



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4302/P1

RCT:.....

WJ

Wednesday, 2/25, if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Note

Lps: Please
check autrefs.
(A), (AI), (NI), (NIA), (NIB), (N2)

Gen

1 AN ACT ^{Gen}...; relating to: regulation of high capacity wells, notification of well
2 construction, groundwater quantity management, ~~and~~ granting rule-making
3 authority and making appropriations

Analysis by the Legislative Reference Bureau

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

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

6 2003-04 2004-05

7 20.370 Natural resources, department of

8 (4) WATER

2003-04 2004-05

1	(cg) Groundwater quantity adminis-				
2	tration ✓	PR	A	-0-	-0-
3	(ch) Groundwater quantity research	PR	B	-0-	-0-

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

5 20.370 (4) (cg) *Groundwater quantity administration.* From the general fund,
 6 from the moneys received under s. 281.34, the amounts in the schedule for the
 7 administration of the program under s. 281.34.

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

9 20.370 (4) (ch) *Groundwater quantity research.* Biennially, from the general
 10 fund, from the moneys received under s. 281.34, the amounts in the schedule for
 11 groundwater research and monitoring under s. 281.34 (10).

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

13 20.370 (6) (eg) *Groundwater mitigation and local assistance.* All moneys
 14 received under s. 281.34 not appropriated under sub. (4) (cg) or (ch) for mitigation
 15 under s. 281.34 (8) (d) and funding to local governmental units under s. 281.34 (9)
 16 (b). ~~shall be credited to this appropriation.~~

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

18 23.11 (5) The department may require an applicant for a permit or statutory
 19 approval which the department, by order, may grant, to submit an environmental
 20 impact report if the area affected exceeds 40 acres or, the estimated cost of the project
 21 exceeds \$25,000, or the applicant is requesting approval under s. 281.43 for a high
 22 capacity well.

History: 1971 c. 273; 1983 a. 524.

23 **SECTION 6.** 281.17 (1) of the statutes is repealed.

1 **SECTION 7.** 281.34[✓] of the statutes is created to read:

2 **281.34 Groundwater withdrawals.** (1) DEFINITIONS. In this section[✓]:

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

5 1. An outstanding resource water identified under s. 281.15[✓] that is not a trout
6 stream.

7 2. An exceptional resource water identified under s. 281.15[✓] that is not a trout
8 stream.

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

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

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

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

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

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

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

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

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

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

18 (4) ENVIRONMENTAL REVIEW. The department shall review an application for
19 approval of any of the following using the environmental review process in its rules
20 promulgated under s. 1.11 applicable to an action that has the potential to cause
21 significant environmental effects and that may involve unresolved conflicts in the
22 use of available resources:

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

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

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

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

10 (b) *Groundwater protection area*. 1. Except as provided in subd. 2., if the
11 department determines, under the environmental review process in sub. (4), that an
12 environmental impact report under s. 23.11 (5) or an environmental impact
13 statement under s. 1.11 (2) must be prepared for a proposed high capacity well
14 located in a groundwater protection area, the department may not approve the high
15 capacity well unless it includes in the approval conditions, which may include
16 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
17 ensure that the high capacity well does not cause significant environmental impact.

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

1 (c) *High water loss.* If the department determines, under the environmental
2 review process in sub. (4), that an environmental impact report under s. 23.11 (5) or
3 an environmental impact statement under s. 1.11 (2) must be prepared for a proposed
4 high capacity well with a water loss of more than 95 percent of the amount of water
5 withdrawn, the department may not approve the high capacity well unless it
6 includes in the approval conditions, which may include conditions as to location,
7 depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high
8 capacity well does not cause significant environmental impact.

9 (d) *Impact on a spring.* 1. Except as provided in sub. 2., if the department
10 determines, under the environmental review process in sub. (4), that an
11 environmental impact report under s. 23.11 (5) or an environmental impact
12 statement under s. 1.11 (2) must be prepared for a proposed high capacity well that
13 may have a significant environmental impact on a spring, the department may not
14 approve the high capacity well unless it includes in the approval conditions, which
15 may include conditions as to location, depth, pumping capacity, rate of flow, and
16 ultimate use, that ensure that the high capacity well does not cause significant
17 environmental impact.

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

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

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

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

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

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

18 (8) GROUNDWATER PROTECTION AREAS. (a) The department shall promulgate
19 rules identifying class I and class II trout streams for the purposes of this section.
20 The department shall identify as a class I trout stream a stream or portion of a stream
21 with a self-sustaining population of trout. The department shall identify as a class
22 II trout stream a stream or portion of a stream that contains a population of trout
23 made up of one or more age groups, above the age one year, in sufficient numbers to
24 indicate substantial survival from one year to the next but in which stocking is
25 necessary to fully utilize the available trout habitat or to sustain the fishery. In the

1 rules under this paragraph, the department shall identify any class I or class II trout
2 stream that is a farm drainage ditch with no prior stream history.

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

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

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

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

A.R. (A) 15 (2) (b) A.R. (N1) auto ref. (A)

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

5 (c) If the groundwater quantity committee created under 2003 Wisconsin Act
6 (this act), section ^{A.R. (A1)} does not issue the report under 2003 Wisconsin Act (this
7 act), section ^{A.R. (N2)} ^{15 (2) (c) auto ref. (A)} by January 1, 2007, the department shall promulgate rules using its
8 authority under ss. 281.12 (1) and 281.35 to address the management of
9 groundwater in groundwater management areas.

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

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

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

17 281.35 (1) (a) "Approval" means a permit issued under s. 30.18 or an approval
18 under s. 281.17 (1), 2001 stats., or s. 281.34 or 281.41.

19 History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.
20 SECTION 9. 281.35 (1) (b) 2. of the statutes is amended to read:

21 281.35 (1) (b) 2. If subd. 1. does not apply, the highest average daily water loss
22 over any 30-day period that is reported to the department or the public service
23 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.

24 History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.
SECTION 10. 281.35 (4) (a) 2. of the statutes is amended to read:

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

4 History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.

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

5 281.35 (4) (a) 2m. A person who is operating a well under an approval issued
 6 under s. 281.34 or who is required to obtain an approval under that section before
 7 constructing a well.

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

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

13 History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672.

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

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

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

1 detriment of public or private water supplies or the unreasonable detriment of public
2 rights in the waters of the state.

3 History: 1977 c. 420; 1979 c. 221; 1981 c. 86 ss. 38 to 54, 64; Stats. 1981 s. 144.855; 1985 a. 60 s. 24; 1987 a. 374; 1993 a. 16; 1995 a. 227 s. 783; Stats. 1995 s. 293.65.

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

4 299.05 (2) (b) Approvals under s. ~~281.17 (1)~~ 281.34.

5 History: 1997 a. 27, 301; 2003 a. ^{A.R. (A)}

SECTION 15. Nonstatutory provisions.

6 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
7 of natural resources are increased by ?? PR positions on July 1, 2004, to be funded
8 from the appropriation under ^{section} ~~(s)~~ 20.370 (4) (cg), ^{of the statutes} as created by this act, for
9 groundwater quantity management.

10 ^{A.R. (A)} (2) GROUNDWATER QUANTITY COMMITTEE.

11 (a) In this subsection:

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

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

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

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

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

22 ^{A.R. (N1)} (b) There is created a groundwater quantity committee consisting of the
23 following members:

24 ^{A.R. (N1A)} 1. Four persons appointed by the governor.

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

2 ^{AR.}
(N1B) → 3. Four persons appointed by the majority leader of the senate.

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

4 **(4)** (c) Each appointing authority under paragraph ^{A.R. (N1) b} ^(A.R. N1A) ^(A.R. N1B) 1. to 3. shall appoint one
5 member representing each of the following interests:

6 1. Industrial.

7 2. Agricultural.

8 3. Environmental.

9 4. Municipal.

