

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P3ins.
RNK:.....

INSERT ANALYSIS

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 that results in a new withdrawal of groundwater, before engaging in reconstruction of an existing high capacity well, or before constructing a high capacity well intended to replace another high capacity well.

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, for reconstruction of an existing high capacity well, or for construction of a replacement high capacity well, it must approve or deny the application. If DNR denies the application, the denial 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 ~~approval~~ is considered approved.

-application 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 a high capacity 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. Current law requires the use of the environmental review process in DNR's review of an application for 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 may have a significant environmental impact on a spring. This

bill provides that DNR's use of the environmental review process when reviewing any high capacity well approval application is limited to only applications 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 ~~on~~ before July 1, 2011, ~~and~~ thereafter, but before the date on which the provisions of this bill take effect, 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.

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"and"

INSERT 6-14

- 1 ^y **SECTION 1.** 281.34 (5) (e) 1. of the statutes is amended to read:
- 2 281.34 **(5)** (e) 1. If s. 281.35 (4) applies to a proposed high capacity well, the
- 3 department shall include in the approval conditions that ensure that the high
- 4 capacity well complies with s. 281.35 (4) to (6).

History: 2003 a. 310; 2007 a. 227; 2009 a. 28.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P3dn

RNK.1:...

leev

date

This redraft remains in preliminary form. As you review this redraft, please note that this version of the draft (and previous versions) provides that approval from DNR is required for reconstruction of an existing high capacity well. See s. 281.34 (2) (a) 2., as created in the draft. The definition under the draft of "existing high capacity well" specifically excludes a replacement high capacity well or a reconstructed high capacity well. That means that no approval is required under this draft to reconstruct a high capacity well that was previously reconstructed or to reconstruct a high capacity well that is a replacement high capacity well. Is this consistent with your intent?

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/P3dn
RNK:eev:jm

June 10, 2013

This redraft remains in preliminary form. As you review this redraft, please note that this version of the draft (and previous versions) provide that approval from DNR is required for reconstruction of an existing high capacity well. See s. 281.34 (2) (a) 2., as created in the draft. The definition under the draft of "existing high capacity well" specifically excludes a replacement high capacity well or a reconstructed high capacity well. That means that no approval is required under this draft to reconstruct a high capacity well that was previously reconstructed or to reconstruct a high capacity well that is a replacement high capacity well. Is this consistent with your intent?

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Johnson, Dan
Sent: Monday, June 10, 2013 3:34 PM
To: Kite, Robin
Subject: RE: LRB 0823

Hi Robin,

I have the P3 version of LRB 0823, but am confused by the drafter's note. It says no approval is required for a reconstructed well or replacement well, but after reading the bill, it appears that such approval is required. I believe we wish to maintain that both reconstructed and replacement wells require approval by the DNR. Again, when I read the bill, I see such a requirement, thus I'm confused by the drafter's note stating the opposite.

Can you clarify?

Thank...

Dan

From: Kite, Robin
Sent: Thursday, June 06, 2013 9:14 AM
To: Johnson, Dan
Subject: RE: LRB 0823

I'll give you a call this afternoon. Thanks.

Robin

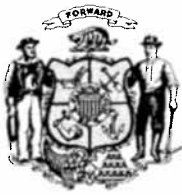
From: Johnson, Dan
Sent: Thursday, June 06, 2013 9:03 AM
To: Kite, Robin
Subject: LRB 0823

Hi Robin,

Just checking on the status of LRB 0823, high cap wells. I know you mentioned an inconsistency you wanted to speak with me about, so if you have some time, I am free today in the afternoon and most of the day on Friday.

Thanks!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635



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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0823/P30
RNK:eev:jm
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stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2013 BILL

TR
6/11

regen

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 (5) (e) 1., 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s)
4 (dm); and *to create* 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (eq), 281.34 (1)
5 (er), 281.34 (1) (et), 281.34 (2) (a) 1., 281.34 (2) (a) 2., 281.34 (2) (a) 3., 281.34
6 (2) (c), 281.34 (2c), 281.34 (2g), 281.34 (4) (am) and 281.34 (11) of the statutes;
7 **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 that results in a new withdrawal of groundwater, before engaging in reconstruction of ~~an existing~~ high capacity well, or before constructing a high capacity well intended to replace another high capacity well. *

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, for reconstruction of an existing high capacity well, or for construction of a replacement high capacity well, it must approve or deny the application. If DNR denies the application, the denial 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 a high capacity 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. Current law requires the use of the environmental review process in DNR's review of an application for 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 may have a significant environmental impact on a spring. This bill provides that DNR's use of the environmental review process when reviewing any high capacity well approval application is limited to only applications 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:

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. “Existing high capacity
5 well” does not include a replacement high capacity well or a reconstructed high
6 capacity well.

