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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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**2017 Senate Bill 615**

**Assembly  
Substitute Amendment 1**

*Memo published: April 2, 2018*

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### **2017 SENATE BILL 615**

2017 Senate Bill 615 creates the Council on Offender Employment (“the Council”), which is responsible for determining whether an offender<sup>1</sup> should be granted a “certificate of employment” (CQE) that provides an offender with relief from certain collateral sanctions. Under the bill, a collateral sanction<sup>2</sup> means a penalty, ineligibility, disability, or disadvantage that is related to employment or to occupational licensing or certification and that is a result of the offender’s criminal record. The bill does not protect against disqualification for certain jobs or licenses, including if: (1) the offense is substantially related to a particular job or licensed activity; (2) the job is one of specific security, alcohol, or educational jobs; or (3) the license is one of specific to child care, foster home licenses, or residential care facility licenses.

### **Council on Offender Employment**

Under the bill, the Council consists of the following three members, or his or her designee:

- The Attorney General.
- The State Public Defender.
- The Chair of the Parole Commission.

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<sup>1</sup> “Offender” means a person who has been convicted of a crime other than a violent crime, as defined in s. 165.84 (7), Stats.

<sup>2</sup> “Collateral sanction” does not include confinement in a jail or prison; probation, parole, or extended supervision; suspension or revocation of motor vehicle operating privileges; imposition of a forfeiture, fine, or assessment; costs of prosecution; or an order to pay restitution.

### **CQE Eligibility**

An offender may apply for a CQE if he or she has been released from confinement and if he or she has either: (1) served at least 24 consecutive months of a term of confinement in Wisconsin state prisons; or (2) served at least 12 consecutive months of a term of confinement in Wisconsin state prisons and at least 12 consecutive months of a term of extended supervision.

### **CQE Application Procedure**

An offender may apply to the Council for a CQE by submitting an application form, provided by the Director of State Courts, and a \$20 fee. The Council may waive the fee if the applicant is unable to pay. For each applicant, the Council must request the Department of Corrections (DOC) to provide certain information. DOC must provide the Council the following information about the applicant: (1) his or her highest level of education; (2) any treatment he or she has completed; (3) any performance evaluations for his or her work; (4) any risk and needs assessment reports; and (5) any other reports gathered during the normal course of business, as requested by the Council.

The Council must issue an order granting or denying an offender's request for a CQE within 60 days after receiving the information provided by DOC. The Council must grant an offender's application for a CQE if it finds all of the following:

- The offender is not likely to pose a risk to public safety.
- The CQE will substantially assist the offender in obtaining employment or occupational licensing or certification.
- The offender is less likely to commit an additional criminal offense if he or she obtains a CQE.

### **CQE Revocation**

The bill requires a court to permanently revoke a person's CQE under the following circumstances: (1) the person is convicted of a felony or a Class A or Class B misdemeanor after he or she has been issued a CQE; or (2) the person's probation, parole, or extended supervision (community supervision) is revoked for the commission of a crime. A court may not revoke a person's CQE as a sanction for the offender's commission of a noncriminal act or offense that is a violation of the person's community supervision.

### **Report to the Legislature**

DOC must prepare an annual report that includes the following information for each year: (1) the number of CQE applications received; (2) the number of CQEs issued; and (3) the number of CQEs that are revoked and the reasons for revocation.

## **Civil Liability Exemption**

The bill generally grants an employer immunity from liability for the acts or omissions of an employee who has been issued a CQE. However, the bill does not offer immunity from liability if the employer, when he or she hired the employee, acted maliciously, with gross negligence, or with intent to cause harm.

## **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 retains Senate Bill 615, as introduced, in its entirety and adds the language contained in Assembly Bill 956, as engrossed.<sup>3</sup> Relevant background information and the changes made by Assembly Bill 956 incorporated into the substitute amendment are described below.

### **Overview of Current Law Relating to Wetlands**

With some exceptions, a person may not discharge material into a wetland unless the person obtains an individual state wetland permit or the activity is authorized under a state general permit. [s. 281.36 (3b) (b), Stats.]

Current law requires the Department of Natural Resources (DNR) to require mitigation for wetland individual permits through its mitigation program. The mitigation program must allow mitigation to be accomplished by any of the following methods: (1) purchasing or applying credits from a mitigation bank in this state; (2) participating in an in lieu fee subprogram established by the DNR; or (3) completing mitigation within the same watershed or within one-half mile of the site of the discharge.

