



State of Wisconsin
2009 - 2010 LEGISLATURE

Tues 3/2, if possible

LRB-4264/PT

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to renumber and amend* 823.08 (3) (c) 2.; *to amend* 23.50 (1), 23.65 (1),
 2 92.05 (3) (k), 92.05 (3) (L), 92.07 (2), 92.14 (6) (i) 2., 92.15 (2), 92.15 (3) (a), 92.15
 3 (4), 93.90 (2) (a), 281.16 (3) (e), 281.16 (4), 281.65 (4) (e), 281.65 (4c) (am) 1. a.
 4 and 823.08 (3) (c) 1.; and *to create* 92.04 (2) (m), 92.14 (3) (em), 281.16 (5),
 5 281.163 and 823.08 (3) (c) 2. b. of the statutes; **relating to:** control of nonpoint
 6 source water pollution in certain areas with carbonate bedrock and granting
 7 rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

Analysis
Insert

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 SECTION 1. 23.50 (1) of the statutes is amended to read:
 9 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
 10 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,

1 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.163 (5), 281.48 (2)
2 to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64
3 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
4 administrative rules promulgated thereunder, violations specified under s. 280.98
5 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
6 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
7 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
8 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

9 **SECTION 2.** 23.65 (1) of the statutes is amended to read:

10 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
11 134.60, 281.163 (5), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4),
12 287.07, 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or
13 350, or any administrative rule promulgated pursuant thereto, a violation specified
14 under s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild
15 animal, has been committed the district attorney may proceed by complaint and
16 summons.

17 **SECTION 3.** 92.04 (2) (m) of the statutes is created to read:

18 92.04 (2) (m) *Review of carbonate bedrock area determinations.* The board shall
19 review and affirm or reverse decisions of county land conservation committees under
20 s. 281.163 (4) (b) when review is requested under s. 281.163 (4) (c). Under this
21 paragraph, the board may conduct an informal hearing that is not a contested case
22 under ch. 227.

23 **SECTION 4.** 92.05 (3) (k) of the statutes is amended to read:

24 92.05 (3) (k) *Nutrient management rules.* The department shall promulgate
25 rules to improve agricultural nutrient management in this state. The rules shall be

1 consistent with rules promulgated under s. 281.16 (3) and, for lands to which the
2 rules promulgated under s. 281.163 (5) (b) apply, with those rules and shall include
3 incentives, educational and outreach provisions and compliance requirements.

4 **SECTION 5.** 92.05 (3) (L) of the statutes, as affected by 2009 Wisconsin Act 28,
5 is amended to read:

6 92.05 (3) (L) *Technical assistance; performance standards.* The department
7 shall provide technical assistance to county land conservation committees and local
8 units of government for the development of ordinances that implement standards
9 adopted under s. 92.07 (2), 92.15 (2) or (3) or 281.16 (3) and, for lands to which the
10 rules promulgated under s. 281.163 (5) (b) apply, that implement the standards in
11 those rules. The department's technical assistance shall include preparing model
12 ordinances, providing data concerning the standards and reviewing draft ordinances
13 to determine whether the draft ordinances comply with applicable statutes and
14 rules.

15 **SECTION 6.** 92.07 (2) of the statutes is amended to read:

16 92.07 (2) STANDARDS. Each land conservation committee may develop and
17 adopt standards and specifications for management practices to control erosion,
18 sedimentation and nonpoint source water pollution. The standards and
19 specifications for agricultural facilities and practices that are constructed or begun
20 on or after October 14, 1997, and, if cost-sharing is available to the owner or operator
21 under s. 92.14 or 281.65 or from any other source or if, as determined under s. 281.16
22 (5) (b), the agricultural facilities or practices are located on land that is categorized
23 under s. 281.163 (4) in a category with heightened vulnerability to groundwater
24 contamination and the land is in an area with characteristics that indicate a level
25 of groundwater contamination that affects public health, for agricultural facilities

agricultural facilities and practices on

and, for lands to which the rules promulgated under s. 281.163(5)(b) apply with

those
rules

1 and practices that are constructed or begun before that date shall be consistent with
2 the performance standards, prohibitions, conservation practices and technical
3 standards under s. 281.16 (3). The land conservation committee shall use the rules
4 promulgated under s. 281.16 (3) (e) to determine whether cost-sharing is available.

5 **SECTION 7.** 92.14 (3) (em) of the statutes is created to read:

6 92.14 (3) (em) Grants to farmers for implementing land and water resource
7 management projects on lands categorized under s. 281.163 (4) undertaken to
8 comply with the requirements under s. 281.163 (5) (b).

9 **SECTION 8.** 92.14 (6) (i) 2. of the statutes is amended to read:

10 92.14 (6) (i) 2. Conduct all land management and pollutant management
11 activities in substantial accordance with the performance standards, prohibitions,
12 conservation practices and technical standards under s. 281.16 and, if applicable,
13 under s. 281.163 (5) (b) and with plans approved under this section, under s. 92.15,
14 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

15 **SECTION 9.** 92.15 (2) of the statutes is amended to read:

16 92.15 (2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may
17 enact regulations of livestock operations that are consistent with and do not exceed
18 the performance standards, prohibitions, conservation practices and technical
19 standards under s. 281.16 (3) and, for livestock operations on lands to which the rules
20 promulgated under s. 281.163 (5) (b) apply, the prohibitions and performance
21 standards in those rules.

22 **SECTION 10.** 92.15 (3) (a) of the statutes is amended to read:

23 92.15 (3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit
24 may enact regulations of livestock operations that exceed the performance
25 standards, prohibitions, conservation practices and technical standards under s.

1 281.16 (3) and, for livestock operations on lands to which the rules promulgated
2 under s. 281.163 (5) (b) apply, the prohibitions and performance standards in those
3 rules only if the local governmental unit demonstrates to the satisfaction of the
4 department of agriculture, trade and consumer protection or the department of
5 natural resources that the regulations are necessary to achieve water quality
6 standards under s. 281.15.

