



2003 SENATE BILL 524

March 3, 2004 - Introduced by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES. Referred to Committee on Environment and Natural Resources.

1 **AN ACT** *to repeal* 281.17 (1); *to amend* 23.11 (5), 281.35 (1) (a), 281.35 (1) (b) 2.,
2 281.35 (4) (a) 2., 281.35 (4) (b) (intro.), 293.65 (3) and 299.05 (2) (b); and *to*
3 **create** 20.370 (4) (cg), 20.370 (4) (ch), 20.370 (6) (eg), 281.34 and 281.35 (4) (a)
4 2m. of the statutes; **relating to:** regulation of high capacity wells, notification
5 of well construction, groundwater quantity management, granting
6 rule-making authority, and making appropriations.

Analysis by the Legislative Reference Bureau

High capacity wells generally

Current law prohibits a person from constructing or operating one or more wells on one property that have the capacity to withdraw a total of more than 100,000 gallons of water a day (high capacity well) without the approval of the Department of Natural Resources (DNR). DNR must disapprove a high capacity well or impose conditions relating to location, depth, pumping capacity, rate of flow, and ultimate use to ensure that the water supply of a public water utility will not be impaired by the well. The law also generally requires DNR to provide in its approval for a high capacity well that a person may not use water withdrawn from the well to produce bottled drinking water unless DNR approves the use of the well for that purpose. Additional standards apply only to wells that result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period. Water loss is the loss of water

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from a water basin because the water is being diverted into a different basin, is being incorporated into a product, or for some other reason is not being returned to the original water basin.

This bill modifies the law relating to approvals of certain high capacity wells, although it retains the requirement that DNR ensure that a high capacity well does not impair the water supply of a public water utility. The bill also does not change the standards that apply under current law to wells that result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period. The bill eliminates the requirement that DNR provide in its approval for a high capacity well that a person may not use water withdrawn from the well to produce bottled drinking water unless DNR approves the use of the well for that purpose.

Environmental review

Current law requires state agencies to prepare environmental impact statements for major actions significantly affecting the environment. DNR, like other agencies, has promulgated rules specifying the processes it will use to review the actions that it takes, such as considering applications for various approvals, to determine when it must prepare environmental impact statements. Current law authorizes DNR to require an applicant for a permit or other approval to submit an environmental impact report if the area affected exceeds 40 acres or the estimated cost of the project exceeds \$25,000.

The bill requires DNR to use the environmental review process in its rules that is applicable to an action that has the potential to cause significant environmental effects or to an action that normally does not have the potential to cause significant environmental effects when it reviews an application for a high capacity well that is located in a groundwater protection area, that has a water loss of 95 percent of the amount of water withdrawn, or that may have a significant environmental impact on a spring. The bill also authorizes DNR to require an applicant for approval of a high capacity well to submit an environmental impact report.

High capacity wells in groundwater protection areas

Under the bill, a groundwater protection area is an area within 1,200 feet of a body of water identified by DNR as being an outstanding or exceptional resource water, other than a trout stream, or within 1,200 feet of a stream identified by DNR as being a class I or class II trout stream, other than a trout stream that is a farm drainage ditch with no prior stream history. Examples of outstanding or exceptional resource waters include wild and scenic rivers.

Under the bill, if DNR determines that an environmental impact report must be prepared for a proposed high capacity well located in a groundwater protection area, DNR generally may not approve the high capacity well unless it includes in the approval conditions that ensure that the well does not cause significant environmental impact. The bill makes an exception from this restriction for a high capacity well that is a water supply for a public water utility if DNR determines that there is no other reasonable alternative location for a well and DNR includes in the approval conditions that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

SENATE BILL 524***High capacity wells with high water loss***

Under the bill, if DNR determines that an environmental impact report must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn, DNR may not approve the high capacity well unless it includes in the approval conditions that ensure that the well does not cause significant environmental impact.

