



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 61

Senate Amendments 1 and 2

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Senate Bill 61 creates two new environmental programs in the Department of Natural Resources (DNR), known as the “environmental results program” and the “environmental improvement program.” The environmental results program provides incentives to public and private entities for voluntarily improving their environmental performance beyond complying with the applicable minimum requirements in environmental laws. The environmental improvement program establishes procedures for entities regulated by the DNR to avoid forfeitures (civil monetary penalties) for a violation of an environmental law under specified circumstances if the violation is reported to the DNR on the basis of a voluntary environmental audit. These programs are described in detail in the analysis of the bill by the Legislative Reference Bureau.

The bill specifies that one of the requirements for a person to participate in the environmental results program is that the person demonstrates the facility or activity to be included in the program was not involved in a specified environmental enforcement action. One of these tests is that, within three years before the date of application, no civil judgment was entered against the applicant or specified affiliate for a violation involving the facility or activity that resulted in substantial harm to public health or the environment. A second test is that, within two years before the date of application, the Department of Justice has not filed a suit to enforce a state environmental requirement and that the DNR has not issued a citation to enforce a state environmental requirement because of a violation involving such a facility or activity.

The bill establishes under the environmental improvement program that, if a regulated entity qualifies to participate in this program, the state may not bring a civil action to collect forfeitures for a violation disclosed in an environmental audit, if the person corrects the violation in either of the following ways: within 90 days after DNR receives the audit or according to a compliance schedule approved by the DNR under the program.

Senate Amendment 1 makes two technical changes to a portion of the environmental results program. That program requires, under certain circumstances, that a regulated entity use an outside

environmental auditor to conduct an annual environmental management system audit. The bill requires that the DNR approve the outside environmental auditor and sets two alternative criteria for this approval.

Senate Amendment 1 amends these criteria for the DNR to approve an outside auditor. First, it deletes a reference to the American National Standards Institute. The amendment provides a correct statement of the relationship between the Registrar Accreditation Board and the American National Standards Institute. It is the Registrar Accreditation Board, working on its own behalf, that certifies environmental auditors. More information about the Registrar Accreditation Board is available at that organization's website: www.rabnet.com/ab_main.shtml.

Senate Amendment 1 also substitutes a reference to International Organization for Standardization (ISO) standard 14012 with a reference to ISO guidance 19011 in the second criterion for DNR to approve an outside auditor. ISO 14012 has been superseded by ISO 19011.

Senate Amendment 2 makes the following changes to the bill:

- Authorizes in the environmental results program the Secretary of Natural Resources, before January 1, 2007, to waive the eligibility requirements relating to two types of enforcement actions, described above, based on the request of an applicant. The DNR must provide public notice of this request and at least 30 days for public comment on the request. The Secretary may not grant this waiver unless he or she finds that the waiver is consistent with the statutorily specified purposes for the program and will not erode public confidence in the integrity of the program.
- Modifies the civil immunity provisions in the environmental improvement program, described above, to replace the specified immunity from forfeitures with the authority for the state to bring an action to collect a forfeiture of not more than \$500 for each violation disclosed in the audit, regardless of the number of days during which the violation continues and notwithstanding the minimum and maximum forfeitures specified in existing environmental laws. In connection with this change, the amendment also does all of the following:
 - Authorizes the DNR to issue a citation to collect one of these forfeitures.
 - Requires that the regulated entity's notice to the DNR that it is beginning an environmental audit must also include a statement, signed by the designated responsible official, that acknowledges that the civil immunity and reduced forfeitures under the program do not apply to violations discovered by the regulated entity before the beginning of the environmental audit.
 - Authorizes the state at any time to begin a civil action to collect a forfeiture for a violation under existing environmental laws and not limited to \$500 per violation if the violation is discovered by the regulated entity before the beginning of the compliance audit.
 - Establishes that any person who intentionally makes a false statement under the statutes governing this program, rather than just the environmental audit submitted to

the DNR, shall be fined not less than \$10 nor more than \$10,000, or imprisoned for not more than six months, or both.

Legislative History

Senate Amendment 1 was introduced by the Senate Committee on Environment and Natural Resources. The committee adopted Senate Amendment 1 by a vote of Ayes, 5; Noes, 0 and recommended passage of Senate Bill 61, as amended, by a vote of Ayes, 3; Noes, 2 on April 29, 2003.

On March 9, 2004, Senator Kedzie introduced Senate Amendment 2. On March 9, 2004, the Senate adopted Senate Amendments 1 and 2 on voice votes and passed Senate Bill 61, as amended, on a vote of Ayes, 25; Noes, 8.

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