7 **SECTION 11.** 92.15 (4) of the statutes is amended to read:

8 92.15 (4) A local governmental unit may not apply a regulation under sub. (2)
9 or (3) to a livestock operation that exists on October 14, 1997, unless the local
10 governmental unit determines, using the rules promulgated under s. 281.16 (3) (e),
11 that cost-sharing is available to the owner or operator of the livestock operation
12 under s. 92.14 or 281.65 or from any other source or, as determined under s. 281.16
13 (5) (b), the livestock operation is located on land that is categorized under s. 281.163
14 (4) in a category with heightened vulnerability to groundwater contamination and
15 the land is in an area with characteristics that indicate a level of groundwater
16 contamination that affects public health.

17 **SECTION 12.** 93.90 (2) (a) of the statutes is amended to read:

18 93.90 (2) (a) For the purposes of this section, the department shall promulgate
19 rules specifying standards for siting and expanding livestock facilities. In
20 promulgating the rules, the department may incorporate by cross-reference
21 provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8),
22 92.16, and 281.16 (3) and ch. 283 and, for lands to which the rules promulgated under
23 s. 281.163 (5) (b) apply, in those rules. The department may not promulgate rules
24 under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or

1 (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283 or, for lands to which the rules
2 promulgated under s. 281.163 (5) (b) apply, with those rules.

3 SECTION 13. 281.16 (3) (e) of the statutes, as affected by 2009 Wisconsin Act 28, ✓
4 is amended to read:

5 281.16 (3) (e) ~~An~~ Except as provided in sub. (5) (a), an owner or operator of an
6 agricultural facility or practice that is in existence before October 14, 1997, may not
7 be required by this state or a municipality to comply with the performance standards,
8 prohibitions, conservation practices or technical standards under this subsection
9 unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source,
10 to the owner or operator. For the purposes of this paragraph, sub. (4) ^(b) and ss. 92.07
11 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall
12 promulgate rules that specify criteria for determining whether cost-sharing is
13 available under s. 281.65 and the department of agriculture, trade and consumer
14 protection shall promulgate rules that specify criteria for determining whether
15 cost-sharing is available under s. 92.14 or from any other source. The rules may not
16 allow a determination that cost-sharing is available to meet local regulations under
17 s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance
18 standards, prohibitions, conservation practices or technical standards under this
19 subsection unless the cost-sharing is at least 70% of the cost of compliance or is from
20 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the
21 rules.

renumbered 281.16(4)(a) and

22 SECTION 14. 281.16 (4) of the statutes is amended to read:
23 281.16 (4) APPLICATION TO ANIMAL FEEDING OPERATIONS ^(a) If the department issues
24 a notice of discharge under ch. 283 for an animal feeding operation, the performance
25 standards, prohibitions, conservation practices and technical standards under sub.

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as provided in par. (b). (4)(b) If an

(1) (3) apply to the animal feeding operation, ~~except that if the~~ animal feeding operation
(2) ~~is in existence before October 14, 1997, the performance standards, prohibitions,~~
for which the department of natural resources issues a notice of discharge under ch. 283

(3) conservation practices and technical standards ~~only~~ apply if the department
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4 determines that cost-sharing is available to the owner or operator of the animal
5 feeding operation under s. 92.14 or 281.65 or from any other source ~~or if sub. (5) (a)~~

applies.

except as provided
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SECTION 15. 281.16 (5) of the statutes is created to read:

8 281.16 (5) APPLICATION IN CARBONATE BEDROCK AREAS. (a) Subsections (3) (e) and

(9) (4) ~~do~~ not apply to an agricultural facility or practice or animal feeding operation that
10 is located on land that is categorized under s. 281.163 (4) in a category with
11 heightened vulnerability to groundwater contamination if the land is in an area with
12 characteristics that indicate a level of groundwater contamination that affects public
13 health.

14 (b) The department shall promulgate rules that do all of the following for the
15 purposes of par. (a) and ss. 92.07 (2), 92.15 (4), and 823.08 (3) (c):

16 1. Designate the categories under s. 281.163 (3) (a) that have heightened
17 vulnerability to groundwater contamination.

18 2. Specify the characteristics that indicate levels of groundwater
19 contamination that affect public health, such as the existence in an area of a well in
20 which the concentration of contaminants exceeds a preventive action limit, as
21 defined in s. 160.01 (6).

SECTION 16. 281.163 of the statutes is created to read:

281.163 Water quality protection; carbonate bedrock areas. (1)

DEFINITIONS. In this section:

1 (a) "Covered county" means Brown County, Calumet County, Door County,
2 Kewaunee County, Manitowoc County, and any other county that, by resolution of
3 its county board, opts to have ~~this section~~ ^{subs. (3) to (6)} apply in the county.

4 (b) "Land spreading" means spreading animal waste, septage, sewage sludge,
5 or any other type of solid waste on the surface of the land or incorporating animal
6 waste, septage, sewage sludge, or any other type of solid waste into the surface layers
7 of the soil.

8 (c) "Potentially susceptible area" means an area identified by the department
9 under sub. (2).

10 (d) "Septage" has the meaning given in s. 281.48 (1) (d).

11 **(2) IDENTIFICATION OF POTENTIALLY SUSCEPTIBLE AREAS.** Using information
12 available to it, the department shall identify areas in this state that exhibit
13 carbonate bedrock characteristics that may cause the areas to be susceptible to
14 groundwater contamination from land spreading. At a minimum, the department
15 shall identify an area under this subsection if the area has carbonate bedrock less
16 than 50 feet from the surface of the land, as shown by bedrock maps produced by the
17 geological and natural history survey and other maps identified by the department.

18 **(3) RULES FOR VULNERABILITY RANKING OF LAND IN POTENTIALLY SUSCEPTIBLE**
19 **AREAS.** (a) The department shall promulgate rules for ranking the land in potentially
20 susceptible areas by categories according to relative vulnerability to groundwater
21 contamination from land spreading, based on factors that include all of the following:

22 1. Bedrock features.

23 2. Depth and other characteristics of top soil.

24 3. Whether the department has declared the land to be an area of special
25 eligibility for compensation for well contamination under s. 281.75 (2) (e).

1 4. Whether the department has established the land as a special well casing
2 pipe depth area under ch. NR 812, Wis. Adm. Code.

3 (b) In the rules under par. (a), the department shall identify types of uses of land
4 that ~~minimize the likelihood of~~ ^{preclude} land spreading on the land.

