



2017 SENATE BILL 76

February 21, 2017 - Introduced by Senators S. FITZGERALD, ROTH, MARKLEIN, WANGGAARD and MOULTON, cosponsored by Representatives TAUCHEN, NERISON, TITTL, VORPAGEL, R. BROOKS, SPIROS, JACQUE, JARCHOW, KREMER and THIESFELDT. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT to amend** 281.34 (2); and **to create** 281.34 (1) (ek), 281.34 (2g) and 281.34
2 (7m) of the statutes; **relating to:** replacement, reconstruction, and transfer of
3 an approved high capacity well, recommendation of special groundwater
4 measures by the Department of Natural Resources, and metering
5 requirements and grants for certain high capacity wells.

Analysis by the Legislative Reference Bureau

This bill makes changes to the laws regulating high capacity wells, which are wells that, together with certain other wells on the same property, have the capacity to withdraw more than 100,000 gallons of water per day.

Activities exempt from approval

Current law requires a person to obtain approval from the Department of Natural Resources before constructing or operating a high capacity well. This bill provides that no additional approval is needed for the owner of an approved high capacity well to 1) repair or maintain the well, 2) construct a replacement high capacity well, if the replacement well's purpose is to prevent contamination or if the replacement well will be substantially the same depth as the existing well and either within a 75-foot radius of the existing well or farther from the nearest groundwater protection area than the existing well, 3) reconstruct the well to substantially the same depth and specifications as the existing well, or 4) transfer the approval at the same time as the owner transfers the land on which the well is located. No additional

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fee is required for any of these actions, but the owner of the well must notify DNR of any replacement, reconstruction, or transfer. The owner may not take any of these actions if they would be inconsistent with the conditions included in the approval for the high capacity well, and the conditions of the approval continue to apply after any of these actions are taken.

Designated study area

This bill also requires DNR to evaluate and model the hydrology of Pleasant Lake in Waushara County and the Fourteenmile Creek Watershed, the Mecan River Watershed, and the Pine River and Willow Creek Watershed, located in parts of Adams, Green Lake, Juneau, Marquette, Portage, Waupaca, Waushara, Winnebago, and Wood counties (defined in the bill as the “designated study area”). DNR must begin its evaluation of the study area within one year after the effective date of the bill. If DNR determines that special measures relating to existing and potential groundwater withdrawal are necessary in all or part of the study area to prevent or remedy a significant reduction of a navigable stream’s or navigable lake’s rate of flow or water level below its average seasonal levels, DNR must issue a decision on whether it recommends that the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area. DNR must hold a public hearing on its decision. Following the public hearing, the bill requires DNR to submit a report to the legislature describing what special measures, if any, it recommends that the legislature adopt in all or part of the study area. DNR must submit this report within three years after beginning its study of the study area.

The bill requires the owner of a new high capacity well located in the study area, or an owner who replaces, reconstructs, or transfers ownership of a high capacity well located in the study area, to provide, with the annual pumping report that it submits to DNR, readings from a water meter showing the well’s water usage.

The bill also permits DNR to provide a qualified lake association or lake district with an approval to construct a high capacity well for the purpose of providing water to a lake located in the study area to assist DNR in evaluating and modeling the hydrology of that area, if DNR determines that the lake’s water level has been significantly reduced below its average seasonal levels. Under the bill, DNR must waive the application fee and expedite the review and approval process for an application submitted by a qualified lake association or lake district, and may not issue an approval if it determines that providing water from the proposed high capacity well to a lake is likely to result in a violation of water quality standards for that lake. DNR must also develop and administer a financial assistance program to provide grants to qualified lake associations and lake districts to construct high capacity wells for this purpose.

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

1 **SECTION 1.** 281.34 (1) (ek) of the statutes is created to read:

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1 281.34 (1) (ek) “Reconstruct” means to modify original construction including
2 deepening, lining, installing or replacing a screen, and underreaming.

3 **SECTION 2.** 281.34 (2) of the statutes is amended to read:

4 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. ~~An~~ Except as provided
5 under sub. (2g), an owner shall apply to the department for approval before
6 construction of a high capacity well begins. ~~No~~ Except as provided under sub. (2g),
7 no person may construct or withdraw water from a high capacity well without the
8 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
9 owner applying for approval under this subsection shall pay a fee of \$500.

10 **SECTION 3.** 281.34 (2g) of the statutes is created to read:

11 281.34 (2g) REPAIR, REPLACEMENT, RECONSTRUCTION, AND TRANSFER OF OWNERSHIP
12 OF AN APPROVED HIGH CAPACITY WELL. (a) Except as provided in par. (e), if a high
13 capacity well has been approved under this section or under s. 281.17 (1), 2001 stats.,
14 the owner of that well may take any of the following actions without obtaining an
15 additional approval under this section:

16 1. Repair and maintain the high capacity well.