Mitigation conducted by a permit applicant (the third option above) generally must be completed within the same watershed or within one-half mile of the site of the impacted wetland. For other types of mitigation, more general locational criteria are set forth in administrative rules and guidelines developed by the DNR and relevant federal agencies.

Current law provides that purchasing credits from a mitigation bank and participation in the in lieu fee subprogram are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks, but the minimum ratio must generally be at least 1.2 acres for each acre affected by a discharge. [s. 281.36 (3n) (d) and (3r), Stats.]

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<sup>3</sup> On February 22, 2018, the Assembly adopted Assembly Amendments 1, 2, and 3 and passed Assembly Bill 956, as amended, on a vote of Ayes, 59; Noes, 34.

Under current administrative rules, the sponsor of a mitigation bank may release credits according to a schedule set forth in a bank document approved by the DNR. In such schedules, the DNR may allow the release of credits as follows:

- Up to 10% of the total estimated credits when the bank document is signed by all parties.
- Up to 20% of the total estimated credits when the DNR issues a letter of compliance after completion and initial monitoring of a project.
- Up to 30% of total estimated credits upon receipt of a monitoring report, following the second year after construction.
- Up to 100% of credits after the DNR receives a final year monitoring report and determines that the site has satisfactorily met all required performance standards.

[s. NR 350.13 (7), Wis. Adm. Code.]

### **Wetland Mitigation Changes**

The substitute amendment makes two changes to current law relating to the mitigation of impacts to wetlands. First, it modifies the timeline by which an approved mitigation bank may release credits for wetland mitigation, with the general effect of allowing more credits to be released at an earlier stage than is authorized under current administrative rules. Specifically, if a mitigation bank has met financial assurance requirements established by the DNR, the bill authorizes the release of credits according to the following schedule:

- Up to 20% of the estimated credits when the bank document is signed by all parties.
- Up to 65% of the estimated credits when the DNR issues a letter of compliance that construction and all corrective actions are complete.
- Up to 85% of estimated credits upon receipt of a monitoring report, following the second year after construction.
- Up to 100% of estimated credits after the DNR receives a final year monitoring report and determines that the site has satisfactorily met all required performance standards.

Second, for mitigation accomplished by purchasing or applying credits from a mitigation bank or mitigation conducted by a permit applicant, the substitute amendment generally requires the mitigation to be completed within the same “compensation search area” as the wetland impacts. The substitute amendment defines “compensation search area” to mean an area that includes one of 22 management areas in the state, the relevant county, or a 20-mile radius from the impacted wetland.

### **New Exemption from Wetland Permitting Requirements**

The substitute amendment creates a new exemption from state wetland permitting requirements for a discharge that was authorized by both a state wetland permit and a wetland

permit issued by the U.S. Army Corps of Engineers (USACE).<sup>4</sup> Specifically, the exemption applies if all of the following criteria are satisfied:

- The discharge was authorized under both a state and federal wetland permit.
- The state and federal permits were issued before the bill takes effect.
- The state and federal permits required a wetland mitigation plan that included both of the following components:
  - Rehabilitation or restoration of 40 or more acres of agricultural lands into wetlands, which may include lands used for cranberry cultivation.
  - Preservation of 150 or more acres of wetlands pursuant to a conservation easement that satisfies certain criteria.
- The discharge complies with the mitigation plan required under the state and federal permits.

In addition, the substitute amendment requires the DNR to waive its water quality certification for a discharge subject to the exemption.<sup>5</sup>

### **Restrictions on Designating or Establishing a Historic Landmark or District in Milwaukee**

The substitute amendment prohibits the City of Milwaukee and Milwaukee County from designating a historic landmark or establishing a historic district if the landmark or district contains a pumphouse or municipal building built by the City of Milwaukee in 1931.

### **BILL HISTORY**

On February 20, 2018, the Senate passed the bill on a vote of Ayes, 32; Noes, 0.

Representative Tusler offered the substitute amendment on March 22, 2018. On the same day, the Assembly adopted the substitute amendment on a voice vote and concurred in the bill, as amended, on a vote of Ayes, 85; Noes, 0.

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<sup>4</sup> Under current law, if a wetland is a nonisolated wetland that is subject to federal jurisdiction, an applicant must obtain a permit from USACE in addition to a state wetland permit.

<sup>5</sup> When determining impacts to water quality for federal permits, USACE relies, in part, on a state water quality certification provided by the DNR. Without a water quality certification from the state, USACE would make the determination regarding water quality impacts resulting from a discharge into a federal wetland.