5 (4) CATEGORIZING POTENTIALLY SUSCEPTIBLE LAND. (a) The county land
6 conservation committee in a covered county shall categorize all land in potentially
7 susceptible areas in the covered county, except for land that is in a land use identified
8 under sub. (3) (b), according to the rules under sub. (3) (a).

9 (b) 1. The owner of land categorized under par. (a), the department of natural
10 resources, the department of agriculture, trade and consumer protection, an
11 organization, or any other person may request a county land conservation committee
12 to review the categorization based on site-specific information showing the
13 categorization to be inconsistent with the rules under sub. (3).

14 2. A county land conservation committee receiving a request under subd. 1.
15 shall conduct an informal hearing on the request. Section 68.11 (2) does not apply
16 to the hearing. The county land conservation committee shall provide reasonable
17 notice of the hearing to the person requesting the review and, if not the person
18 requesting the review, to the owner of the land, the department of natural resources,
19 and the department of agriculture, trade and consumer protection.

20 (c) The owner of land categorized under par. (a), the department of natural
21 resources, the department of agriculture, trade and consumer protection, an
22 organization, or any other person may may obtain a review of the decision of a county
23 land conservation committee under par. (b) by filing a written request with the land
24 and water conservation board within 60 days after the day on which the county land
25 conservation committee issues the decision.

A county land conservation committee shall provide public notice of a request under
this subdivision.

1 (d) The owner of land categorized under par. (a), the department of natural
2 resources, the department of agriculture, trade and consumer protection, the county
3 in which the land is located, an organization, or any other person may request a
4 contested case hearing under ch. 227 to review the decision of the land and water
5 conservation board under par. (c) by filing a written request with the department of
6 natural resources within 60 days after receiving an adverse decision of the land and
7 water conservation board.

8 *Insert* → **(5) REGULATION.** The department of natural resources, in consultation with the
9 *10-7* department of agriculture, trade and consumer protection, shall promulgate rules
10 that do all of the following:

11 (a) Identify the categories under sub. (3) (a) of potentially susceptible land for
12 which regulation of land spreading activities, in addition to regulation under s.
13 281.16, is needed to prevent or minimize nonpoint source pollution of groundwater.

14 (b) Prescribe performance standards and prohibitions to prevent or minimize
15 nonpoint source pollution of groundwater from land spreading on land in the
16 categories identified under par. (a).

17 **(6) ENFORCEMENT.** (a) The department may follow the procedures for the
18 issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture *under s. 281.98(1)* for a violation of
19 rules promulgated under sub. (5).

20 (b) A county land conservation committee may request the district attorney of
21 the county to exercise the district attorney's authority to proceed under s. 23.65
22 against a person for a violation of rules promulgated under sub. (5).

23 **SECTION 17.** 281.65 (4) (e) of the statutes is amended to read:

24 281.65 (4) (e) Promulgate rules, in consultation with the department of
25 agriculture, trade and consumer protection, as are necessary for the proper

1 execution and administration of the program under this section. Before
2 promulgating rules under this paragraph, the department shall submit the rules to
3 the land and water conservation board for review under sub. (3) (at). The rules shall
4 include standards and specifications concerning best management practices which
5 are required for eligibility for cost-sharing grants under this section. The standards
6 and specifications shall be consistent with the performance standards, prohibitions,
7 conservation practices and technical standards under s. 281.16 and under s. 281.163
8 (5) (b), where applicable. The department may waive the standards and
9 specifications in exceptional cases. The rules shall specify which best management
10 practices are cost-effective best management practices. Only persons involved in the
11 administration of the program under this section, persons who are grant recipients
12 or applicants and persons who receive notices of intent to issue orders under s. 281.20
13 (1) (b) are subject to the rules promulgated under this paragraph. Any rule
14 promulgated under this paragraph which relates or pertains to agricultural
15 practices relating to animal waste handling and treatment is subject to s. 13.565.

16 **SECTION 18.** 281.65 (4c) (am) 1. a. of the statutes is amended to read:

17 281.65 (4c) (am) 1. a. The need for compliance with performance standards
18 established by the department under ~~s. ss.~~ 281.16 (2) and (3) and 281.163 (5).

19 **SECTION 19.** 823.08 (3) (c) 1. of the statutes is amended to read:

20 823.08 (3) (c) 1. Subject to subd. 2., if a court requests the department of
21 agriculture, trade and consumer protection or the department of natural resources
22 for suggestions under par. (b) 2. a., the department of agriculture, trade and
23 consumer protection or the department of natural resources shall advise the court
24 concerning the relevant provisions of the performance standards, prohibitions,
25 conservation practices and technical standards under s. 281.16 (3) and, for lands to

1 which the rules promulgated under s. 281.163 (5) (b) apply, the prohibitions and
2 performance standards in those rules.

3 **SECTION 20.** 823.08 (3) (c) 2. of the statutes is renumbered 823.08 (3) (c) 2.
4 (intro.) and amended to read:

5 823.08 (3) (c) 2. (intro.) If the agricultural use or agricultural practice alleged
6 to be a nuisance was begun before October 14, 1997, a department may advise the
7 court under subd. 1. only if the one of the following applies:

8 a. The department determines that cost-sharing is available to the defendant
9 under s. 92.14 or 281.65 or from any other source.

10 **SECTION 21.** 823.08 (3) (c) 2. b. of the statutes is created to read:

11 823.08 (3) (c) 2. b. As determined under s. 281.16 (5) (b), the agricultural use
12 or practice is located on land that is categorized under s. 281.163 (4) in a category
13 with heightened vulnerability to groundwater contamination and the land is in an
14 area with characteristics that indicate a level of groundwater contamination that
15 affects public health.

16 **SECTION 22. Nonstatutory provisions.**

17 (1) **ADVISORY COMMITTEE.** The department of natural resources shall appoint a
18 committee to advise it on the rules required under sections 281.16 (5) and 281.163
19 of the statutes, as created by this act. The department shall include representatives
20 of industry, agriculture, local government, environmental groups, and other persons
21 with interests that could be affected by the rules and shall ensure that an adequate
22 number of members are from areas thought to be susceptible to groundwater
23 contamination because of carbonate bedrock features.