17 2. Construct a new high capacity well to replace the existing high capacity well
18 if the new high capacity well will be constructed in accordance with department
19 standards that apply to the construction of new high capacity wells on the date that
20 construction of the replacement high capacity well begins, if the existing high
21 capacity well is filled and sealed as provided in rules promulgated by the
22 department, and if any of the following applies:

23 a. The purpose of replacement is to remedy or prevent contamination. The
24 owner of the well shall submit documentation of the contamination to the
25 department in the manner and form required by the department.

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1 b. The replacement high capacity well will be drilled to substantially the same
2 depth as the existing high capacity well and either will be located within a 75-foot
3 radius of the existing high capacity well or will be located farther from the nearest
4 groundwater protection area than the existing high capacity well and not be located
5 within any other groundwater protection area.

6 3. Reconstruct the high capacity well, if the reconstructed high capacity well
7 is constructed to substantially the same depth and specifications as the existing high
8 capacity well.

9 4. Transfer the approval, concurrent with transferring the land on which the
10 high capacity well is located, to the person to whom the land is transferred.

11 (b) The department may not impose a fee for any action taken under this
12 subsection.

13 (c) No later than 90 days after taking any action under par. (a) 2., 3., or 4., the
14 owner of the high capacity well shall notify the department of the action taken on a
15 form prescribed by the department. For any action taken under par. (a) 2., the owner
16 shall, on the same form, notify the department of the location of the replacement high
17 capacity well and the method by which the existing well was filled and sealed.

18 (d) Except as provided in sub. (7), the conditions included in the approval for
19 the high capacity well continue to apply after an owner takes any of the actions under
20 par. (a).

21 (e) An owner of a well may not take an action under par. (a) if the action would
22 be inconsistent with the conditions included in the approval for the high capacity
23 well.

24 **SECTION 4.** 281.34 (7m) of the statutes is created to read:

25 281.34 (7m) DESIGNATED STUDY AREA. (a) In this subsection:

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1 1. “Designated study area” means the area made up of the Fourteenmile Creek
2 Watershed in Adams, Juneau, Portage, Waushara, and Wood counties, the Mecan
3 River Watershed in Green Lake, Marquette, and Waushara counties, and the Pine
4 River and Willow Creek Watershed in Waupaca, Waushara, and Winnebago
5 counties.

6 2. “Qualified lake association” means an association that meets the
7 qualifications under s. 281.68 (3m) (a).

8 (b) The department shall evaluate and model the hydrology of Pleasant Lake
9 in Waushara County and any other navigable stream or navigable lake located in the
10 designated study area for which the department seeks to determine whether existing
11 and potential groundwater withdrawals are causing or are likely to cause a
12 significant reduction of the navigable stream’s or navigable lake’s rate of flow or
13 water level below its average seasonal levels. The department may request, under
14 s. 13.10, the joint committee on finance to provide funding and positions for the
15 evaluation and modeling under this paragraph. The evaluation under this
16 paragraph shall include all relevant factors that may affect groundwater and water
17 levels and rates of flow of navigable waters, including topography, ground cover,
18 annual and seasonal variations in precipitation, and plant life. The department
19 shall begin the evaluation and modeling under this paragraph no later than one year
20 after the effective date of this paragraph [LRB inserts date].

21 (c) If upon conclusion of the evaluation and modeling of the area under par. (b)
22 the department determines that special measures relating to existing and potential
23 groundwater withdrawal are necessary in all or part of that area to prevent or
24 remedy a significant reduction of a navigable stream’s or navigable lake’s rate of flow
25 or water level below its average seasonal levels, the department shall issue a decision

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1 on whether it recommends that the legislature adopt, by statute, special measures
2 relating to groundwater withdrawal in all or part of that area. If the department
3 issues a decision recommending that the legislature adopt, by statute, special
4 measures relating to groundwater withdrawal in all or part of that area, the decision
5 shall contain all of the following information:

6 1. A description of the extent to which the department has determined that
7 cumulative groundwater withdrawals in all or part of the area cause, or are expected
8 to cause, a significant reduction of a navigable stream's or navigable lake's rate of
9 flow or water level below its average seasonal levels.

10 2. A description of the concrete scientific information that the department used
11 to establish that there is a hydrologic connection between the groundwater in all or
12 part of the area and the navigable waters in all or part of the area and a causal
13 relationship between groundwater withdrawal in all or part of the area and an
14 existing or potential significant reduction of a navigable stream's or navigable lake's
15 rate of flow or water level below its average seasonal levels, and the degree to which
16 the department verified the connection and causal relationship by the use of field
17 work or field study.

18 3. A description of the geographical boundaries of the area to which the
19 department recommends special measures relating to groundwater withdrawal
20 should apply. The department shall identify in the description the specific navigable
21 water or part of the navigable water that is or may be affected by cumulative
22 groundwater withdrawals and shall identify the location of the groundwater
23 withdrawals that the department has determined are causing or may cause a
24 significant reduction of a navigable stream's or navigable lake's rate of flow or water
25 level below its average seasonal levels.

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1 4. Any proposed special measures in the area described under subd. 3. that the
2 department recommends that the legislature adopt, by statute, to prevent or remedy
3 a significant reduction of a navigable stream's or navigable lake's rate of flow or
4 water level below its average seasonal levels.

5 5. An economic impact analysis of the economic effect of the special measures
6 recommended under subd. 4. on specific businesses, business sectors, public utility
7 ratepayers, local governmental units, and the state's economy as a whole.

8 (d) The department shall hold a public informational hearing to solicit
9 comments on the department's decision under par. (c). The department shall give
10 notice of the hearing to each person who owns land in the area that would be affected
11 by the proposed special measures under par. (c) 4. and to each owner of a well in that
12 area if the well owner has notified the department of the location of that well.

13 (e) After holding the public hearing under par. (d), the department shall
14 prepare a report on whether it recommends that the legislature adopt, by statute,
15 special measures relating to groundwater withdrawal in the area described in its
16 decision under par. (c) 3. No later than 3 years after beginning the evaluation and
17 modeling under par. (b), the department shall submit the report to the joint
18 committee on finance and to the chief clerk of each house of the legislature, for
19 distribution under s. 13.172 (3) to the appropriate legislative standing committees
20 generally responsible for legislation related to environmental issues.

21 (f) If the department recommends in its report submitted under par. (e) that the
22 legislature adopt, by statute, special measures relating to groundwater withdrawal
23 in the area described in its decision under par. (c) 3., the department shall prepare
24 an additional report specifying the special measures relating to groundwater
25 withdrawal in that area that the department recommends that the legislature adopt,

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1 by statute, to prevent or remedy a significant reduction of a navigable stream's or
2 navigable lake's rate of flow or water level below its average seasonal levels. No later
3 than 3 years after beginning the evaluation and modeling under par. (b), the
4 department shall submit the report to the joint committee on finance and to the chief
5 clerk of each house of the legislature, for distribution under s. 13.172 (3) to the
6 appropriate legislative standing committees generally responsible for legislation
7 related to environmental issues.

8 (g) Neither a decision of the department under par. (c) nor a recommendation
9 of the department under par. (e) are final decisions. Notwithstanding ss. 227.42 (1)
10 and 227.52, no person is entitled to administrative or judicial review of a department
11 decision under par. (c) or a department recommendation under par. (e).

12 (h) The special measures relating to groundwater withdrawal recommended
13 by the department under par. (c) 4. or par. (f) shall not be effective unless adopted by
14 the legislature by statute. Notwithstanding par. (j), nothing in this subsection shall
15 affect the department's review of applications and issuance of approvals for high
16 capacity wells located in the area studied under par. (b).

17 (i) The owner of a high capacity well that is constructed in the area studied
18 under par. (b) after the effective date of this paragraph [LRB inserts date], or who
19 takes any of the actions described in sub. (2g) (a) 2. to 4. in the area studied under
20 par. (b) after the effective date of this paragraph [LRB inserts date], shall provide
21 to the department, with the owner's annual pumping report under sub. (5) (e) 2.,
22 readings of a water meter showing the volume of water usage of that high capacity
23 well in gallons.

24 (j) 1. The department may issue an approval under this section to a qualified
25 lake association or lake district to construct and operate a new high capacity well,

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1 or to operate an existing approved high capacity well, for the sole purpose of
2 providing water to a lake that is located wholly or partially in the area studied under
3 par. (b) to assist the department in evaluating and modeling the hydrology of that
4 area under par. (b), if the department determines that the lake's water level has been
5 significantly reduced below its average seasonal levels. For any approval application
6 submitted by a qualified lake association or lake district under this paragraph, the
7 department shall waive the application fee under sub. (2), expedite the review and
8 approval process to the greatest extent possible, and include, as a condition of the
9 approval, a limit on the water level of the lake that may be reached as a result of the
10 water provided by the proposed well. The department may not issue an approval to
11 a qualified lake association or lake district under this paragraph if it determines that
12 providing water from the proposed high capacity well to a lake is likely to result in
13 a violation of a water quality standard under s. 281.15 for that lake.

14 2. The department shall develop and administer a financial assistance
15 program to provide assistance to qualified lake associations and lake districts for all
16 or part of the cost of constructing or operating an approved high capacity well under
17 this paragraph. The financial assistance program shall include provisions relating
18 to cost-sharing from qualified lake associations and lake districts receiving
19 assistance under the program.

20 3. The department shall consider, in its evaluation and modeling under par. (b),
21 the effects of the groundwater withdrawal and the supply of water to a lake resulting
22 from any high capacity well constructed under this paragraph.

23 (k) Paragraphs (i) and (j) cease to apply in, and, notwithstanding sub. (7),
24 approvals shall expire that were issued under par. (j) in, any part of the area studied
25 under par. (b) to which any of the following applies:

