

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 25, 2004

This is a preliminary version of the groundwater quantity proposal. It does not yet have appropriation amounts for the appropriations that are limited to the amounts in the schedule. It also does not indicate the number of positions authorized for DNR.

This draft creates a program revenue continuing appropriation for groundwater mitigation and local assistance. Please note that we do not include chapter 20 schedule entries for program revenue continuing appropriations because the amounts in the schedule have no legal effect. Let me know if you want an annual or biennial appropriation instead.

As requested, I have replicated in proposed s. 281.34 (5) the list of the kinds of conditions in current s. 281.17 (1) (b) (intro.) that DNR may impose on wells. My understanding is that it is not the intent of this proposal to provide that DNR may only impose the kinds of conditions on the list. It is important to realize, therefore, that courts sometimes use this kind of list to restrict the authority of governmental agencies. This is what the LRB *Drafting Manual* says on the subject:

7.08 ENUMERATION PROVISION. Avoid specific enumerations that are, in fact, examples and are not all-inclusive. They may undercut a statute's force by raising a question as to whether the statute applies to examples not enumerated or whether the statute applies only to examples of the same general type enumerated. For an example of a specific enumeration that may have undercut a statute's intended force, see *Hatheway v. Gannett Satellite Network*, 157 Wis. 2d 395 (Ct. App. 1990). The court relied on two related canons of statutory construction -- *eiusdem generis*, which holds that, when a general definition is followed by a list of specifics, for example, "place of business ..., hotel, tavern, etc.," the definition is limited to other examples of the same kind, class, or nature as the items listed; and *noscitur a sociis*, which holds that a word is known by its associates. . . . For a discussion of the canons of statutory construction that come into play in interpreting an enumeration, see *Sutherland Stat Const* (5th Ed), ss. 47.15 to 47.25.

For this preliminary draft, I have left the definition of "local governmental unit" as in the proposed definition that John Stolzenberg and Mark Patronsky have previously seen, except for removing regional planning commissions and "other local public entities" operating a water system.

Please contact me with any questions or redraft instructions.

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