High capacity wells that may affect a spring

Under the bill, if DNR determines that an environmental impact report must be prepared for a proposed high capacity well that may have a significant environmental impact on a spring, DNR generally may not approve the high capacity well unless it includes in the approval conditions that ensure that the well does not cause significant environmental impact. The bill makes an exception from this restriction for a high capacity well that is a water supply for a public water utility if DNR determines that there is no other reasonable alternative location for a well and DNR includes in the approval conditions that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

Modifying and rescinding approvals

The bill authorizes DNR to modify or rescind the approval for a high capacity well, whether issued before or after this bill takes effect, if the high capacity well or the use of the high capacity well does not conform to the standards and conditions applicable to the approval of the well.

Mitigation in groundwater protection areas

The bill requires DNR to administer a program to mitigate the effects of wells constructed in groundwater protection areas before this bill takes effect. Mitigation may include abandonment of wells, replacement of wells at different locations, and management strategies. Under the program, DNR may order the owner of a well to undertake mitigation but only if DNR provides funding for the full cost of the mitigation.

Groundwater management areas

The bill requires DNR to identify two groundwater management areas by rule. One would be centered in Brown County and the other centered in Waukesha County. DNR is to identify these groundwater areas by first determining the areas in which the level of water in a well placed in the aquifer would be 150 feet lower than the level would have been if no groundwater had been pumped from the aquifer. A groundwater management area consists of the entire area of each city, village, and town at least a portion of which is within the area with the lowered well water level.

The bill requires DNR to assist local governmental units in groundwater management areas by providing advice, incentives, and funding for research and planning related to groundwater management.

The bill creates a committee, called the Groundwater Quantity Committee, consisting of members, appointed by the governor, the speaker of the assembly, and the senate majority leader, representing industrial, agricultural, environmental, and municipal interests and the secretary of natural resources or the secretary's

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1 **SECTION 2.** 20.370 (4) (cg) of the statutes is created to read:

2 20.370 (4) (cg) *Groundwater quantity administration.* From the general fund,
3 from the moneys received under s. 281.34, the amounts in the schedule for the
4 administration of the program under s. 281.34.

5 **SECTION 3.** 20.370 (4) (ch) of the statutes is created to read:

6 20.370 (4) (ch) *Groundwater quantity research.* Biennially, from the general
7 fund, from the moneys received under s. 281.34, the amounts in the schedule for
8 groundwater research and monitoring under s. 281.34 (10).

9 **SECTION 4.** 20.370 (6) (eg) of the statutes is created to read:

10 20.370 (6) (eg) *Groundwater mitigation and local assistance.* All moneys
11 received under s. 281.34 not appropriated under sub. (4) (cg) or (ch) for mitigation
12 under s. 281.34 (8) (d) and funding to local governmental units under s. 281.34 (9)
13 (b).

14 **SECTION 5.** 23.11 (5) of the statutes is amended to read:

15 23.11 (5) The department may require an applicant for a permit or statutory
16 approval which the department, by order, may grant, to submit an environmental
17 impact report if the area affected exceeds 40 acres ~~or~~, the estimated cost of the project
18 exceeds \$25,000, or the applicant is requesting approval under s. 281.34 for a high
19 capacity well.

20 **SECTION 6.** 281.17 (1) of the statutes is repealed.

21 **SECTION 7.** 281.34 of the statutes is created to read:

22 **281.34 Groundwater withdrawals. (1) DEFINITIONS.** In this section:

23 (a) "Groundwater protection area" means an area within 1,200 feet of any of
24 the following:

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1 1. An outstanding resource water identified under s. 281.15 that is not a trout
2 stream.

3 2. An exceptional resource water identified under s. 281.15 that is not a trout
4 stream.

5 3. A class I or class II trout stream, other than a class I or class II trout stream
6 that is a farm drainage ditch with no prior stream history, as identified under sub.
7 (8) (a).

8 (b) “High capacity well” means a well that, together with all other wells on the
9 same property, has a capacity and rate of withdrawal of more than 100,000 gallons
10 per day.

