for one of the other expensive OFR mechanisms.

I would like to take just another minute or two to highlight how the current statutes provide a competitive disadvantage to municipalities and unnecessarily cost municipalities and their residents very real money each year.

At my current landfill, we have \$14.7 million in OFR accounts. This is money that is sitting there, unable to be invested or used for other business needs. Over the last several years, despite strong stock market performance, these accounts have actually lost money or barely broken even each year. Due to inflationary pressure, this has resulted in us needing to make cash payments of hundreds of thousands of dollars per year into these accounts. In 2023 alone, we had to make a payment of over \$2.3 million. This was due to the way the formula is calculated, which assumes inflation will stay the same for the next 30+ years. These payments would not have been necessary if we were allowed to use the net worth method for meeting OFR requirements. Additionally, once we start to close a portion of a landfill, we not only have funds sitting unused in an OFR account, we also have to actually fund the upfront closure costs with other monies, to the tune of several million dollars. Only after the work is completed and the proper documentation report is submitted and approved, can OFR funds be released as reimbursement. This means that we have millions of dollars tied up for several months after having to front the costs of construction.

Allowing private landfills to use the net worth methodology while denying municipal landfills from doing the same is a clear disadvantage to Wisconsin's municipalities. I ask you to consider which is a greater risk to the State - a private LLC that can sell off their assets, file bankruptcy, and walk away from a waste facility or a municipality which is not going anywhere and has bonding and taxing authority. This Bill is a common sense measure that introduces virtually no risk to the State. Municipally owned waste facilities will continue to meet our requirements to provide environmentally responsible waste solutions. We ask that we are not asked to do so with one hand tied behind our back. On behalf of Dane County, the Wisconsin Badger Chapter of the Solid Waste Association of North America, and the Wisconsin Counties Solid Waste Management Association, I ask you to support this Bill. Thank you for your time, and I am available to answer any questions you may have.



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Testimony before the Assembly Committee on Local Government

Senator André Jacque

November 16, 2023

Thank you Chairman Novak and Members for holding this public hearing on Assembly Bill 492. I regret that I am unable to testify in person, but please accept this written testimony.

AB 492 and its Senate companion, SB 624, address an inequity in current law requiring municipal solid waste facilities to meet proof of financial responsibility requirements that exceed those of privately-owned landfills and public utilities.

While municipal landfills currently must demonstrate that they have sufficient funds for closure, long-term care, and spill remediation in compliance with all laws and regulations, privately-owned landfills and electric cooperatives must only meet a “net worth test,” requiring just a certain level of net worth, liabilities to net worth ratio, and credit worthiness.

However, municipal landfills are held to a much higher financial standards – usually requiring the posting of a bond, depositing funds with the state, setting up an escrow account or line of credit - that are extremely costly to taxpayers and cumbersome for municipal facilities to administer.

Assembly Bill 492 puts municipal landfills on the same level as private landfills, affording municipalities the option available under federal law to demonstrate their financial fitness using the net worth method. This flexibility will free municipal taxpayers from bearing the burden of unnecessary costs associated with bonds, letters of credit, or escrow accounts, which are not borne by for-profit entities. Municipal budgets - and their taxpayers - are stretched thin as it is, and passing this legislation would make public resources available for other priorities.

Should a municipal landfill not meet the net worth test in subsequent years, other options, such as obtaining a letter of credit, would still be available to them under this bill. Further, Assembly Bill 492 also allows the DNR to pay costs from a segregated waste management account for activities associated with closure, spills or long-term care of a landfill.

Thank you for your consideration of Assembly Bill 492.