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

12 ^{A.R. (N2)} → (e) No later than December 31, 2006, the groundwater quantity committee
13 shall report to the standing committees of the legislature with jurisdiction over
14 environmental matters, in the manner provided in section 13.172 (3) [✓] of the statutes,
15 recommendations for legislation to address the management of groundwater in the
16 following areas, and administrative rules to implement the legislation:

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

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

A.R. (12)

1 (f) The groundwater quantity committee shall recommend under paragraph (e)
2 a coordinated strategy for addressing groundwater management issues by affected
3 local governmental units and regional planning commissions with the assistance of
4 the department of natural resources and other state agencies. The committee shall
5 consult with affected local governmental units in the preparation of the
6 recommendations under paragraph (e).
A.R. (12)

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

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

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

21 (3) IDENTIFICATION OF GROUNDWATER PROTECTION AREAS. Notwithstanding section
22 281.34 (1) (a) 3. of the statutes, as created by this act, until the effective date of the
23 rules promulgated under section 281.34 (8) (a) of the statutes, as created by this act,
24 or the first day of the 19th month beginning after the effective date of this subsection,
25 whichever is later, the department shall identify which streams are class I and class

1 II trout streams, other than ^g a class I or class II trout stream ^{s that} are farm drainage
2 ditches with no prior stream history, for the purpose of identifying groundwater
3 protection areas using sections NR 102.10 ✓ and 102.11 ✓, Wisconsin Administrative
4 Code, the version of the department's publication Wisconsin Trout Streams ✓
5 published most recently before the effective date of this subsection ✓, and the
6 information available to the department concerning farm drainage ditches.

7 **SECTION 16. Initial applicability.**

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

12 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4302/P1.dn

RCT.../...

WLj

authority of governmental

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 restrict DNR to the kinds of conditions on the list. It is important to realize, therefore, that courts sometimes use this kind of list to restrict the actions of agencies on the basis of statutory construction. This is what the Drafting Manual says on the subject!

authority / *provide that* / *may only impose*

LRB

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

*

panel of other local public entities operating a water system

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4302/P1dn
RCT:wlj:pg

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.

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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 Patronskey 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.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Johnson, Dan (Legislature)
Sent: Friday, February 27, 2004 10:28 AM
To: Tradewell, Becky
Subject: LRB 4302/P1 to /1 and DNR revisions

Importance: High

Hi Becky,

In order for us to keep this groundwater bill moving, we have decided that making it a /1 rather than /P1 is preferred. Thus, you may zero out the appropriations and set a place marker of 5 staff positions for the DNR. In conjunction with this request, please make the following revisions to the bill:

- ✓1. Page 3, line 1: substitute "s. 281.34" for "s. 281.43".
- ✓2. Page 12, lines: 5 to 8: renumber the subdivisions, beginning with 1.
- ✓3. Page 4, line 25: after "resources", insert: "or 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". [This describes a Type III action under ch. NR 150.]
4. Page 5, lines 15 and 16 and page 6, lines 5, 6, 14 and 15: delete "or an environmental impact statement under s. 1.11 (2)". [This removes the EIS trigger from the standards provisions.]

Thank you and if you have any questions, please call me or you may discuss with John Stolzenberg or Mark Patronskey. If it is possible to have this completed by the end of today, that would be really appreciated.

Dan Johnson
State Senator Neal Kedzie
11th Senate District
(608) 266-2635



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4302/1

RCT:wlj:pg

Wanted 3:30 today

VMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

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

~~This is a preliminary draft. An analysis will be provided in a later version.~~
For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

Analysis
insert

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

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

				2003-04	2004-05
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1

2 **20.370 Natural resources, department of**

3 (4) WATER

4 (cg) Groundwater quantity adminis-

5 tration

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A

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6 (ch) Groundwater quantity research

PR

B

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

8 20.370 (4) (cg) *Groundwater quantity administration.* From the general fund,
9 from the moneys received under s. 281.34, the amounts in the schedule for the
10 administration of the program under s. 281.34.

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

12 20.370 (4) (ch) *Groundwater quantity research.* Biennially, from the general
13 fund, from the moneys received under s. 281.34, the amounts in the schedule for
14 groundwater research and monitoring under s. 281.34 (10).

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

16 20.370 (6) (eg) *Groundwater mitigation and local assistance.* All moneys
17 received under s. 281.34 not appropriated under sub. (4) (cg) or (ch) for mitigation
18 under s. 281.34 (8) (d) and funding to local governmental units under s. 281.34 (9)
19 (b).