24 (2) **TASK FORCE REPORT.** The department of natural resources and the advisory
25 committee under subsection (1) shall review the recommendations in the Final

1 Report of the Northeast Wisconsin Karst Task Force, February 9, 2007, before the
2 department promulgates the rules required under section 281.163 of the statutes, as
3 created by this act. The department shall incorporate recommendations in the report
4 in the rules required under section 281.163 of the statutes, as created by this act, as
5 appropriate.

6

(END)

A handwritten signature, "Slate", is enclosed within a hand-drawn oval shape in the lower right quadrant of the page.

1 **Analysis insert**

This is a partial analysis. A complete analysis will be provided in a later version.

Current law requires the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules to limit water pollution from diffuse sources, such as construction sites and feedlots (nonpoint source water pollution).

This bill requires DNR, in consultation with DATCP, to promulgate rules to limit pollution of groundwater caused by the spreading of any kind of waste, including animal waste, septage, and sewage sludge, on land (land spreading). Under the bill, the rules apply to certain areas with carbonate bedrock that are susceptible to groundwater contamination caused by land spreading and that are not sufficiently protected by the current rules concerning nonpoint source water pollution. The rules promulgated under this bill apply to susceptible areas in covered counties, which are Brown County, Calumet County, Door County, Kewaunee County, Manitowoc County, and any other county that opts to have them apply.

To identify the areas for which additional regulation of land spreading is potentially needed, the bill requires DNR to identify areas in this state that exhibit carbonate bedrock characteristics that may cause them to be susceptible to groundwater contamination from land spreading, including areas that have carbonate bedrock less than 50 feet from the surface of the land. The bill also requires DNR to promulgate rules for ranking the land in potentially susceptible areas into categories according to relative vulnerability to groundwater contamination from land spreading, based on factors that include bedrock features and the depth and other characteristics of top soil, and to identify the categories for which additional regulation is needed.

The bill requires the land conservation committee in a covered county to categorize the land in potentially susceptible areas (as identified by DNR) in the county according to the rules for ranking those lands. The bill provides a process for a land owner or other person, including DNR and DATCP, to obtain a review of a land conservation committee's categorization of land.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

2

3 **Insert 10-7**

4 **(4m)** MAPPING OF POTENTIALLY SUSCEPTIBLE LAND. The department of
5 agriculture, trade and consumer protection, in cooperation with county land
6 conservation committees, the natural resources conservation service of the federal

1 department of agriculture, the University of Wisconsin-Madison department of soil
2 science, and the department of natural resources, shall indicate land categorized
3 under sub. (4), by ranking, on maps that show areas in which nutrient applications
4 are restricted under ss. 92.05 (3) (k) and 281.16 (3) and shall post the maps on its
5 Internet site.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4264/P2dn

RCT:/.....

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- Late -

This is a preliminary draft of the proposal concerning groundwater quality in areas with carbonate bedrock. The proposal and the existing statutes are quite complex and, consequently, so is the draft. It should be reviewed carefully.

Section 92.07 of the statutes authorizes county land conservation committees (CLCCs) to adopt requirements for controlling erosion and nonpoint source water pollution. The statute requires these requirements to be consistent with DNR's performance standards and prohibitions, and DATCP's conservation practices and technical standards, under s. 281.16 (3) for agricultural facilities and practices that are begun after October 14, 1997, and for facilities and practices that began earlier if cost-sharing is available. onor

In response to the instructions to make cost-sharing requirements inapplicable in participating counties in certain areas of heightened vulnerability to groundwater contamination from land spreading, I specified that CLCC requirements for controlling erosion and nonpoint source water pollution in participating counties must be consistent with the performance standards, prohibitions, conservation practices, and technical standards under s. 281.16 (3) for agricultural facilities and practices that are begun before October 14, 1997, in those areas of heightened vulnerability even if cost sharing is not available. After discussing this with John Stolzenberg, I also added that the CLCC requirements under s. 92.07 in participating counties, as they apply to all areas that are vulnerable because of carbonate bedrock, must be consistent with the performance standards and prohibitions that DNR will create under this draft. Please let me know if you do not want to require CLCCs in participating counties to modify their requirements for controlling erosion and nonpoint source water pollution in this way.

Section 92.15 (2) of the statutes authorizes local governments to enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices, and technical standards under s. 281.16 (3) (the applicability of such regulations is subject to cost-sharing requirements as described above). This draft provides that the local regulations may also be consistent with the performance standards and prohibitions that DNR will create under this draft, for the areas in which those regulations will apply. Section 92.15 (3)

authorizes local governments to enact regulations that are more stringent than the state performance standards, prohibitions, conservation practices, and technical standards only if the local governmental unit demonstrates to the satisfaction of DATCP or DNR that more stringent regulations are necessary to achieve water quality standards under s. 281.15. John raised the issue of whether the standard for allowing local regulations that exceed the state performance standards (and so forth) should be broadened to refer, for example, to the drinking water standards under ch. 160. Please let me know if you wish to make such a change. ✓

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4264/P2dn
RCT:cjs:rs

March 2, 2010

This is a preliminary draft of the proposal concerning groundwater quality in areas with carbonate bedrock. The proposal and the existing statutes are quite complex and, consequently, so is the draft. It should be reviewed carefully.

Section 92.07 of the statutes authorizes county land conservation committees (CLCCs) to adopt requirements for controlling erosion and nonpoint source water pollution. The statute requires these requirements to be consistent with DNR's performance standards and prohibitions, and DATCP's conservation practices and technical standards, under s. 281.16 (3) for agricultural facilities and practices that are begun on or after October 14, 1997, and for facilities and practices that began earlier if cost-sharing is available.

In response to the instructions to make cost-sharing requirements inapplicable in participating counties in certain areas of heightened vulnerability to groundwater contamination from land spreading, I specified that CLCC requirements for controlling erosion and nonpoint source water pollution in participating counties must be consistent with the performance standards, prohibitions, conservation practices, and technical standards under s. 281.16 (3) for agricultural facilities and practices that are begun before October 14, 1997, in those areas of heightened vulnerability even if cost sharing is not available. After discussing this with John Stolzenberg, I also added that the CLCC requirements under s. 92.07 in participating counties, as they apply to all areas that are vulnerable because of carbonate bedrock, must be consistent with the performance standards and prohibitions that DNR will create under this draft. Please let me know if you do not want to require CLCCs in participating counties to modify their requirements for controlling erosion and nonpoint source water pollution in this way.