11 (c) “Local governmental unit” means a city, village, town, county, town sanitary
12 district, utility district under s. 66.0827 that provides water, public inland lake
13 protection and rehabilitation district that has town sanitary district powers under
14 s. 33.22 (3), joint local water authority created under s. 66.0823, or municipal water
15 district under s. 198.22.

16 (d) “Owner” means a person who owns property on which a well is located or
17 proposed to be located or the designated representative of such a person.

18 (e) “Potentiometric surface” means a measure of pressure of groundwater in an
19 aquifer based on the level to which groundwater will rise in a well placed in the
20 aquifer.

21 (f) “Spring” means an area of concentrated groundwater discharge occurring
22 at the surface of the land that results in a current of flowing water with flows of a
23 minimum of one cubic foot per second at least 80 percent of the time.

24 (g) “Water loss” means a loss of water from the basin from which it is withdrawn
25 as a result of interbasin diversion or consumptive use or both.

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1 (h) "Well" means any drillhole or other excavation or opening deeper than it is
2 wide that extends more than 10 feet below the ground surface and is constructed for
3 the purpose of obtaining groundwater.

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

9 (3) NOTIFICATION REQUIRED FOR OTHER WELLS. An owner shall notify the
10 department of the location of a well that is not a high capacity well before
11 construction of the well begins. An owner notifying the department under this
12 subsection shall pay a fee of \$50.

13 (4) ENVIRONMENTAL REVIEW. The department shall review an application for
14 approval of any of the following using the environmental review process in its rules
15 promulgated under s. 1.11 applicable to an action that has the potential to cause
16 significant environmental effects and that may involve unresolved conflicts in the
17 use of available resources or to an action that normally does not have the potential
18 to cause significant environmental effects, normally does not significantly affect
19 energy usage, and normally does not involve unresolved conflicts in the use of
20 available resources:

21 (a) A high capacity well that is located in a groundwater protection area.

22 (b) A high capacity well with a water loss of 95 percent of the amount of water
23 withdrawn.

24 (c) A high capacity well that may have a significant environmental impact on
25 a spring.

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1 **(5) STANDARDS AND CONDITIONS FOR APPROVAL.** (a) *Public water supply.* If the
2 department determines that a proposed high capacity well may impair the water
3 supply of a public utility engaged in furnishing water to or for the public, the
4 department may not approve the high capacity well unless it includes in the approval
5 conditions, which may include conditions as to location, depth, pumping capacity,
6 rate of flow, and ultimate use, that will ensure that the water supply of the public
7 utility will not be impaired.

8 (b) *Groundwater protection area.* 1. Except as provided in subd. 2., if the
9 department determines, under the environmental review process in sub. (4), that an
10 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
11 capacity well located in a groundwater protection area, the department may not
12 approve the high capacity well unless it includes in the approval conditions, which
13 may include conditions as to location, depth, pumping capacity, rate of flow, and
14 ultimate use, that ensure that the high capacity well does not cause significant
15 environmental impact.

16 2. Subdivision 1. does not apply to a proposed high capacity well that is located
17 in a groundwater protection area and that is a water supply for a public utility
18 engaged in supplying water to or for the public, if the department determines that
19 there is no other reasonable alternative location for a well and includes in the
20 approval conditions, which may include conditions as to location, depth, pumping
21 capacity, rate of flow, and ultimate use, that ensure that the environmental impact
22 of the well is balanced by the public benefit of the well related to public health and
23 safety.

24 (c) *High water loss.* If the department determines, under the environmental
25 review process in sub. (4), that an environmental impact report under s. 23.11 (5)

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1 must be prepared for a proposed high capacity well with a water loss of more than
2 95 percent of the amount of water withdrawn, the department may not approve the
3 high capacity well unless it includes in the approval conditions, which may include
4 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
5 ensure that the high capacity well does not cause significant environmental impact.

6 (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the department
7 determines, under the environmental review process in sub. (4), that an
8 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
9 capacity well that may have a significant environmental impact on a spring, the
10 department may not approve the high capacity well unless it includes in the approval
11 conditions, which may include conditions as to location, depth, pumping capacity,
12 rate of flow, and ultimate use, that ensure that the high capacity well does not cause
13 significant environmental impact.

