

State of Wisconsin



2003 Assembly Bill 926

Date of enactment: **April 22, 2004**

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2003 WISCONSIN ACT 310

(Vetoed in Part)

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

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

				2003-04	2004-05
20.370	Natural resources, department of				
(4)	WATER				
(cg)	Groundwater quantity administration	PR	A	-0-	-0-
(ch)	Groundwater quantity research	PR	B	-0-	-0-

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

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

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

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

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

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

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

23.11 (5) The department may require an applicant for a permit or statutory approval which the department, by order, may grant, to submit an environmental impact report if the area affected exceeds 40 acres or, the esti-

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

mated cost of the project exceeds \$25,000, or the applicant is requesting approval for a high capacity well described in s. 281.34 (4) (a) 1. to 3.

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

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

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

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

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

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

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

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

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

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

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

(f) "Spring" means an area of concentrated groundwater discharge occurring at the surface of the land that results in a flow of at least one cubic foot per second at least 80 percent of the time.

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

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

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

(2m) TEMPORARY DEWATERING WELLS. The department shall issue a single approval under sub. (2) for all

high capacity wells constructed for one project, as determined by the department, for temporary dewatering of a construction site, including a construction site for a building, road, or utility. The department shall provide for amendments to a project under this subsection. A person applying for approval of high capacity wells for a project under this subsection is only required to pay one \$500 fee.

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

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

1. A high capacity well that is located in a groundwater protection area.

2. A high capacity well with a water loss of more than 95 percent of the amount of water withdrawn.

3. A high capacity well that may have a significant environmental impact on a spring.

(b) If, under sub. (5) (b), (c), or (d), the department requests an environmental impact report under s. 23.11 (5) for a proposed high capacity well, the department may only request information in that report that relates to the decisions that the department makes under this section related to the proposed high capacity well.

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

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

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

(c) *High water loss.* If the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

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

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

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

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

(6) **PREEXISTING HIGH CAPACITY WELLS.** (a) The owner of a high capacity well for which the department issued an approval under s. 281.17 (1), 2001 stats., shall

provide to the department information concerning the location of the well and an annual pumping report.

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

(7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the department modifies or rescinds the approval because the high capacity well or the use of the high capacity well is not in conformance with standards or conditions applicable to the approval of the high capacity well.

(8) **GROUNDWATER PROTECTION AREAS.** (a) The department shall promulgate rules identifying class I, class II, and class III trout streams for the purposes of this section. The department shall identify as a class I trout stream a stream or portion of a stream with a self-sustaining population of trout. The department shall identify as a class II trout stream a stream or portion of a stream that contains a population of trout made up of one or more age groups, above the age one year, in sufficient numbers to indicate substantial survival from one year to the next but in which stocking is necessary to fully utilize the available trout habitat or to sustain the fishery. The department shall identify as a class III trout stream a stream or portion of a stream that has marginal trout habitat with no natural reproduction of trout occurring, requiring annual stocking of trout to provide trout fishing, and generally without carryover of trout from one year to the next. In the rules under this paragraph, the department shall identify any class I, class II, or class III trout stream that is a farm drainage ditch with no prior stream history.

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

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

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

(9) **GROUNDWATER MANAGEMENT AREAS.** (a) The department shall, by rule, designate 2 groundwater man-

agement areas including and surrounding Brown County and Waukesha County consisting of the entire area of each city, village, and town at least a portion of which is within the area in which, on the effective date of this paragraph [revisor inserts date], the groundwater potentiometric surface has been reduced 150 feet or more from the level at which the potentiometric surface would be if no groundwater had been pumped.

(b) The department shall assist local governmental units and regional planning commissions in groundwater management areas designated under par. (a) by providing advice, incentives, and funding for research and planning related to groundwater management.

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

(d) If the department promulgates rules under par. (c) and the rules require mitigation in the same or a similar manner as under sub. (8) (d), the department may not require mitigation for a well under the rules unless the department provides funding for the full cost of the mitigation, except that full funding is not required if the department is authorized under ch. 280 to require the well to be abandoned because of issues regarding public health.

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

- (a) Interaction of groundwater and surface water.
- (b) Characterization of groundwater resources.
- (c) Strategies for managing water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. Nonstatutory provisions.

(2) GROUNDWATER ADVISORY 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 advisory committee consisting of the following members:

1. Three 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.

3g. One member appointed by the minority leader of the assembly.

3r. One member appointed by the minority leader of the senate.

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

(c) Each appointing authority under paragraph (b) 2. and 3. shall appoint one member representing each of the following interests:

- 1. Industrial.
- 2. Agricultural.
- 3. Environmental.
- 4. Municipal.

(cm) The governor shall appoint one member of the groundwater advisory committee representing well drillers. The governor, the minority leader of the assembly, and the minority leader of the senate shall consult regarding the other 4 appointees under paragraph (b) 1., 3g., and 3r. to ensure that one represents each of the interests under paragraph (c) 1. to 4.

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

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

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

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

(f) The groundwater advisory committee shall recommend under paragraph (e) a coordinated strategy for addressing groundwater management issues by affected local governmental units and regional planning commissions with the assistance of the department of natural resources and other state agencies. The committee shall include in its recommendations under paragraph (e) recommendations for a mitigation program for groundwater management areas that is similar to the mitigation pro-

gram in section 281.34 (8) (d) of the statutes, as created by this act. The committee shall also recommend under this paragraph whether areas described in paragraph (e) 2. should be designated as groundwater management areas and, once designated, how and when to remove the designation of an area as a groundwater management area. The committee shall consult with affected local governmental units in the preparation of the recommendations under paragraph (e).

(g) The groundwater advisory committee shall review the implementation of section 281.34 of the statutes, as created by this act. No later than December 31, 2007, the groundwater advisory committee shall report to the standing committees of the legislature with jurisdiction over environmental matters, in the manner provided in section 13.172 (3) of the statutes, the results of this review and the committee's recommendations for changes in the regulation of high capacity wells that are in groundwater protection areas, that have a water loss of 95 percent or more, or that have a significant environmental impact on a spring, and recommendations regarding the definition of spring in section 281.34 (1) (f) of the statutes, as created by this act. The committee shall include in the report recommendations for statutory authorization for groundwater management strategies that permit adaptation of the regulation of high capacity wells as relevant information becomes available or groundwater conditions change. The committee shall include in the report recommendations regarding the potential for the use of general permits for high capacity wells and recommendations regarding the factors to be considered by the department of natural resources in determining whether a high capacity well causes significant environmental impact for the purposes of section 281.34 of the statutes, as created by this act.

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

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

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

section, and the information available to the department concerning farm drainage ditches.

SECTION 16. Initial applicability.

(1) HIGH CAPACITY WELLS. The treatment of sections

281.17 (1) and 281.34 (2) of the statutes first applies to an application for approval of a high capacity well that is received by the department of natural resources on the day after the effective date of this subsection.

