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Testimony before the Senate Committee on Transportation and Local Government

Senator André Jacque

January 10, 2024

Chairman Tomczyk and Committee Members:

Thank you for holding this public hearing. Senate Bill 624, and its companion Assembly Bill 492, 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 unreasonably 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.

Senate Bill 624 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, Senate Bill 624 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.

I am pleased to note that the identical companion legislation passed the Assembly Committee on Local Government last month on a unanimous 10-0 vote.

Thank you for your consideration of Senate Bill 624. I would be happy to answer any questions.



Jeff Mursau

STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Senate Committee on Transportation and Local Government
SB 624- Establishing Financial Responsibility for Municipal Solid Waste Facilities

January 10, 2024

Chairman Tomczyk and Committee Members -

Thank you for the opportunity to testify in support of SB 624, 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 established 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 by the respective legislative committees in 2019 (SB 714/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.

To that end, 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.

The Assembly companion bill (AB 492) passed the Assembly Committee on Local Government unanimously last month. The bill is also supported by the League of Municipalities.

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.



Senate Committee on Transportation and Local Government
2023 Senate Bill 624
Establishing proof of financial responsibility for municipal solid waste facilities
January 10, 2023

Good morning Chair Tomczyk and members of the Committee. My name is Michael Schmit, and I am the Business Services Section Manager for the Waste and Materials Management Program with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Senate Bill 624, 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.