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

21 23.11 (5) The department may require an applicant for a permit or statutory
22 approval which the department, by order, may grant, to submit an environmental
23 impact report if the area affected exceeds 40 acres or, the estimated cost of the project

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exceeds \$25,000, or the applicant is requesting approval under s. 281.16 for a high capacity well.

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

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

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

6

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

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

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

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

13

14

(8) (a).

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(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.

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(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.

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(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.

24

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

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

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

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

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

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

21 (4) ENVIRONMENTAL REVIEW. The department shall review an application for
22 approval of any of the following using the environmental review process in its rules
23 promulgated under s. 1.11 applicable to an action that has the potential to cause
24 significant environmental effects and that may involve unresolved conflicts in the
25 use of available resources.

Insert 4-25

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

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

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

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

13 (b) *Groundwater protection area*. 1. Except as provided in subd. 2., if the
14 department determines, under the environmental review process in sub. (4), that an
15 environmental impact report under s. 23.11 (5) ~~or an environmental impact~~
16 ~~statement under s. 1.11 (2)~~ must be prepared for a proposed high capacity well
17 located in a groundwater protection area, the department may not approve the high
18 capacity well unless it includes in the approval conditions, which may include
19 conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that
20 ensure that the high capacity well does not cause significant environmental impact.

21 2. Subdivision 1. does not apply to a proposed high capacity well that is located
22 in a groundwater protection area and that is a water supply for a public utility
23 engaged in supplying water to or for the public, if the department determines that
24 there is no other reasonable alternative location for a well and includes in the
25 approval conditions, which may include conditions as to location, depth, pumping

1 capacity, rate of flow, and ultimate use, that ensure that the environmental impact
2 of the well is balanced by the public benefit of the well related to public health and
3 safety.

4 (c) *High water loss.* If the department determines, under the environmental
5 review process in sub. (4), that an environmental impact report under s. 23.11 (5) ~~or~~
6 ~~an environmental impact statement under s. 1.11 (2)~~ must be prepared for a proposed
7 high capacity well with a water loss of more than 95 percent of the amount of water
8 withdrawn, the department may not approve the high capacity well unless it
9 includes in the approval conditions, which may include conditions as to location,
10 depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high
11 capacity well does not cause significant environmental impact.

12 (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the department
13 determines, under the environmental review process in sub. (4), that an
14 environmental impact report under s. 23.11 (5) ~~or an environmental impact~~
15 ~~statement under s. 1.11 (2)~~ must be prepared for a proposed high capacity well that
16 may have a significant environmental impact on a spring, the department may not
17 approve the high capacity well unless it includes in the approval conditions, which
18 may include conditions as to location, depth, pumping capacity, rate of flow, and
19 ultimate use, that ensure that the high capacity well does not cause significant
20 environmental impact.

21 2. Subdivision 1. does not apply to a proposed high capacity well that may have
22 a significant environmental impact on a spring and that is a water supply for a public
23 utility engaged in supplying water to or for the public, if the department determines
24 that there is no other reasonable alternative location for a well and includes in the
25 approval conditions, which may include conditions as to location, depth, pumping

1 capacity, rate of flow, and ultimate use, that ensure that the environmental impact
2 of the well is balanced by the public benefit of the well related to public health and
3 safety.

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

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

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

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

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

21 (8) GROUNDWATER PROTECTION AREAS. (a) The department shall promulgate
22 rules identifying class I and class II trout streams for the purposes of this section.
23 The department shall identify as a class I trout stream a stream or portion of a stream
24 with a self-sustaining population of trout. The department shall identify as a class
25 II trout stream a stream or portion of a stream that contains a population of trout

1 made up of one or more age groups, above the age one year, in sufficient numbers to
2 indicate substantial survival from one year to the next but in which stocking is
3 necessary to fully utilize the available trout habitat or to sustain the fishery. In the
4 rules under this paragraph, the department shall identify any class I or class II trout
5 stream that is a farm drainage ditch with no prior stream history.

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

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

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

21 (9) GROUNDWATER MANAGEMENT AREAS. (a) The department shall, by rule,
22 designate 2 groundwater management areas including and surrounding Brown
23 County and Waukesha County consisting of the entire area of each city, village, and
24 town at least a portion of which is within the area in which, on the effective date of
25 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 quantity 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.

(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.

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

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

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

6 281.35 (4) (a) 2m. A person who is operating a well under an approval issued
7 under s. 281.34 or who is required to obtain an approval under that section before
8 constructing a well.

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

10 281.35 (4) (b) (intro.) Before any person specified in par. (a) may begin a new
11 withdrawal or increase the amount of an existing withdrawal, the person shall apply
12 to the department under s. 30.18, ~~281.17 (1)~~ 281.34, or 281.41 for a new approval or
13 a modification of its existing approval if either of the following conditions applies:

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

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

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

1 detriment of public or private water supplies or the unreasonable detriment of public
2 rights in the waters of the state.

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

4 299.05 (2) (b) Approvals under s. ~~281.17 (1)~~ 281.34.

5 **SECTION 15. Nonstatutory provisions.**

6 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
7 of natural resources are increased by ⁵⁰ ~~20~~ PR positions on July 1, 2004, to be funded
8 from the appropriation under section 20.370 (4) (cg) of the statutes, as created by this
9 act, for groundwater quantity management.

10 (2) GROUNDWATER QUANTITY COMMITTEE.

11 (a) In this subsection:

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

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

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

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

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

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

24 1. Four persons appointed by the governor.

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

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

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

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

5 12. Industrial.

6 29. Agricultural.

7 34. Environmental.

8 45. Municipal.

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

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

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

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

24 (f) The groundwater quantity committee shall recommend under paragraph (e)
25 a coordinated strategy for addressing groundwater management issues by affected

1 local governmental units and regional planning commissions with the assistance of
2 the department of natural resources and other state agencies. The committee shall
3 consult with affected local governmental units in the preparation of the
4 recommendations under paragraph (e).

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

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

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

20 (3) IDENTIFICATION OF GROUNDWATER PROTECTION AREAS. Notwithstanding section
21 281.34 (1) (a) 3. of the statutes, as created by this act, until the effective date of the
22 rules promulgated under section 281.34 (8) (a) of the statutes, as created by this act,
23 or the first day of the 19th month beginning after the effective date of this subsection,
24 whichever is later, the department shall identify which streams are class I and class
25 II trout streams, other than class I or class II trout streams that are farm drainage

1 ditches with no prior stream history, for the purpose of identifying groundwater
2 protection areas using sections NR 102.10 and 102.11, Wisconsin Administrative
3 Code, the version of the department's publication Wisconsin Trout Streams
4 published most recently before the effective date of this subsection, and the
5 information available to the department concerning farm drainage ditches.

6 **SECTION 16. Initial applicability.**

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

11 (END)

Analysis insert

High capacity wells generally

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 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 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.

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 the 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 designee. The bill requires the Groundwater Quantity Committee to report to the legislature, no later than December 31, 2006, recommendations for legislation to address groundwater issues in groundwater management areas and other areas in the state in which the withdrawal of groundwater adversely affects the availability of groundwater for use or adversely affects water quality. If the Groundwater Quantity Committee fails to issue the report on time, the bill requires DNR to promulgate rules to address the management of groundwater in groundwater management areas using authority that DNR has under current law.

The bill also requires the Groundwater Quantity Committee to review the implementation of the provisions of this bill and to report to the legislature, no later than December 31, 2007, the results of this review and recommendations for changes in the regulation of high capacity wells.

Notification of well construction, fees

The bill requires a landowner to notify DNR of the location of a well that is not a high capacity well before construction of the well begins. The bill requires a landowner providing this notice to pay a fee of \$50. ✓

The bill requires a person applying for approval of a high capacity well to pay a fee of \$500. ✓

Research and monitoring

The bill requires DNR to conduct research and monitoring related to the interaction of groundwater and surface water, characterization of groundwater resources, and strategies for managing water.

No ff

or 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

Emery, Lynn

From: Johnson, Dan (Legislature)
Sent: Tuesday, March 02, 2004 8:50 AM
To: LRB.Legal
Subject: Draft review: LRB 03-4302/1 Topic: High capacity wells

It has been requested by <Johnson, Dan (Legislature)> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4302/1 Topic: High capacity wells