14 2. Subdivision 1. does not apply to a proposed high capacity well that may have
15 a significant environmental impact on a spring and that is a water supply for a public
16 utility engaged in supplying water to or for the public, if the department determines
17 that there is no other reasonable alternative location for a well and includes in the
18 approval conditions, which may include conditions as to location, depth, pumping
19 capacity, rate of flow, and ultimate use, that ensure that the environmental impact
20 of the well is balanced by the public benefit of the well related to public health and
21 safety.

22 (e) *All high capacity wells.* 1. If s. 281.35 applies to a proposed high capacity
23 well, the department shall include in the approval conditions that ensure that the
24 high capacity well complies with s. 281.35.

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1 2. The department shall include in the approval for each high capacity well
2 requirements that the owner identify the location of the high capacity well and
3 submit an annual pumping report.

4 **(6) PREEXISTING HIGH CAPACITY WELLS.** (a) The owner of a high capacity well for
5 which the department issued an approval under s. 281.17 (1), 2001 stats., shall
6 provide to the department information concerning the location of the well and an
7 annual pumping report.

8 (b) The department shall promulgate rules specifying the date and method by
9 which owners of high capacity wells shall comply with par. (a).

10 **(7) MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The
11 department may modify or rescind the approval of a high capacity well issued under
12 this section or under s. 281.17 (1), 2001 stats., if the high capacity well or the use of
13 the high capacity well is not in conformance with standards or conditions applicable
14 to the approval of the high capacity well.

15 **(8) GROUNDWATER PROTECTION AREAS.** (a) The department shall promulgate
16 rules identifying class I and class II trout streams for the purposes of this section.
17 The department shall identify as a class I trout stream a stream or portion of a stream
18 with a self-sustaining population of trout. The department shall identify as a class
19 II trout stream a stream or portion of a stream that contains a population of trout
20 made up of one or more age groups, above the age one year, in sufficient numbers to
21 indicate substantial survival from one year to the next but in which stocking is
22 necessary to fully utilize the available trout habitat or to sustain the fishery. In the
23 rules under this paragraph, the department shall identify any class I or class II trout
24 stream that is a farm drainage ditch with no prior stream history.

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1 (b) The department shall create accurate images of groundwater protection
2 areas.

3 (c) A person who proposes to construct a high capacity well may request the
4 department to determine whether the proposed location of the high capacity well is
5 within a groundwater protection area.

6 (d) The department shall administer a program to mitigate the effects of wells
7 constructed before the effective date of this paragraph [revisor inserts date], that
8 are located in groundwater protection areas. Mitigation may include abandonment
9 of wells, replacement of wells at different locations, and management strategies.
10 Under the mitigation program, the department may order the owner of a well
11 constructed before the effective date of this paragraph [revisor inserts date], that
12 is located in a groundwater protection area to undertake mitigation but only if the
13 department provides funding for the full cost of the mitigation, except that full
14 funding is not required if the department is authorized under ch. 280 to require the
15 well to be abandoned because of issues regarding public health.

16 **(9) GROUNDWATER MANAGEMENT AREAS.** (a) The department shall, by rule,
17 designate 2 groundwater management areas including and surrounding Brown
18 County and Waukesha County consisting of the entire area of each city, village, and
19 town at least a portion of which is within the area in which, on the effective date of
20 this paragraph [revisor inserts date], the groundwater potentiometric surface has
21 been reduced 150 feet or more from the level at which the potentiometric surface
22 would be if no groundwater had been pumped.

23 (b) The department shall assist local governmental units and regional
24 planning commissions in groundwater management areas designated under par. (a)

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1 by providing advice, incentives, and funding for research and planning related to
2 groundwater management.

3 (c) If the groundwater quantity committee created under 2003 Wisconsin Act
4 (this act), section 15 (2) (b) does not issue the report under 2003 Wisconsin Act
5 (this act), section 15 (2) (e) by January 1, 2007, the department shall promulgate
6 rules using its authority under ss. 281.12 (1) and 281.35 to address the management
7 of groundwater in groundwater management areas.

8 **(10) RESEARCH AND MONITORING.** To aid in the administration of this section the
9 department shall, with the advice of the groundwater coordinating council, conduct
10 monitoring and research related to all of the following:

11 (a) Interaction of groundwater and surface water.

12 (b) Characterization of groundwater resources.

13 (c) Strategies for managing water.

14 **SECTION 8.** 281.35 (1) (a) of the statutes is amended to read:

15 281.35 (1) (a) "Approval" means a permit issued under s. 30.18 or an approval
16 under s. 281.17 (1), 2001 stats., or s. 281.34 or 281.41.

17 **SECTION 9.** 281.35 (1) (b) 2. of the statutes is amended to read:

18 281.35 (1) (b) 2. If subd. 1. does not apply, the highest average daily water loss
19 over any 30-day period that is reported to the department or the public service
20 commission under sub. (3) (c) or s. 30.18 (6) (c), 196.98, ~~281.17 (1)~~ 281.34, or 281.41
21 or s. 281.17 (1), 2001 stats.

22 **SECTION 10.** 281.35 (4) (a) 2. of the statutes is amended to read:

23 281.35 (4) (a) 2. A person who is operating a well under an approval issued
24 under s. 281.17 (1) ~~or who is required to obtain an approval under that paragraph~~
25 ~~before constructing or installing a well,~~ 2001 stats.

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1 **SECTION 11.** 281.35 (4) (a) 2m. of the statutes is created to read:

2 281.35 (4) (a) 2m. A person who is operating a well under an approval issued
3 under s. 281.34 or who is required to obtain an approval under that section before
4 constructing a well.

5 **SECTION 12.** 281.35 (4) (b) (intro.) of the statutes is amended to read:

6 281.35 (4) (b) (intro.) Before any person specified in par. (a) may begin a new
7 withdrawal or increase the amount of an existing withdrawal, the person shall apply
8 to the department under s. 30.18, ~~281.17 (1)~~ 281.34, or 281.41 for a new approval or
9 a modification of its existing approval if either of the following conditions applies:

10 **SECTION 13.** 293.65 (3) of the statutes is amended to read:

11 293.65 (3) WITHDRAWAL OF GROUNDWATER; DEWATERING; PERMIT REQUIREMENTS. (a)
12 An approval under s. ~~281.17 (1)~~ 281.34 is required to withdraw groundwater or to
13 dewater mines if the capacity and rate of withdrawal of all wells involved in the
14 withdrawal of groundwater or the dewatering of mines exceeds 100,000 gallons each
15 day. A permit under s. 283.31 is required to discharge pollutants resulting from the
16 dewatering of mines.

17 (b) The department may not issue an approval under s. ~~281.17 (1)~~ 281.34 if the
18 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
19 mines will result in the unreasonable detriment of public or private water supplies
20 or the unreasonable detriment of public rights in the waters of the state. No
21 withdrawal of groundwater or dewatering of mines may be made to the unreasonable
22 detriment of public or private water supplies or the unreasonable detriment of public
23 rights in the waters of the state.

24 **SECTION 14.** 299.05 (2) (b) of the statutes is amended to read:

25 299.05 (2) (b) Approvals under s. ~~281.17 (1)~~ 281.34.

SENATE BILL 524**SECTION 15****SECTION 15. Nonstatutory provisions.**

(1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department of natural resources are increased by 5.0 PR positions on July 1, 2004, to be funded from the appropriation under section 20.370 (4) (cg) of the statutes, as created by this act, for groundwater quantity management.

(2) GROUNDWATER QUANTITY COMMITTEE.

(a) In this subsection:

1. “Groundwater protection area” has the meaning given in section 281.34 (1) (a) of the statutes, as created by this act.

2. “High capacity well” has the meaning given in section 281.34 (1) (b) of the statutes, as created by this act.