Section 92.15 (2) of the statutes authorizes local governments to enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices, and technical standards under s. 281.16 (3) (the applicability of such regulations is subject to cost-sharing requirements as described above). This draft provides that the local regulations may also be consistent with the performance standards and prohibitions that DNR will create under this draft, for the areas in which those regulations will apply. Section 92.15 (3) authorizes local governments to enact regulations that are more stringent than the state performance standards, prohibitions, conservation practices, and technical

standards only if the local governmental unit demonstrates to the satisfaction of DATCP or DNR that more stringent regulations are necessary to achieve water quality standards under s. 281.15. John raised the issue of whether the standard for allowing local regulations that exceed the state performance standards (and so forth) should be broadened to refer, for example, to the drinking water standards under ch. 160. Please let me know if you wish to make such a change.

Please contact me with any questions or redraft instructions.

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Tradewell, Becky

From: Konopacki, Larry
Sent: Tuesday, March 09, 2010 3:37 PM
To: Tradewell, Becky
Cc: Stolzenberg, John; Wagnitz, John
Subject: Karst legislation changes

Hi Becky, John in Sen. Hansen's office has requested the following changes to the Karst bill:

- ✓ - Please require the DNR to submit its rules to the Legislative Council Clearinghouse no later than 24 months after the effective date of the bill
- ✓ - Please add the WI Geology and Natural History Survey as a cooperating agency that will assist DATCP in mapping sensitive areas
- ✓ - Please add "industrial waste" to the list under the definition of "land spreading" under s. 281.163 (1) (b)
- ✓ - Please add "scientists" to the list of representatives that are to be included on the DNR's advisory committee under Section 22 (1)

Thank you, and let us know if you have any questions.

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State of Wisconsin
2009 - 2010 LEGISLATURE

Thurs 3/11

LRB-4264/P2

RCT:cjs:rs

Stays

imr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

Gov Cat

1 AN ACT to renumber and amend 281.16 (4) and 823.08 (3) (c) 2.; to amend
2 23.50 (1), 23.65 (1), 92.05 (3) (k), 92.05 (3) (L), 92.07 (2), 92.14 (6) (i) 2., 92.15
3 (2), 92.15 (3) (a), 92.15 (4), 93.90 (2) (a), 281.16 (3) (e), 281.65 (4) (e), 281.65 (4c)
4 (am) 1. a. and 823.08 (3) (c) 1.; and to create 92.04 (2) (m), 92.14 (3) (em), 281.16
5 (5), 281.163 and 823.08 (3) (c) 2. b. of the statutes; relating to: control of
6 nonpoint source water pollution in certain areas with carbonate bedrock and
7 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a partial analysis. A complete analysis will be provided in a later version.

Current law requires the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules to limit water pollution from diffuse sources, such as construction sites and feedlots (nonpoint source water pollution).

This bill requires DNR, in consultation with DATCP, to promulgate rules to limit pollution of groundwater caused by the spreading of any kind of waste, including animal waste, septage, and sewage sludge, on land (land spreading). Under the bill, the rules apply to certain areas with carbonate bedrock that are susceptible to groundwater contamination caused by land spreading and that are not

that is, water pollution

and industrial waste

nonpoint source

sufficiently protected by the current rules concerning nonpoint source water pollution. The rules promulgated under this bill apply to susceptible areas in covered counties, which are Brown County, Calumet County, Door County, Kewaunee County, Manitowoc County, and any other county that opts to have them apply. *Analysis insert 1*

* To identify the areas for which additional regulation of land spreading is potentially needed, the bill requires DNR to identify areas in this state that exhibit carbonate bedrock characteristics that may cause them to be susceptible to groundwater contamination from land spreading, including areas that have carbonate bedrock less than 50 feet from the surface of the land. The bill ~~also~~ requires DNR to promulgate rules for ranking the land in potentially susceptible areas into categories according to relative vulnerability to groundwater contamination from land spreading, based on factors that include bedrock features and the depth and other characteristics of top soil, and to identify the categories for which additional regulation is needed. *county*

* The bill requires the land conservation committee in a covered county to categorize the land in potentially susceptible areas (as identified by DNR) in the county according to the rules for ranking those lands. The bill provides a process for a land owner or other person, including DNR and DATCP, to obtain a review of a land conservation committee's categorization of land. *Analysis insert 2*

* For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 23.50 (1) of the statutes is amended to read:

2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
4 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.163 (5), 281.48 (2)
5 to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64
6 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
7 administrative rules promulgated thereunder, violations specified under s. 280.98
8 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
9 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
10 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
11 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

1 **SECTION 2.** 23.65 (1) of the statutes is amended to read:

2 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
3 134.60, 281.163 (5), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4),
4 287.07, 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or
5 350, or any administrative rule promulgated pursuant thereto, a violation specified
6 under s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild
7 animal, has been committed the district attorney may proceed by complaint and
8 summons.

9 **SECTION 3.** 92.04 (2) (m) of the statutes is created to read:

10 92.04 (2) (m) *Review of carbonate bedrock area determinations.* The board shall
11 review and affirm or reverse decisions of county land conservation committees under
12 s. 281.163 (4) (b) when review is requested under s. 281.163 (4) (c). Under this
13 paragraph, the board may conduct an informal hearing that is not a contested case
14 under ch. 227.

15 **SECTION 4.** 92.05 (3) (k) of the statutes is amended to read:

16 92.05 (3) (k) *Nutrient management rules.* The department shall promulgate
17 rules to improve agricultural nutrient management in this state. The rules shall be
18 consistent with rules promulgated under s. 281.16 (3) and, for lands to which the
19 rules promulgated under s. 281.163 (5) (b) apply, with those rules and shall include
20 incentives, educational and outreach provisions and compliance requirements.

21 **SECTION 5.** 92.05 (3) (L) of the statutes, as affected by 2009 Wisconsin Act 28,
22 is amended to read:

23 92.05 (3) (L) *Technical assistance; performance standards.* The department
24 shall provide technical assistance to county land conservation committees and local
25 units of government for the development of ordinances that implement standards

1 adopted under s. 92.07 (2), 92.15 (2) or (3) or 281.16 (3) and, for lands to which the
2 rules promulgated under s. 281.163 (5) (b) apply, that implement the standards in
3 those rules. The department's technical assistance shall include preparing model
4 ordinances, providing data concerning the standards and reviewing draft ordinances
5 to determine whether the draft ordinances comply with applicable statutes and
6 rules.

7 **SECTION 6.** 92.07 (2) of the statutes is amended to read:

8 92.07 (2) STANDARDS. Each land conservation committee may develop and
9 adopt standards and specifications for management practices to control erosion,
10 sedimentation and nonpoint source water pollution. The standards and
11 specifications for agricultural facilities and practices that are constructed or begun
12 on or after October 14, 1997, and, if cost-sharing is available to the owner or operator
13 under s. 92.14 or 281.65 or from any other source or if, as determined under s. 281.16
14 (5) (b), the agricultural facilities or practices are located on land that is categorized
15 under s. 281.163 (4) in a category with heightened vulnerability to groundwater
16 contamination and the land is in an area with characteristics that indicate a level
17 of groundwater contamination that affects public health, for agricultural facilities
18 and practices that are constructed or begun before that date shall be consistent with
19 the performance standards, prohibitions, conservation practices and technical
20 standards under s. 281.16 (3) and, for agricultural facilities and practices on lands
21 to which the rules promulgated under s. 281.163 (5) (b) apply, with those rules. The
22 land conservation committee shall use the rules promulgated under s. 281.16 (3) (e)
23 to determine whether cost-sharing is available.

24 **SECTION 7.** 92.14 (3) (em) of the statutes is created to read:

1 92.14 (3) (em) Grants to farmers for implementing land and water resource
2 management projects on lands categorized under s. 281.163 (4) undertaken to
3 comply with the requirements under s. 281.163 (5) (b).

4 **SECTION 8.** 92.14 (6) (i) 2. of the statutes is amended to read:

5 92.14 (6) (i) 2. Conduct all land management and pollutant management
6 activities in substantial accordance with the performance standards, prohibitions,
7 conservation practices and technical standards under s. 281.16 and, if applicable,
8 under s. 281.163 (5) (b) and with plans approved under this section, under s. 92.15,
9 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

10 **SECTION 9.** 92.15 (2) of the statutes is amended to read:

11 92.15 (2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may
12 enact regulations of livestock operations that are consistent with and do not exceed
13 the performance standards, prohibitions, conservation practices and technical
14 standards under s. 281.16 (3) and, for livestock operations on lands to which the rules
15 promulgated under s. 281.163 (5) (b) apply, the prohibitions and performance
16 standards in those rules.

17 **SECTION 10.** 92.15 (3) (a) of the statutes is amended to read:

18 92.15 (3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit
19 may enact regulations of livestock operations that exceed the performance
20 standards, prohibitions, conservation practices and technical standards under s.
21 281.16 (3) and, for livestock operations on lands to which the rules promulgated
22 under s. 281.163 (5) (b) apply, the prohibitions and performance standards in those
23 rules only if the local governmental unit demonstrates to the satisfaction of the
24 department of agriculture, trade and consumer protection or the department of

1 natural resources that the regulations are necessary to achieve water quality
2 standards under s. 281.15.

3 **SECTION 11.** 92.15 (4) of the statutes is amended to read:

4 92.15 (4) A local governmental unit may not apply a regulation under sub. (2)
5 or (3) to a livestock operation that exists on October 14, 1997, unless the local
6 governmental unit determines, using the rules promulgated under s. 281.16 (3) (e),
7 that cost-sharing is available to the owner or operator of the livestock operation
8 under s. 92.14 or 281.65 or from any other source or, as determined under s. 281.16
9 (5) (b), the livestock operation is located on land that is categorized under s. 281.163
10 (4) in a category with heightened vulnerability to groundwater contamination and
11 the land is in an area with characteristics that indicate a level of groundwater
12 contamination that affects public health.

13 **SECTION 12.** 93.90 (2) (a) of the statutes is amended to read:

14 93.90 (2) (a) For the purposes of this section, the department shall promulgate
15 rules specifying standards for siting and expanding livestock facilities. In
16 promulgating the rules, the department may incorporate by cross-reference
17 provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8),
18 92.16, and 281.16 (3) and ch. 283 and, for lands to which the rules promulgated under
19 s. 281.163 (5) (b) apply, in those rules. The department may not promulgate rules
20 under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or
21 (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283 or, for lands to which the rules
22 promulgated under s. 281.163 (5) (b) apply, with those rules.

23 **SECTION 13.** 281.16 (3) (e) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

1 281.16 (3) (e) An Except as provided in sub. (5) (a), an owner or operator of an
2 agricultural facility or practice that is in existence before October 14, 1997, may not
3 be required by this state or a municipality to comply with the performance standards,
4 prohibitions, conservation practices or technical standards under this subsection
5 unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source,
6 to the owner or operator. For the purposes of this paragraph, sub. (4) (b) and ss. 92.07
7 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall
8 promulgate rules that specify criteria for determining whether cost-sharing is
9 available under s. 281.65 and the department of agriculture, trade and consumer
10 protection shall promulgate rules that specify criteria for determining whether
11 cost-sharing is available under s. 92.14 or from any other source. The rules may not
12 allow a determination that cost-sharing is available to meet local regulations under
13 s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance
14 standards, prohibitions, conservation practices or technical standards under this
15 subsection unless the cost-sharing is at least 70% of the cost of compliance or is from
16 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the
17 rules.

18 **SECTION 14.** 281.16 (4) of the statutes is renumbered 281.16 (4) (a) and
19 amended to read:

20 281.16 (4) (a) If the department issues a notice of discharge under ch. 283 for
21 an animal feeding operation, the performance standards, prohibitions, conservation
22 practices and technical standards under sub. (3) apply to the animal feeding
23 operation, except that if the as provided in par. (b).

24 (b) If an animal feeding operation for which the department of natural
25 resources issues a notice of discharge under ch. 283 is in existence before

1 October 14, 1997, the performance standards, prohibitions, conservation practices
2 and technical standards only apply if the department determines that cost-sharing
3 is available to the owner or operator of the animal feeding operation under s. 92.14
4 or 281.65 or from any other source, except as provided in sub. (5) (a).

5 **SECTION 15.** 281.16 (5) of the statutes is created to read:

6 281.16 (5) APPLICATION IN CARBONATE BEDROCK AREAS. (a) Subsections (3) (e) and
7 (4) (b) do not apply to an agricultural facility or practice or animal feeding operation
8 that is located on land that is categorized under s. 281.163 (4) in a category with
9 heightened vulnerability to groundwater contamination if the land is in an area with
10 characteristics that indicate a level of groundwater contamination that affects public
11 health.

12 (b) The department shall promulgate rules that do all of the following for the
13 purposes of par. (a) and ss. 92.07 (2), 92.15 (4), and 823.08 (3) (c):

14 1. Designate the categories under s. 281.163 (3) (a) that have heightened
15 vulnerability to groundwater contamination.

16 2. Specify the characteristics that indicate levels of groundwater
17 contamination that affect public health, such as the existence in an area of a well in
18 which the concentration of contaminants exceeds a preventive action limit, as
19 defined in s. 160.01 (6).

20 **SECTION 16.** 281.163 of the statutes is created to read:

21 **281.163 Water quality protection; carbonate bedrock areas. (1)**

22 DEFINITIONS. In this section:

23 (a) "Covered county" means Brown County, Calumet County, Door County,
24 Kewaunee County, Manitowoc County, and any other county that, by resolution of
25 its county board, opts to have subs. (3) to (6) apply in the county.

industrial wastes

1

(b) "Land spreading" means spreading animal waste, septage, sewage sludge,

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or any other type of solid waste on the surface of the land or incorporating animal

3

waste, septage, sewage sludge, ^{industrial wastes} or any other type of solid waste into the surface layers

4

of the soil.

5

(c) "Potentially susceptible area" means an area identified by the department

6

under sub. (2).

7

(d) "Septage" has the meaning given in s. 281.48 (1) (d).

8

(2) IDENTIFICATION OF POTENTIALLY SUSCEPTIBLE AREAS. Using information

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available to it, the department shall identify areas in this state that exhibit

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carbonate bedrock characteristics that may cause the areas to be susceptible to

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groundwater contamination from land spreading. At a minimum, the department

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shall identify an area under this subsection if the area has carbonate bedrock less

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than 50 feet from the surface of the land, as shown by bedrock maps produced by the

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geological and natural history survey and other maps identified by the department.

15

(3) RULES FOR VULNERABILITY RANKING OF LAND IN POTENTIALLY SUSCEPTIBLE

16

AREAS. (a) The department shall promulgate rules for ranking the land in potentially

17

susceptible areas by categories according to relative vulnerability to groundwater

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contamination from land spreading, based on factors that include all of the following:

19

1. Bedrock features.

20

2. Depth and other characteristics of top soil.

21

3. Whether the department has declared the land to be an area of special

22

eligibility for compensation for well contamination under s. 281.75 (2) (e).

23

4. Whether the department has established the land as a special well casing

24

pipe depth area under ch. NR 812, Wis. Adm. Code.

1 (b) In the rules under par. (a), the department shall identify types of uses of land
2 that preclude land spreading on the land.

3 (4) CATEGORIZING POTENTIALLY SUSCEPTIBLE LAND. (a) The county land
4 conservation committee in a covered county shall categorize all land in potentially
5 susceptible areas in the covered county, except for land that is in a land use identified
6 under sub. (3) (b), according to the rules under sub. (3) (a).

7 (b) 1. The owner of land categorized under par. (a), the department of natural
8 resources, the department of agriculture, trade and consumer protection, an
9 organization, or any other person may request a county land conservation committee
10 to review the categorization based on site-specific information showing the
11 categorization to be inconsistent with the rules under sub. (3).

12 2. A county land conservation committee receiving a request under subd. 1.
13 shall conduct an informal hearing on the request. A county land conservation
14 committee shall provide public notice of a request under this subdivision. Section
15 68.11 (2) does not apply to the hearing. The county land conservation committee
16 shall provide reasonable notice of the hearing to the person requesting the review
17 and, if not the person requesting the review, to the owner of the land, the department
18 of natural resources, and the department of agriculture, trade and consumer
19 protection.

20 (c) The owner of land categorized under par. (a), the department of natural
21 resources, the department of agriculture, trade and consumer protection, an
22 organization, or any other person may may obtain a review of the decision of a county
23 land conservation committee under par. (b) by filing a written request with the land
24 and water conservation board within 60 days after the day on which the county land
25 conservation committee issues the decision.

1 (d) The owner of land categorized under par. (a), the department of natural
2 resources, the department of agriculture, trade and consumer protection, the county
3 in which the land is located, an organization, or any other person may request a
4 contested case hearing under ch. 227 to review the decision of the land and water
5 conservation board under par. (c) by filing a written request with the department of
6 natural resources within 60 days after receiving an adverse decision of the land and
7 water conservation board.

8 (4m) MAPPING OF POTENTIALLY SUSCEPTIBLE LAND. The department of
9 agriculture, trade and consumer protection, in cooperation with county land
10 conservation committees, the natural resources conservation service of the federal
11 department of agriculture, the University of Wisconsin-Madison department of soil
12 science, ^{Insert 11-12} and the department of natural resources, shall indicate land categorized
13 under sub. (4), by ranking, on maps that show areas in which nutrient applications
14 are restricted under ss. 92.05 (3) (k) and 281.16 (3) and shall post the maps on its
15 Internet site.

16 (5) REGULATION. The department of natural resources, in consultation with the
17 department of agriculture, trade and consumer protection, shall promulgate rules
18 that do all of the following:

19 (a) Identify the categories under sub. (3) (a) of potentially susceptible land for
20 which regulation of land spreading activities, in addition to regulation under s.
21 281.16, is needed to prevent or minimize nonpoint source pollution of groundwater.