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

8 281.34 (1) (eg) “Proposed high capacity well” means a new high capacity well
9 that will result in a new withdrawal of groundwater. “Proposed high capacity well”
10 does not include a replacement high capacity well or a reconstructed high capacity
11 well.

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

13 281.34 (1) (eq) “Reconstructed high capacity well” means a high capacity well
14 for which the department has approved reconstruction.

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

16 281.34 (1) (er) “Reconstruction” means modification of original construction
17 and includes deepening, lining, installing or replacing a screen, and underreaming.

18 **SECTION 6.** 281.34 (1) (et) of the statutes is created to read:

19 281.34 (1) (et) “Replacement high capacity well” means a high capacity well
20 that is constructed to replace an existing high capacity well or reconstructed high
21 capacity well.

or a replacement high capacity well

1 SECTION 7. 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
2 to read:

3 281.34 (2) (a) An owner shall apply to the department for approval before
4 construction of a high capacity well begins. beginning any of the following:

5 (b) No person may construct a proposed high capacity well, engage in
6 reconstruction of ~~an existing~~^a high capacity well, ~~construct a replacement high~~
7 ~~capacity well~~, or withdraw water from a high capacity well without the approval of
8 the department under this section or under s. 281.17 (1), 2001 stats.

9 (e) (d) An owner applying for approval under this subsection shall pay a fee of
10 \$500.

11 SECTION 8. 281.34 (2) (a) 1. of the statutes is created to read:

12 281.34 (2) (a) 1. Construction of a proposed high capacity well.

13 SECTION 9. 281.34 (2) (a) 2. of the statutes is created to read:

14 281.34 (2) (a) 2. Reconstruction of ~~an existing~~^a high capacity well.

15 SECTION 10. 281.34 (2) (a) 3. of the statutes is created to read:

16 281.34 (2) (a) 3. Construction of a replacement high capacity well.

17 SECTION 11. 281.34 (2) (c) of the statutes is created to read:

18 281.34 (2) (c) 1. Within 65 business days from the date on which the department
19 receives a complete application for an approval under par. (a), the department shall
20 approve or deny the application and shall notify the applicant of the decision in
21 writing. If the department denies the application, the notification shall include the
22 reasons for the denial.

23 2. The department may include conditions in an approval for a proposed high
24 capacity well or for reconstruction of an existing well, but only as to location, depth,

1 pumping capacity, and rate of flow, unless the department is authorized to include
2 other conditions in an approval under sub. (5).

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

7 **SECTION 12.** 281.34 (2c) of the statutes is created to read:

8 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may issue
9 an approval for the construction of a replacement high capacity well if the
10 replacement high capacity well will be drilled to substantially the same depth as the
11 existing high capacity well, the replacement high capacity well will be located within
12 a 75-foot radius of the existing high capacity well, and the replacement high capacity
13 well will be constructed in accordance with department standards that apply to the
14 construction of high capacity wells on the date that construction of the replacement
15 high capacity well begins.

16 (b) 1. Except as provided in subd. 2., the department may not include conditions
17 in an approval for a replacement high capacity well that are different than the
18 conditions in the approval for the existing high capacity well.

19 2. Subdivision 1. does not apply to an approval for a replacement high capacity
20 well located in a groundwater protection area if the existing high capacity well was
21 not located in a groundwater protection area.

22 **SECTION 13.** 281.34 (2g) of the statutes is created to read:

23 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
24 a high capacity well is located, and if the owner holds an approval issued under sub.
25 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may

1 transfer the approval to the person to whom the land is transferred without
2 department review. The department may not impose a fee for the transfer. The
3 owner shall notify the department of the transfer on a form prescribed by the
4 department.

5 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

6 281.34 (4) (a) (intro.) The department shall review an application for approval
7 of any of the following using the environmental review process in its rules
8 promulgated under s. 1.11, subject to par. (am):

9 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

10 281.34 (4) (am) In its review of an application for approval under par. (a), the
11 department's use of the environmental review process in its rules promulgated under
12 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
13 well.

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

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

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

23 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
24 under the environmental review process in sub. (4), that an environmental impact
25 report under s. 23.11 (5) must be prepared for a proposed high capacity well located

1 in a groundwater protection area, the department may not approve the proposed
2 high capacity well unless it is able to include and includes in the approval conditions,
3 which may include conditions as to location, depth, pumping capacity, rate of flow,
4 and ultimate use, that ensure that the ^{proposed} high capacity well does not cause significant
5 environmental impact to a groundwater protection area.

6 **SECTION 18.** 281.34 (5) (d) 1. of the statutes is amended to read:

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

15 **SECTION 19.** 281.34 (5) (dm) of the statutes is amended to read:

16 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
17 is covered by an approved water supply service area plan under s. 281.348, the
18 department may not approve the proposed high capacity well unless it is consistent
19 with that plan.

20 **SECTION 20.** 281.34 (5) (e) 1. of the statutes is amended to read:

21 281.34 (5) (e) 1. If s. 281.35 (4) applies to a ~~proposed~~ high capacity well, the
22 department shall include in the approval conditions that ensure that the high
23 capacity well complies with s. 281.35 (4) to (6).

24 **SECTION 21.** 281.34 (7) of the statutes is amended to read:

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

7 **SECTION 22.** 281.34 (11) of the statutes is created to read:

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

12 **SECTION 23.** 281.344 (4s) (dm) of the statutes is amended to read:

13 281.344 (4s) (dm) *Requiring individual permit.* The department may require
14 a person who is making or proposes to make a withdrawal that averages 100,000
15 gallons per day or more in any 30-day period, but that does not equal at least
16 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
17 under sub. (5) if the withdrawal is located in a groundwater protection area, as
18 defined in s. 281.34 (1) (a) (~~a~~) (am), or a groundwater management area designated
19 under s. 281.34 (9).

20 **SECTION 24.** 281.346 (4s) (dm) of the statutes is amended to read:

21 281.346 (4s) (dm) *Requiring individual permit.* The department may require
22 a person who is making or proposes to make a withdrawal that averages 100,000
23 gallons per day or more in any 30-day period, but that does not equal at least
24 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
25 under sub. (5) if the withdrawal is located in a groundwater protection area, as

1 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
2 under s. 281.34 (9).

3 **SECTION 25. Nonstatutory provisions.**

4 (1) (a) In this subsection:

5 1. “Department” means the department of natural resources.

6 2. “Owner” has the meaning given in section 281.34 (1) (d) of the statutes.

7 (b) If the department issued an approval to an owner of a high capacity well
8 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., before
9 July 6, 2011, and if the department added new or more restrictive conditions to that
10 approval on or after July 6, 2011, and before the effective date of this paragraph, the
11 department shall, upon a request made by the owner on or before June 30, 2014,
12 remove the new or more restrictive conditions from the approval if those new or more
13 restrictive conditions are not required to be included in the approval under section
14 281.34 of the statutes, as affected by this act.

15 (END)

Kite, Robin

From: Kite, Robin
Sent: Thursday, June 13, 2013 2:02 PM
To: Johnson, Dan
Subject: RE: LRB 0823 analysis question

I will revise the analysis to address your concern. Let me know if you have any other questions.

Robin

From: Johnson, Dan
Sent: Thursday, June 13, 2013 11:27 AM
To: Kite, Robin
Subject: LRB 0823 analysis question

Hi Robin,

I have the /1 of LRB 0823...thank you. Everything looks fine, but I was looking over the analysis and caught one item of concern. In the second to last paragraph, it reads:

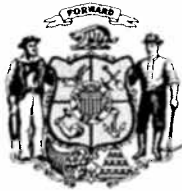
Current law requires the use of the environmental review process in DNR's review of an application for a high capacity well that is located in a groundwater protection area, that has a water loss of more than 95 percent of the amount of water withdrawn, or that may have a significant environmental impact on a spring. This bill provides that DNR's use of the environmental review process when reviewing **any** high capacity well approval application is limited to only applications for approval of a proposed high capacity well.

The concern is the use of the word "any". I think it should refer to the previously mentioned wells (GPA, water bottling, and springs), rather than **any** high capacity well. Thus, it could simply be changed to read:

This bill provides that DNR's use of the environmental review process when reviewing **those (types of)** high capacity well approval application is limited to only applications for approval of a proposed high capacity well.

I may be nit-picking here, but just want to make sure we have it right. Thanks, and if you have any comment on that, I'd appreciate it.

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0823/0

RNK:eev:jm

Stays

2013 BILL

In
6/13

regen

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 (5) (e) 1., 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s)
4 (dm); and *to create* 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (eq), 281.34 (1)
5 (er), 281.34 (1) (et), 281.34 (2) (a) 1., 281.34 (2) (a) 2., 281.34 (2) (a) 3., 281.34
6 (2) (c), 281.34 (2c), 281.34 (2g), 281.34 (4) (am) and 281.34 (11) of the statutes;
7 **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 that results in a new withdrawal of groundwater, before engaging in reconstruction of a high capacity well, or before constructing a high capacity well intended to replace another high capacity well.