3. “Local governmental unit” has the meaning given in section 281.34 (1) (c) of the statutes, as created by this act.

4. “Spring” has the meaning given in section 281.34 (1) (f) of the statutes, as created by this act.

5. “Water loss” has the meaning given in section 281.34 (1) (g) of the statutes, as created by this act.

(b) There is created a groundwater quantity committee consisting of the following members:

1. Four persons appointed by the governor.

2. Four persons appointed by the speaker of the assembly.

3. Four persons appointed by the majority leader of the senate.

4. The secretary of natural resources or the secretary’s designee.

(c) Each appointing authority under paragraph (b) 1. to 3. shall appoint one member representing each of the following interests:

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1 1. Industrial.

2 2. Agricultural.

3 3. Environmental.

4 4. Municipal.

5 (d) The speaker of the assembly and the majority leader of the senate shall each
6 designate one appointee as cochairperson of the groundwater quantity committee.

7 (e) No later than December 31, 2006, the groundwater quantity committee
8 shall report to the standing committees of the legislature with jurisdiction over
9 environmental matters, in the manner provided in section 13.172 (3) of the statutes,
10 recommendations for legislation to address the management of groundwater in the
11 following areas, and administrative rules to implement the legislation:

12 1. Groundwater management areas, as designated under section 281.34 (9) (a)
13 of the statutes, as created by this act.

14 2. Other areas of the state in which the withdrawal of groundwater over the
15 long term adversely affects the availability of water for use or adversely affects water
16 quality due to the effects of drawdown of the groundwater and in which there is a
17 need for a coordinated response among the state, local governmental units, regional
18 planning commissions, and public and private users of groundwater to address the
19 effects on groundwater availability or quality.

20 (f) The groundwater quantity committee shall recommend under paragraph (e)
21 a coordinated strategy for addressing groundwater management issues by affected
22 local governmental units and regional planning commissions with the assistance of
23 the department of natural resources and other state agencies. The committee shall
24 consult with affected local governmental units in the preparation of the
25 recommendations under paragraph (e).

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1 (g) The groundwater quantity committee shall review the implementation of
2 section 281.34 of the statutes, as created by this act. No later than December 31,
3 2007, the groundwater quantity committee shall report to the standing committees
4 of the legislature with jurisdiction over environmental matters, in the manner
5 provided in section 13.172 (3) of the statutes, the results of this review and the
6 committee's recommendations for changes in the regulation of high capacity wells
7 that are in groundwater protection areas, that have a water loss of 95 percent or
8 more, or that have a significant environmental impact on a spring. The committee
9 shall include in the report recommendations for statutory authorization for
10 groundwater management strategies that permit adaptation of the regulation of
11 high capacity wells as relevant information becomes available or groundwater
12 conditions change.

13 (h) The department of natural resources shall staff and provide funding for the
14 groundwater quantity committee.

15 (i) The groundwater quantity committee terminates on December 31, 2007.

16 (3) IDENTIFICATION OF GROUNDWATER PROTECTION AREAS. Notwithstanding section
17 281.34 (1) (a) 3. of the statutes, as created by this act, until the effective date of the
18 rules promulgated under section 281.34 (8) (a) of the statutes, as created by this act,
19 or the first day of the 19th month beginning after the effective date of this subsection,
20 whichever is later, the department shall identify which streams are class I and class
21 II trout streams, other than class I or class II trout streams that are farm drainage
22 ditches with no prior stream history, for the purpose of identifying groundwater
23 protection areas using sections NR 102.10 and 102.11, Wisconsin Administrative
24 Code, the version of the department's publication Wisconsin Trout Streams

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1 published most recently before the effective date of this subsection, and the
2 information available to the department concerning farm drainage ditches.

3 **SECTION 16. Initial applicability.**

4 (1) HIGH CAPACITY WELLS. The treatment of sections 281.17 (1) and 281.34 (2)
5 of the statutes first applies to an application for approval of a high capacity well that
6 is received by the department of natural resources on the day after the effective date
7 of this subsection.

8 (END)