22 (b) Prescribe performance standards and prohibitions to prevent or minimize
23 nonpoint source pollution of groundwater from land spreading on land in the
24 categories identified under par. (a).

1 **(6) ENFORCEMENT.** (a) The department may follow the procedures for the
2 issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture under s. 281.98
3 (1) for a violation of rules promulgated under sub. (5).

4 (b) A county land conservation committee may request the district attorney of
5 the county to exercise the district attorney's authority to proceed under s. 23.65
6 against a person for a violation of rules promulgated under sub. (5).

7 **SECTION 17.** 281.65 (4) (e) of the statutes is amended to read:

8 281.65 (4) (e) Promulgate rules, in consultation with the department of
9 agriculture, trade and consumer protection, as are necessary for the proper
10 execution and administration of the program under this section. Before
11 promulgating rules under this paragraph, the department shall submit the rules to
12 the land and water conservation board for review under sub. (3) (at). The rules shall
13 include standards and specifications concerning best management practices which
14 are required for eligibility for cost-sharing grants under this section. The standards
15 and specifications shall be consistent with the performance standards, prohibitions,
16 conservation practices and technical standards under s. 281.16 and under s. 281.163
17 (5) (b), where applicable. The department may waive the standards and
18 specifications in exceptional cases. The rules shall specify which best management
19 practices are cost-effective best management practices. Only persons involved in the
20 administration of the program under this section, persons who are grant recipients
21 or applicants and persons who receive notices of intent to issue orders under s. 281.20
22 (1) (b) are subject to the rules promulgated under this paragraph. Any rule
23 promulgated under this paragraph which relates or pertains to agricultural
24 practices relating to animal waste handling and treatment is subject to s. 13.565.

25 **SECTION 18.** 281.65 (4c) (am) 1. a. of the statutes is amended to read:

1 281.65 (4c) (am) 1. a. The need for compliance with performance standards
2 established by the department under ~~s. ss.~~ 281.16 (2) and (3) and 281.163 (5).

3 **SECTION 19.** 823.08 (3) (c) 1. of the statutes is amended to read:

4 823.08 (3) (c) 1. Subject to subd. 2., if a court requests the department of
5 agriculture, trade and consumer protection or the department of natural resources
6 for suggestions under par. (b) 2. a., the department of agriculture, trade and
7 consumer protection or the department of natural resources shall advise the court
8 concerning the relevant provisions of the performance standards, prohibitions,
9 conservation practices and technical standards under s. 281.16 (3) and, for lands to
10 which the rules promulgated under s. 281.163 (5) (b) apply, the prohibitions and
11 performance standards in those rules.

12 **SECTION 20.** 823.08 (3) (c) 2. of the statutes is renumbered 823.08 (3) (c) 2.
13 (intro.) and amended to read:

14 823.08 (3) (c) 2. (intro.) If the agricultural use or agricultural practice alleged
15 to be a nuisance was begun before October 14, 1997, a department may advise the
16 court under subd. 1. only if the one of the following applies:

17 a. The department determines that cost-sharing is available to the defendant
18 under s. 92.14 or 281.65 or from any other source.

19 **SECTION 21.** 823.08 (3) (c) 2. b. of the statutes is created to read:

20 823.08 (3) (c) 2. b. As determined under s. 281.16 (5) (b), the agricultural use
21 or practice is located on land that is categorized under s. 281.163 (4) in a category
22 with heightened vulnerability to groundwater contamination and the land is in an
23 area with characteristics that indicate a level of groundwater contamination that
24 affects public health.

25 **SECTION 22. Nonstatutory provisions.**

1 (1) ADVISORY COMMITTEE. The department of natural resources shall appoint a
 2 committee to advise it on the rules required under sections 281.16 (5) and 281.163
 3 of the statutes, as created by this act. The department shall include ^{scientists and} representatives ←
 4 of industry, agriculture, local government, environmental groups, and other persons
 5 with interests that could be affected by the rules and shall ensure that an adequate
 6 number of members are from areas thought to be susceptible to groundwater
 7 contamination because of carbonate bedrock features.

8 (2) TASK FORCE REPORT. The department of natural resources and the advisory
 9 committee under subsection (1) shall review the recommendations in the Final
 10 Report of the Northeast Wisconsin Karst Task Force, February 9, 2007, before the
 11 department promulgates the rules required under section 281.163 of the statutes, as
 12 created by this act. The department shall incorporate recommendations in the report
 13 in the rules required under section 281.163 of the statutes, as created by this act, as
 14 appropriate.

(END)

15 →
 Insert 14-15

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4264/lins
RCT:.....

1 **Analysis insert-1**

no ff The bill also requires DATCP to make its existing rules concerning nutrient management consistent with the new DNR rules concerning land spreading on susceptible lands in covered counties. ✓

2 **Analysis insert-2** ✓

no ff The bill also requires DATCP to produce maps that show land that is categorized under this process, by category, and to post those maps on its Internet site. ✓

The bill authorizes DNR to enforce the rules concerning land spreading on susceptible lands by issuing citations, which are similar to traffic tickets. A district attorney may also proceed against a person who violates the rules. ✓

The rules promulgated by DNR and DATCP under current law to limit nonpoint source water pollution, as described above, do not apply to an agricultural facility or practice that was in existence before October 14, 1997, unless financial assistance is available to pay a portion of the cost of complying with the rules.

Under this bill, the current rules to limit nonpoint source water pollution apply to an agricultural facility or practice, in a covered county, that was in existence before October 14, 1997, without regard to whether financial assistance is available, if the facility or practice is on land categorized in a category with heightened vulnerability to groundwater contamination and is in an area with a level of groundwater contamination that may affect public health, as determined under rules promulgated by DNR.

3 **Insert 11-12**

no ff the geological and natural history survey,

5 **Insert 14-15**

no ff (b) PROPOSED RULES. The department of natural resources shall submit in proposed form the rules required under sections 281.16 (5) and 281.163 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 24th month beginning after the effective date of this subsection. ✓

Parisi, Lori

From: Wagnitz, John
Sent: Thursday, March 11, 2010 3:56 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4264/1 Topic: Controlling nonpoint source pollution in areas with carbonate bedrock

Please Jacket LRB 09-4264/1 for the SENATE.