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

BILL

capacity well, for reconstruction of an existing high capacity well, or for construction of a replacement high capacity well, it must approve or deny the application. If DNR denies the application, the denial 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 a high capacity 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. Current law requires the use of the environmental review process in DNR's review of an application for 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 may have a significant environmental impact on a spring. This bill provides that DNR's use of the environmental review process when reviewing any high capacity well approval application is limited to only applications 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.

INS.
Analysis

BILL

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:

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. “Existing high capacity
5 well” does not include a replacement high capacity well or a reconstructed high
6 capacity well.

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

8 281.34 (1) (eg) “Proposed high capacity well” means a new high capacity well
9 that will result in a new withdrawal of groundwater. “Proposed high capacity well”
10 does not include a replacement high capacity well or a reconstructed high capacity
11 well.

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

13 281.34 (1) (eq) “Reconstructed high capacity well” means a high capacity well
14 for which the department has approved reconstruction.

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

16 281.34 (1) (er) “Reconstruction” means modification of original construction
17 and includes deepening, lining, installing or replacing a screen, and underreaming.

18 **SECTION 6.** 281.34 (1) (et) of the statutes is created to read:

19 281.34 (1) (et) “Replacement high capacity well” means a high capacity well
20 that is constructed to replace an existing high capacity well or reconstructed high
21 capacity well.

BILL**SECTION 7**

1 **SECTION 7.** 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
2 to read:

3 281.34 (2) (a) An owner shall apply to the department for approval before
4 ~~construction of a high capacity well begins.~~ beginning any of the following:

5 (b) No person may construct a proposed high capacity well or a replacement
6 high capacity well, engage in reconstruction of a high capacity well, or withdraw
7 water from a high capacity well without the approval of the department under this
8 section or under s. 281.17 (1), 2001 stats.

9 (e) (d) An owner applying for approval under this subsection shall pay a fee of
10 \$500.

11 **SECTION 8.** 281.34 (2) (a) 1. of the statutes is created to read:

12 281.34 (2) (a) 1. Construction of a proposed high capacity well.

13 **SECTION 9.** 281.34 (2) (a) 2. of the statutes is created to read:

14 281.34 (2) (a) 2. Reconstruction of a high capacity well.

15 **SECTION 10.** 281.34 (2) (a) 3. of the statutes is created to read:

16 281.34 (2) (a) 3. Construction of a replacement high capacity well.

17 **SECTION 11.** 281.34 (2) (c) of the statutes is created to read:

18 281.34 (2) (c) 1. Within 65 business days from the date on which the department
19 receives a complete application for an approval under par. (a), the department shall
20 approve or deny the application and shall notify the applicant of the decision in
21 writing. If the department denies the application, the notification shall include the
22 reasons for the denial.

23 2. The department may include conditions in an approval for a proposed high
24 capacity well or for reconstruction of an existing well, but only as to location, depth,

BILL

1 pumping capacity, and rate of flow, unless the department is authorized to include
2 other conditions in an approval under sub. (5).

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

7 **SECTION 12.** 281.34 (2c) of the statutes is created to read:

8 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may issue
9 an approval for the construction of a replacement high capacity well if the
10 replacement high capacity well will be drilled to substantially the same depth as the
11 existing high capacity well, the replacement high capacity well will be located within
12 a 75-foot radius of the existing high capacity well, and the replacement high capacity
13 well will be constructed in accordance with department standards that apply to the
14 construction of high capacity wells on the date that construction of the replacement
15 high capacity well begins.

16 (b) 1. Except as provided in subd. 2., the department may not include conditions
17 in an approval for a replacement high capacity well that are different than the
18 conditions in the approval for the existing high capacity well.

19 2. Subdivision 1. does not apply to an approval for a replacement high capacity
20 well located in a groundwater protection area if the existing high capacity well was
21 not located in a groundwater protection area.

22 **SECTION 13.** 281.34 (2g) of the statutes is created to read:

23 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
24 a high capacity well is located, and if the owner holds an approval issued under sub.
25 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may

BILL

1 transfer the approval to the person to whom the land is transferred without
2 department review. The department may not impose a fee for the transfer. The
3 owner shall notify the department of the transfer on a form prescribed by the
4 department.

5 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

6 281.34 (4) (a) (intro.) The department shall review an application for approval
7 of any of the following using the environmental review process in its rules
8 promulgated under s. 1.11, subject to par. (am):

9 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

10 281.34 (4) (am) In its review of an application for approval under par. (a), the
11 department's use of the environmental review process in its rules promulgated under
12 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
13 well.

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

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

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

23 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
24 under the environmental review process in sub. (4), that an environmental impact
25 report under s. 23.11 (5) must be prepared for a proposed high capacity well located

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1 in a groundwater protection area, the department may not approve the proposed
2 high capacity well unless it is able to include and includes in the approval conditions,
3 which may include conditions as to location, depth, pumping capacity, rate of flow,
4 and ultimate use, that ensure that the proposed high capacity well does not cause
5 significant environmental impact to a groundwater protection area.

6 **SECTION 18.** 281.34 (5) (d) 1. of the statutes is amended to read:

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

15 **SECTION 19.** 281.34 (5) (dm) of the statutes is amended to read:

16 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
17 is covered by an approved water supply service area plan under s. 281.348, the
18 department may not approve the proposed high capacity well unless it is consistent
19 with that plan.

20 **SECTION 20.** 281.34 (5) (e) 1. of the statutes is amended to read:

21 281.34 (5) (e) 1. If s. 281.35 (4) applies to a proposed high capacity well, the
22 department shall include in the approval conditions that ensure that the high
23 capacity well complies with s. 281.35 (4) to (6).

24 **SECTION 21.** 281.34 (7) of the statutes is amended to read:

BILL**SECTION 21**

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

7 **SECTION 22.** 281.34 (11) of the statutes is created to read:

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

12 **SECTION 23.** 281.344 (4s) (dm) of the statutes is amended to read:

13 281.344 (4s) (dm) *Requiring individual permit.* The department may require
14 a person who is making or proposes to make a withdrawal that averages 100,000
15 gallons per day or more in any 30-day period, but that does not equal at least
16 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
17 under sub. (5) if the withdrawal is located in a groundwater protection area, as
18 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
19 under s. 281.34 (9).

20 **SECTION 24.** 281.346 (4s) (dm) of the statutes is amended to read:

21 281.346 (4s) (dm) *Requiring individual permit.* The department may require
22 a person who is making or proposes to make a withdrawal that averages 100,000
23 gallons per day or more in any 30-day period, but that does not equal at least
24 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
25 under sub. (5) if the withdrawal is located in a groundwater protection area, as

BILL

1 defined in s. 281.34 (1) ~~(a)~~ (am), or a groundwater management area designated
2 under s. 281.34 (9).

SECTION 25. Nonstatutory provisions.

4 (1) (a) In this subsection:

5 1. “Department” means the department of natural resources.

6 2. “Owner” has the meaning given in section 281.34 (1) (d) of the statutes.

7 (b) If the department issued an approval to an owner of a high capacity well
8 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., before
9 July 6, 2011, and if the department added new or more restrictive conditions to that
10 approval on or after July 6, 2011, and before the effective date of this paragraph, the
11 department shall, upon a request made by the owner on or before June 30, 2014,
12 remove the new or more restrictive conditions from the approval if those new or more
13 restrictive conditions are not required to be included in the approval under section
14 281.34 of the statutes, as affected by this act.

15 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0823/2ins.
RNK:.....

INSERT ANALYSIS

no 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 provides that DNR is required to use the environmental review process when reviewing an application for an approval of a high capacity well that falls into one of these 3 categories only if the high capacity well is

three

Parisi, Lori

From: Johnson, Dan
Sent: Thursday, June 13, 2013 3:37 PM
To: LRB.Legal
Subject: Draft Review: LRB -0823/2 Topic: Limit DNR's authority to regulate high capacity wells

Please Jacket LRB -0823/2 for the SENATE.

Konopacki, Larry

From: Johnson, Dan
Sent: Wednesday, July 10, 2013 8:51 AM
To: Kite, Robin
Cc: Konopacki, Larry
Subject: 0823/2 revisions - high cap wells

Hi Robin,

As per my previous message, we will need to make some additional revisions to LRB 0823/2. If you need any assistance with this, I think Larry would be willing to do so. I've copied him on this e-mail.

✓1. Under the draft bill, a replacement well may be approved so long as it is no more than 75 feet from the well being replaced and conforms to the same standards as the existing high cap well. However, if the replacement well is moved into a groundwater protection area, that provision does not apply. But, we inadvertently left out "springs" in this provision under Section 12 of the bill. Thus, please make the following revision:

- Page 5, line 21; after "groundwater protection area", insert "and does not apply if the department determines the replacement high capacity well may have a significant environmental impact on a spring."

✓2. Under the draft bill, an existing high cap well may be replaced or reconstructed. Once that occurs, the well is then considered (by definition) as a replacement high cap well or a reconstructed high cap well. What the bill does not consider is a scenario when a person may want to do the following:

- Replace a replacement high capacity well
- Replace a reconstructed high capacity well
- Reconstruct a replacement high capacity well
- Reconstruct a reconstructed high capacity well

Thus, the bill will need to be revised to address those four scenarios and allow a person to do so under the same criteria if they were replacing or reconstructing an existing high capacity well.

3. Finally, in Section 20 of the bill, (line 21 on page 7), the word "proposed" is deleted from statute. Larry questioned why that was done, and I wasn't entirely certain. I'm not sure if that needs to be restored, but please advise as to the rationale for its deletion under the draft bill.

Thank you very much, and let me know if you have any questions or concerns with this request.

Dan Johnson
Chief of Staff
Senator Neal Kedzie
11th Senate District
608.266.2635

Kite, Robin

From: Johnson, Dan
Sent: Thursday, August 15, 2013 11:02 AM
To: Kite, Robin
Subject: RE: LRB 0823

Okay, thank you, I look forward to the revised draft.

I do appreciate your comments, and certainly recognize them. Interesting to note, though, the Court recently handed down another decision regarding a Lake Koshkonong issue, which may affect the DNR's "duty" under the public trust doctrine to the converse. Thus, we now have two court cases within the last two years that have sent two differing messages about the DNR's authority to regulate under the PTD.

If nothing else, there is now confusion both in the agency and the regulated community as to how far this authority extends. Our goal is to (hopefully) clarify that and give direction to the agency about what the Legislature's intentions are in this regard. But you're right – the agency could perhaps do something to the contrary based on its interpretation of Lake Beulah, with the Lake Koshkonong decision notwithstanding.

Dan

From: Kite, Robin
Sent: Thursday, August 15, 2013 10:40 AM
To: Johnson, Dan
Subject: RE: LRB 0823

Dan:

I expect to finish this redraft in the next day or two. You should have it by Monday or Tuesday of next week.

One of the questions I have about with this version of the draft (as with previous versions) is whether by establishing limitations on DNR's **authority** to regulate high capacity wells in the manner provided in the draft, DNR's **duty** under the public trust doctrine is affected. As you noted in the information that you provided to me with initial drafting instructions, the court in the Lake Beulah case, recognized that DNR has broad authority to protect surface waters under ss. 28.11 and 28.12, stats. The case also states that DNR has not only this authority but also a duty to protect navigable waters under the public trust doctrine. Consequently, it seems to me that regardless of how narrowly the draft circumscribes DNR's authority, a court could still find that DNR has the duty to take action beyond that authority if necessary to protect navigable waters. We may have fully discussed this issue previously, but I wanted to make sure to raise the issue again in the event that we did not.

Thanks.
Robin

From: Johnson, Dan
Sent: Wednesday, August 14, 2013 4:00 PM
To: Kite, Robin
Subject: LRB 0823

Hi Robin,

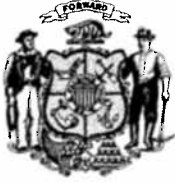
Just checking in on the status of LRB 0823/2, high cap wells. Just curious....thanks!

Dan Johnson

Senator Neal Kedzie

11th Senate District

608.266.2635



State of Wisconsin
2013 - 2014 LEGISLATURE

Wanted Mon. 8/19



pin run

3

LRB-0823/2

RNK:eev:jf

2013 BILL

regen cat

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 (5) (e) 1., 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s)
4 (dm); and to create 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (eq), 281.34 (1)
5 (er), 281.34 (1) (et), 281.34 (2) (a) 1., 281.34 (2) (a) 2., 281.34 (2) (a) 3., 281.34
6 (2) (c), 281.34 (2c), 281.34 (2g), 281.34 (4) (am) and 281.34 (11) of the statutes;
7 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 that results in a new withdrawal of groundwater, before engaging in reconstruction of a high capacity well, or before constructing a high capacity well intended to replace another high capacity well.

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

high capacity
The bill defines a proposed high capacity well as a new well that will result in a new withdrawal of groundwater.

BILL

capacity well, ^{or} for reconstruction of an existing high capacity well, ^{or replacement} ~~or for construction of a replacement high capacity well~~, it must approve or deny the application. If DNR denies the application, the denial 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 ~~a~~ high capacity, other than conditions relating to location, depth, pumping capacity, and rate of flow. ^{an existing well}

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 provides that DNR is ~~required to use the environmental review process when reviewing an application for an approval of a high capacity well that falls into one of these three categories only if the high capacity well is 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.

INS.
ANALYSIS

BILL

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:

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. "Existing high capacity
5 well" does not include a replacement high capacity well or a reconstructed high
6 capacity well.

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

8 281.34 (1) (eg) "Proposed high capacity well" means a new high capacity well
9 that will result in a new withdrawal of groundwater. "Proposed high capacity well"
10 does not include a ~~replacement~~ high capacity well ~~or a reconstructed high capacity~~
11 well. *constructed to replace an existing high capacity*

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

13 281.34 (1) (eq) "Reconstructed high capacity well" means a high capacity well
14 for which the department has approved reconstruction.

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

16 281.34 (1) (er) "Reconstruction" means ~~modification of~~ *to modify* original construction
17 and includes deepening, lining, installing or replacing a screen, and underreaming.

18 **SECTION 6.** 281.34 (1) (et) of the statutes is created to read:

19 281.34 (1) (et) "Replacement high capacity well" means a high capacity well
20 that is constructed to replace an existing high capacity well ~~or reconstructed high~~
21 ~~capacity well~~

BILL

1 **SECTION 7.** 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended
2 to read:

3 281.34 (2) (a) An owner shall apply to the department for approval before
4 construction of a high capacity well begins, beginning any of the following:

5 ~~(b) No person may construct a proposed high capacity well or a replacement~~
6 ~~high capacity well, engage in reconstruction of a high capacity well,~~ or withdraw
7 water from a high capacity well without the approval of the department under this
8 section or under s. 281.17 (1), 2001 stats.

9 ~~(e) (d)~~ ^(c) An owner applying for approval under this subsection shall pay a fee of
10 \$500.

11 **SECTION 8.** 281.34 (2) (a) 1. of the statutes is created to read:

12 281.34 (2) (a) 1. Construction of a proposed high capacity well.

13 **SECTION 9.** 281.34 (2) (a) 2. of the statutes is created to read:

14 281.34 (2) (a) 2. Reconstruction of ^{of an existing} a high capacity well.

15 **SECTION 10.** 281.34 (2) (a) 3. of the statutes is created to read:

16 281.34 (2) (a) 3. Construction of a replacement high capacity well.

17 **SECTION 11.** 281.34 (2) (c) of the statutes is created to read:

18 281.34 (2) (c) 1. Within 65 business days from the date on which the department
19 receives a complete application for an approval under par. (a), the department shall
20 approve or deny the application and shall notify the applicant of the decision in
21 writing. If the department denies the application, the notification shall include the
22 reasons for the denial.

23 2. The department may include conditions in an approval for a proposed high
24 capacity well or for reconstruction of an existing ^{high capacity} well, but only as to location, depth,

BILL

1 pumping capacity, and rate of flow, unless the department is authorized to include
2 other conditions in an approval under sub. (5).

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

7 **SECTION 12.** 281.34 (2c) of the statutes is created to read:

8 281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. (a) The department may issue
9 an approval (for the construction of a replacement) high capacity well if the
10 replacement high capacity well will be drilled to substantially the same depth as the
11 existing high capacity well, (the replacement high capacity well) will be located within
12 a 75-foot radius of the existing high capacity well, and (the replacement high capacity
13 well) will be constructed in accordance with department standards that apply to the
14 construction of ^{proposed} high capacity wells on the date that construction of the replacement
15 high capacity well begins.

16 (b) 1. Except as provided in subd. 2., the department may not include conditions
17 in an approval for a replacement high capacity well that are different than the
18 conditions in the approval for the existing high capacity well.

19 2. Subdivision 1. does not apply to an approval for a replacement high capacity
20 well located in a groundwater protection area if the existing high capacity well was
21 not located in a groundwater protection area.

22 **SECTION 13.** 281.34 (2g) of the statutes is created to read:

23 281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which
24 a high capacity well is located, and if the owner holds an approval issued under sub.
25 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may

to construct a
high capacity well to
replace an existing

BILL

1 transfer the approval to the person to whom the land is transferred without
2 department review. The department may not impose a fee for the transfer. The
3 owner shall notify the department of the transfer on a form prescribed by the
4 department.

5 **SECTION 14.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

6 281.34 (4) (a) (intro.) The department shall review an application for approval
7 of any of the following using the environmental review process in its rules
8 promulgated under s. 1.11, subject to par. (am):

9 **SECTION 15.** 281.34 (4) (am) of the statutes is created to read:

10 281.34 (4) (am) In its review of an application for approval under par. (a), the
11 department's use of the environmental review process in its rules promulgated under
12 s. 1.11 is expressly limited to an application for approval of a proposed high capacity
13 well.

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

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

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

23 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,
24 under the environmental review process in sub. (4), that an environmental impact
25 report under s. 23.11 (5) must be prepared for a proposed high capacity well located

BILL

1 in a groundwater protection area, the department may not approve the proposed
2 high capacity well unless it is able to include and includes in the approval conditions,
3 which may include conditions as to location, depth, pumping capacity, rate of flow,
4 and ultimate use, that ensure that the proposed high capacity well does not cause
5 significant environmental impact to a groundwater protection area.

6 **SECTION 18.** 281.34 (5) (d) 1. of the statutes is amended to read:

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

15 **SECTION 19.** 281.34 (5) (dm) of the statutes is amended to read:

16 281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well
17 is covered by an approved water supply service area plan under s. 281.348, the
18 department may not approve the proposed high capacity well unless it is consistent
19 with that plan.

20 **SECTION 20.** 281.34 (5) (e) 1. of the statutes is amended to read:

21 281.34 (5) (e) 1. If s. 281.35 (4) applies to a proposed high capacity well, the
22 department shall include in the approval conditions that ensure that the high
23 capacity well complies with s. 281.35 (4) to (6).

24 **SECTION 21.** 281.34 (7) of the statutes is amended to read:

INS.
7-14

BILL

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

7 **SECTION 22.** 281.34 (11) of the statutes is created to read:

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

12 **SECTION 23.** 281.344 (4s) (dm) of the statutes is amended to read:

13 281.344 (4s) (dm) *Requiring individual permit.* The department may require
14 a person who is making or proposes to make a withdrawal that averages 100,000
15 gallons per day or more in any 30-day period, but that does not equal at least
16 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
17 under sub. (5) if the withdrawal is located in a groundwater protection area, as
18 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
19 under s. 281.34 (9).

20 **SECTION 24.** 281.346 (4s) (dm) of the statutes is amended to read:

21 281.346 (4s) (dm) *Requiring individual permit.* The department may require
22 a person who is making or proposes to make a withdrawal that averages 100,000
23 gallons per day or more in any 30-day period, but that does not equal at least
24 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit
25 under sub. (5) if the withdrawal is located in a groundwater protection area, as

BILL

1 defined in s. 281.34 (1) (a) (am), or a groundwater management area designated
2 under s. 281.34 (9).

3 **SECTION 25. Nonstatutory provisions.**

4 (1) (a) In this subsection:

5 1. "Department" means the department of natural resources.

6 2. "Owner" has the meaning given in section 281.34 (1) (d) of the statutes.

7 (b) If the department issued an approval to an owner of a high capacity well
8 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., before
9 July 6, 2011, and if the department added new or more restrictive conditions to that
10 approval on or after July 6, 2011, and before the effective date of this paragraph, the
11 department shall, upon a request made by the owner on or before June 30, 2014,
12 remove the new or more restrictive conditions from the approval if those new or more
13 restrictive conditions are not required to be included in the approval under section
14 281.34 of the statutes, as affected by this act.

15 (END)

INSERT ANALYSIS

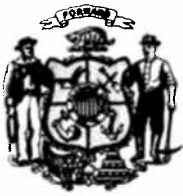
no expressly limits DNR's authority so that it may use the environmental review process only when reviewing an application for approval of

INSERT 4-4

1 281.34 (2) (a) An owner shall apply to the department for approval before
2 beginning construction of a proposed high capacity well begins or before beginning
3 reconstruction or replacement of an existing high capacity well.

INSERT 7-14

4
5 SECTION 1. 281.34 (5) (dg) of the statutes is created to read:
6 281.34 (5) (dg) *Limitation on approval conditions.* 1. The department may
7 include conditions in an approval to construct a proposed high capacity well or to
8 reconstruct an existing high capacity well, but only as to location, depth, pumping
9 capacity, and rate of flow, unless the department is authorized to include other
10 conditions in an approval under this subsection.
11 2. The department may not include conditions in an approval to replace an
12 existing high capacity well that are different than the conditions in the approval for
13 the existing high capacity well unless any of the following applies:
14 a. The replacement high capacity well is located in a groundwater protection
15 area and the existing high capacity well is not located in a groundwater protection
16 area.
17 b. The department determines that the replacement well may have a
18 significant environmental impact on a spring.



2013 SENATE BILL 302

Before
Changes

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

SENATE

INTRODUCTION AND REFERRAL OF PROPOSALS

Rec

(September 25, 2013)

SENATE BILL 302 (LRB -0823)

Relating to: high capacity well approvals.

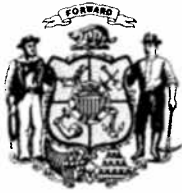
Introduced by Senators Kedzie, Gudex and Tiffany; cosponsored by Representatives Mursau, A. Ott, LeMahieu, Ripp, August, Thiesfeldt, Bernier, Tauchen and Brooks.

Referred to committee on NATURAL RESOURCES.

Order of sponsors changed

"corrected copy" requested by Erin in the SCC office

9MB



2013 SENATE BILL 302

After
change
09-25-2013

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;
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