



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 956**

**Assembly Amendments 1,  
2 and 3**

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### OVERVIEW OF CURRENT LAW

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.]

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.]

### **2017 ASSEMBLY BILL 956**

2017 Assembly Bill 956 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 all types of mitigation the bill generally requires mitigation to be completed within the same “compensation search area” as the wetland impacts. The bill defines “compensation search area” to mean an area that includes one of 22 management areas in the state, the relevant county, and a 20-mile radius from the impacted wetland.

### **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 makes two changes to the bill. First, it modifies the definition of “compensation search area” to include one of 22 management areas, the relevant county, or a 20-mile radius from the impacted wetland.

Second, it removes the locational requirement relating to the in lieu fee program, for which a similar change is made in 2017 Assembly Bill 547.

## **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 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>1</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 amendment requires the DNR to waive its water quality certification for a discharge subject to the exemption.<sup>2</sup>

## **ASSEMBLY AMENDMENT 3**

Assembly Amendment 3 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**

Representative Tusler offered Assembly Amendment 1 on February 16, 2018. On February 20, 2018, the Assembly Committee on Environment and Forestry voted to recommend adoption of Assembly Amendment 1 on a vote of Ayes, 10; Noes, 2. On the same day, the committee voted to recommend passage of the bill, as amended, on a vote of Ayes, 10; Noes, 2.

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<sup>1</sup> Under current law, if a wetland is a non-isolated wetland that is subject to federal jurisdiction, an applicant must obtain a permit from USACE in addition to a state wetland permit.

<sup>2</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.

Assembly Amendments 2 and 3 were introduced by Representative Tusler and Representative Kuglitsch, respectively. On February 22, 2018, the Assembly adopted Assembly Amendments 1, 2, and 3 and passed the bill, as amended, on a vote of Ayes, 59; Noes, 34.

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