



2013 SENATE BILL 302

September 18, 2013 - Introduced by Senators KEDZIE, GUDEX and TIFFANY, cosponsored by Representatives MURSAU, A. OTT, LEMAHIEU, RIPP, AUGUST, THIESFELDT, BERNIER, TAUCHEN and BROOKS. Referred to Natural Resources.

1 **AN ACT** *to renumber* 281.34 (1) (a); *to renumber and amend* 281.34 (2); *to*
2 *amend* 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b) 1., 281.34 (5) (d) 1.,
3 281.34 (5) (dm), 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s) (dm); and *to*
4 **create** 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (er), 281.34 (2) (c), 281.34 (2c),
5 281.34 (2g), 281.34 (4) (am), 281.34 (5) (dg) and 281.34 (11) of the statutes;
6 **relating to:** high capacity well approvals.

Analysis by the Legislative Reference Bureau

Current law requires a person to obtain approval from the Department of Natural Resources (DNR) before constructing a high capacity well. Under current law, a high capacity well is a well that, together with all other wells on the same property, has the capacity to withdraw more than 100,000 gallons of water per day.

This bill modifies current law by specifying the circumstances under which a person must obtain a high capacity well approval. Under the bill, an approval is required before constructing a proposed high capacity well or reconstructing or replacing an existing high capacity well. The bill defines a proposed high capacity well as a new high capacity well that will result in a new withdrawal of groundwater.

This bill also provides that within 65 business days from the date on which DNR receives a complete application for approval for construction of a proposed high capacity well, or for reconstruction or replacement of an existing high capacity well, it must approve or deny the application. If DNR denies the application, the denial

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must include the reasons for the denial. If DNR fails to approve or deny the application within the deadline established in the bill, then the application is considered approved.

Under current law, DNR is required to impose conditions on a high capacity well under certain circumstances. For example, if DNR determines that a proposed high capacity well may impair the water supply of a public utility, DNR may not approve the high capacity well unless it includes conditions that will ensure that the water supply of the public utility will not be impaired. This bill provides that DNR may not impose conditions, other than those required in current law, in an approval for a proposed high capacity well or for the reconstruction of an existing high capacity well other than conditions relating to location, depth, pumping capacity, and rate of flow.

This bill provides that DNR may issue an approval for the construction of a replacement high capacity well only if the replacement well is drilled to substantially the same depth as the existing high capacity well, it is located within a 75-foot radius of the existing high capacity well, and it will be constructed in accordance with DNR standards that apply on the date on which construction of the replacement high capacity well begins. The bill also prohibits DNR from including conditions in an approval for a replacement high capacity well that are different than the conditions in the approval for the high capacity well being replaced.

This bill also provides that if a person who owns property on which a high capacity well is located transfers the property, the owner may transfer the approval for the high capacity well to the person to whom the land is transferred without review by DNR and without having to pay a fee.

Under current law, DNR must review certain high capacity well approval applications using an environmental review process specified in rules promulgated by DNR. DNR must use this process in reviewing an application for approval of a high capacity well that is located in a groundwater protection area, that has a water loss of more than 95 percent of the amount of water withdrawn, or that has a significant environmental impact on a spring. This bill expressly limits DNR's authority so that it may use the environmental review process only when reviewing an application for approval of a proposed high capacity well.

The bill also provides that DNR's rule-making authority with regard to approvals for high capacity wells is expressly limited to the rule-making authority granted to DNR under current law. In addition, the bill provides that if DNR issued an approval to an owner of a high capacity well before July 6, 2011, and thereafter, but before the date on which the provisions of this bill take effect, and added new or more restrictive conditions to that approval, then DNR must, upon the owner's request, remove the new or more restrictive conditions from the approval unless the law specifically requires the conditions to be included.

For further information see the *state* 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:

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1 **SECTION 1.** 281.34 (1) (a) of the statutes is renumbered 281.34 (1) (am).

2 **SECTION 2.** 281.34 (1) (ag) of the statutes is created to read:

3 281.34 (1) (ag) “Existing high capacity well” means a high capacity well that
4 has been approved by the department under this section.

5 **SECTION 3.** 281.34 (1) (eg) of the statutes is created to read:

6 281.34 (1) (eg) “Proposed high capacity well” means a new high capacity well
7 that will result in a new withdrawal of groundwater. “Proposed high capacity well”
8 does not include a high capacity well constructed to replace an existing high capacity
9 well.

10 **SECTION 4.** 281.34 (1) (er) of the statutes is created to read:

11 281.34 (1) (er) “Reconstruct” means to modify original construction and
12 includes deepening, lining, installing or replacing a screen, and underreaming.

13 **SECTION 5.** 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
14 to read:

15 281.34 (2) (a) An owner shall apply to the department for approval before
16 beginning construction of a proposed high capacity well ~~begins~~ or before beginning
17 reconstruction or replacement of an existing high capacity well.

18 (b) No person may construct a proposed high capacity well, replace or
19 reconstruct an existing high capacity well, or withdraw water from a high capacity
20 well without the approval of the department under this section or under s. 281.17 (1),
21 2001 stats.

22 (c) An owner applying for approval under this subsection shall pay a fee of \$500.

23 **SECTION 6.** 281.34 (2) (c) of the statutes is created to read:

24 281.34 (2) (c) 1. Within 65 business days from the date on which the department
25 receives a complete application for an approval under par. (a), the department shall

SENATE BILL 302**SECTION 6**

1 approve or deny the application and shall notify the applicant of the decision in
2 writing. If the department denies the application, the notification shall include the
3 reasons for the denial.

