



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 368

**Senate Amendments
1, 10, 11, and 12**

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This memorandum describes the changes to **2011 Senate Bill 368** contained in Senate Amendments 1, 10, 11, and 12. 2011 Senate Bill 368 changes the way that activities that impact wetlands are permitted by the Department of Natural Resources (DNR).

Senate Amendment 1 does all of the following:

- Doubles the time limit under current law for the DNR to provide wetland identification or wetland confirmation from 30 to 60 days.
- Adds wetland “preservation” to the list of activities that qualify as wetland mitigation under the bill.
- Requires that a wetland general permit “may only apply to a single and complete project.” This provision makes the language of the bill consistent with federal law preventing “permit stacking.”
- Removes “ephemeral ponds in wooded settings” from the list of land features for which the DNR may prohibit discharges under a wetland general permit under the bill, and adds “sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago” to that list.
- Allows the DNR to extend the time limit under the bill for evaluating a request for authorization for a discharge under a general permit if adverse weather conditions prevent the DNR from conducting an on-site inspection.

- Changes the time period for an authorization for a discharge under a wetlands general permit from “five years” to “five years or when the discharge is completed, whichever occurs first.”
- Adds expansions of existing agricultural facilities to the types of activities under the bill for which the DNR must limit its practicable alternatives analysis to on-site or adjacent locations.
- Clarifies that an applicant for a wetlands individual permit is not entitled to approval in exchange for conducting mitigation.
- Adds notices of administrative hearings to the list of notice types for which the DNR must establish notice procedures and for which the DNR must prescribe the form and content.
- Removes the requirement in the bill that certain notices may only be provided by mail.
- Provides for administrative and judicial review of DNR decisions related to wetland individual permits and a procedure for temporarily prohibiting a discharge under a wetland individual permit while a review is pending.

Senate Amendment 10 amends the definition of a wetlands “mitigation bank” to allow wetland mitigation credits to be “applied,” in addition to “purchased,” to compensate for adverse impacts to other wetlands.

Senate Amendment 11 requires the DNR to provide notice of the potential creation of a mitigation bank to each city, village, town, and county in which the mitigation bank would be located, and provides an opportunity for each of these governmental entities to submit comments regarding the establishment of the mitigation bank.

Senate Amendment 12 does both of the following:

- Under the bill, the DNR is required to limit its review of the practicable alternatives of a project that would impact wetlands to alternatives that are on the proposed project site or adjacent to the proposed site in specified situations, including when the applicant demonstrates that the project would result in a demonstrable economic benefit. This amendment requires this economic benefit to be a “public” benefit.
- The amendment also provides that the required acreage of wetland mitigation, if that mitigation occurs within one-half mile of the project or within the same watershed as the project, must be 90% of the acreage of mitigation that would be required further from the project location.

Legislative History

Senate Amendment 1 was introduced on January 17, 2012, by Senator Kedzie, and Senate Amendment 10 was introduced on January 18, 2012, by the Senate Committee on Natural Resources and Environment. On January 19, 2012, the Senate Committee on Natural Resources and Environment recommended adoption of Senate Amendment 1 by a vote of Ayes, 6; Noes, 1; adoption of Senate

Amendment 10 by a vote of Ayes, 7; Noes, 0; and passage of Senate Bill 368, as amended, by a vote of Ayes, 4; Noes, 3.

Senate Amendment 11 was offered by Senator Kedzie on January 20, 2012, and Senate Amendment 12 was offered by Senators Kedzie and Cowles on February 13, 2012. Amendments 1, 10, 11, and 12 were adopted by the Senate on February 14, 2012, and Senate Bill 368, as amended, was passed by the Senate on February 15, 2012, by a vote of Ayes, 17; Noes, 15.

LAK:jb;ksm