4 2. Failure of the department to approve or deny an application under this
5 subsection within 65 business days shall constitute the department's approval of the
6 application. Upon the demand of the applicant, the department shall issue a written
7 approval to the applicant.

8 **SECTION 7.** 281.34 (2c) of the statutes is created to read:

9 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. The department may issue an
10 approval to construct a high capacity well to replace an existing high capacity well
11 if the replacement high capacity well will be drilled to substantially the same depth
12 as the existing high capacity well, will be located within a 75-foot radius of the
13 existing high capacity well, and will be constructed in accordance with department
14 standards that apply to the construction of proposed high capacity wells on the date
15 that construction of the replacement high capacity well begins.

16 **SECTION 8.** 281.34 (2g) of the statutes is created to read:

17 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
18 a high capacity well is located, and if the owner holds an approval issued under sub.
19 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may
20 transfer the approval to the person to whom the land is transferred without
21 department review. The department may not impose a fee for the transfer. The
22 owner shall notify the department of the transfer on a form prescribed by the
23 department.

24 **SECTION 9.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

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1 281.34 (4) (a) (intro.) The department shall review an application for approval
2 of any of the following using the environmental review process in its rules
3 promulgated under s. 1.11, subject to par. (am):

4 **SECTION 10.** 281.34 (4) (am) of the statutes is created to read:

5 281.34 (4) (am) In its review of an application for approval under par. (a), the
6 department's use of the environmental review process in its rules promulgated under
7 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
8 well.

9 **SECTION 11.** 281.34 (5) (a) of the statutes is amended to read:

10 281.34 (5) (a) *Public water supply.* If the department determines that a
11 proposed high capacity well may impair the water supply of a public utility engaged
12 in furnishing water to or for the public, the department may not approve the
13 proposed high capacity well unless it is able to include and includes in the approval
14 conditions, which may include conditions as to location, depth, pumping capacity,
15 rate of flow, and ultimate use, that will ensure that the water supply of the public
16 utility will not be impaired.

17 **SECTION 12.** 281.34 (5) (b) 1. of the statutes is amended to read:

18 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
19 under the environmental review process in sub. (4), that an environmental impact
20 report under s. 23.11 (5) must be prepared for a proposed high capacity well located
21 in a groundwater protection area, the department may not approve the proposed
22 high capacity well unless it is able to include and includes in the approval conditions,
23 which may include conditions as to location, depth, pumping capacity, rate of flow,
24 and ultimate use, that ensure that the proposed high capacity well does not cause
25 significant environmental impact to a groundwater protection area.

SENATE BILL 302**SECTION 13**

1 **SECTION 13.** 281.34 (5) (d) 1. of the statutes is amended to read:

2 281.34 (5) (d) 1. Except as provided in subd. 2., if the department determines,
3 under the environmental review process in sub. (4), that an environmental impact
4 report under s. 23.11 (5) must be prepared for a proposed high capacity well that may
5 have a significant environmental impact on a spring, the department may not
6 approve the proposed high capacity well unless it is able to include and includes in
7 the approval conditions, which may include conditions as to location, depth, pumping
8 capacity, rate of flow, and ultimate use, that ensure that the proposed high capacity
9 well does not cause significant environmental impact to a spring.

10 **SECTION 14.** 281.34 (5) (dg) of the statutes is created to read:

11 281.34 (5) (dg) *Limitation on approval conditions.* 1. The department may
12 include conditions in an approval to construct a proposed high capacity well or to
13 reconstruct an existing high capacity well, but only as to location, depth, pumping
14 capacity, and rate of flow, unless the department is authorized to include other
15 conditions in an approval under this subsection.

16 2. The department may not include conditions in an approval to replace an
17 existing high capacity well that are different than the conditions in the approval for
18 the existing high capacity well unless any of the following applies:

19 a. The replacement high capacity well is located in a groundwater protection
20 area and the existing high capacity well is not located in a groundwater protection
21 area.

22 b. The department determines that the replacement well may have a
23 significant environmental impact on a spring.

24 **SECTION 15.** 281.34 (5) (dm) of the statutes is amended to read:

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1 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
2 is covered by an approved water supply service area plan under s. 281.348, the
3 department may not approve the proposed high capacity well unless it is consistent
4 with that plan.

5 **SECTION 16.** 281.34 (7) of the statutes is amended to read:

6 281.34 (7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The
7 approval of a high capacity well issued under this section or under s. 281.17 (1), 2001
8 stats., remains in effect unless the department modifies or rescinds the approval
9 because the high capacity well or the use of the high capacity well is ~~not in~~
10 ~~conformance with standards or~~ violates the conditions applicable to in the approval
11 of the high capacity well.

12 **SECTION 17.** 281.34 (11) of the statutes is created to read:

13 281.34 (11) **RULE-MAKING AUTHORITY.** The department's authority to
14 promulgate rules under this section, other than rules governing construction
15 standards for high capacity wells, is expressly limited to the authority granted under
16 subs. (6) (b), (8) (a), and (9) (a) and (c).

17 **SECTION 18.** 281.344 (4s) (dm) of the statutes is amended to read:

18 281.344 (4s) (dm) *Requiring individual permit.* The department may require
19 a person who is making or proposes to make a withdrawal that averages 100,000
20 gallons per day or more in any 30-day period, but that does not equal at least
21 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
22 under sub. (5) if the withdrawal is located in a groundwater protection area, as
23 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
24 under s. 281.34 (9).

25 **SECTION 19.** 281.346 (4s) (dm) of the statutes is amended to read:

