

2013 DRAFTING REQUEST

Senate Amendment (SA-SB302)

Received: 10/14/2013 Received By: rkite
Wanted: As time permits Same as LRB:
For: Neal Kedzie (608) 266-2635 By/Representing: Dan Johnson
May Contact: Drafter: rkite
Subject: Environment - water quality Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Kedzie@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Restrictions on DNR's authority to regulate high capacity wells

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 10/16/2013			_____			
/P1	rkite 10/28/2013	jdyer 10/17/2013	jfrantze 10/17/2013	_____	sbasford 10/17/2013		
/P2	rkite 10/29/2013	jdyer 10/28/2013	jmurphy 10/28/2013	_____	lparisi 10/28/2013		
/1		jdyer	jfrantze	_____	lparisi	lparisi	

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		10/29/2013	10/29/2013	_____	10/29/2013	10/29/2013	

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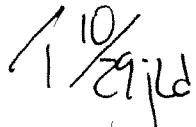
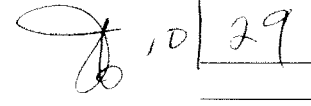
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/P1	rkite 10/28/2013	jdyer 10/17/2013	jfrantze 10/17/2013	_____	sbasford 10/17/2013	_____	_____
/P2		jdyer 10/28/2013	jmurphy 10/28/2013	_____	lparisi 10/28/2013	_____	_____

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/?	rkite 10/16/2013	<i>P2 10/28 jld</i>	<i>Jon</i>	<i>Justin 10/28</i>			
/P1		jdyer 10/17/2013	jfrantze 10/17/2013		sbasford 10/17/2013		

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Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Includes handwritten initials and dates like '10/17' and '12/11'.

FE Sent For:

<END>

Kite, Robin

From: Johnson, Dan
Sent: Monday, October 14, 2013 11:29 AM
To: Kite, Robin
Subject: SB 302 amendment request

Hi Robin,

Senator Kedzie would like to request a simple amendment to Senate Bill 302 which serves as an introductory language for s. 281.34. Thus, the following may need to be inserted either before or after (1) in that section.

“Any authority or general duty that may be granted or delegated to the department under ss. 281.11 or 281.12 is explicitly limited by this section with regard to the department’s authority to review, approve, or regulate high capacity wells in this state.”

If you have any questions regarding this amendment, please let me know. Thank you!

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

Kite, Robin

From: Johnson, Dan
Sent: Wednesday, October 16, 2013 12:37 PM
To: Kite, Robin
Subject: RE: SB 302 amendment request

Hi Robin,

I have conferred with Sen. Kedzie and he agrees the Department should have the authority to promulgate a rule under 281.34 as we discussed; but again, the intent is to ensure that 281.34 governs in regards to high capacity well regulation, notwithstanding 281.11 and 281.12(1). Thus, if you could draft an amendment to the bill which clarifies that intent, we would appreciate it.

Thanks again!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

Per Dan - don't "prohibit" DNR from an action - that is, the language should provide that the authority to regulate wells is explicitly limited to the authority under 281.34

From: Kite, Robin
Sent: Monday, October 14, 2013 5:05 PM
To: Johnson, Dan
Subject: RE: SB 302 amendment request

No. If the language says that DNR's regulatory authority is explicitly limited to the authority conferred under s. 281.34, then unless that statute explicitly says that DNR may promulgate a rule, it cannot do so. Also, keep in mind that s. 227.11 (2) (a) 1. and 2., stats., already significantly limits an agency's authority to promulgate rules beyond authority explicitly conferred. If you feel that you need to refer to rule-making, then the language could probably say that DNR's "regulatory authority, including the authority to promulgate a rule" is explicitly limited, to the authority conferred under s. 281.34. Give me a call if you want to discuss this in more detail.

Robin

From: Johnson, Dan
Sent: Monday, October 14, 2013 4:54 PM
To: Kite, Robin
Subject: RE: SB 302 amendment request

I will need to discuss this with Senator Kedzie, and get back to you. One question: would the new replacement language make the DNR's rule-making authority more broad than it currently is under the bill? In other words, would the DNR then be allowed to write rules for additional sections under 281.34, whereas currently under the bill, it is limited to subs. (6)(b), (8)(a), and (9)(a) and (c).

Dan

From: Kite, Robin
Sent: Monday, October 14, 2013 4:47 PM

To: Johnson, Dan

Subject: RE: SB 302 amendment request

Dan:

I think that if you want to draft a provision that essentially says that notwithstanding ss. 281.11 and 281.12, DNR's authority to regulate high capacity wells is explicitly limited to the duty and authority conferred under s. 281.34, then this language will supersede s. 281.34 (11) as created in the bill. That provision limits DNR's rule-making authority which is one way that DNR may "regulate" high capacity wells. I recommend that the amendment replace the current provision on rule-making with new language that says that DNR's duty and authority to regulate high capacity wells is limited to its explicit duty and authority under s. 281.34. Otherwise, the rule-making provision will be redundant. Do you agree?

Robin

From: Johnson, Dan

Sent: Monday, October 14, 2013 11:29 AM

To: Kite, Robin

Subject: SB 302 amendment request

Hi Robin,

Senator Kedzie would like to request a simple amendment to Senate Bill 302 which serves as an introductory language for s. 281.34. Thus, the following may need to be inserted either before or after (1) in that section.

"Any authority or general duty that may be granted or delegated to the department under ss. 281.11 or 281.12 is explicitly limited by this section with regard to the department's authority to review, approve, or regulate high capacity wells in this state."

If you have any questions regarding this amendment, please let me know. Thank you!

Dan Johnson

Chief of Staff

Senator Neal Kedzie

11th Senate District

608.266.2635



500
State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa0995/EL

RNK: 1:...

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE AMENDMENT,
TO SENATE BILL 302

In
10/16

1 At the locations indicated, amend the bill as follows:

2 1. Page 7, line 13: delete lines 13 to 16[✓] and substitute:

3 "281.34 (11) REGULATORY AUTHORITY LIMITED.[✓] Notwithstanding ss. 281.11 and[✓]
4 281.12 (1),[✓] the department's duty and authority to regulate high capacity wells, other
5 than its authority to promulgate rules governing construction standards for high
6 capacity wells, is limited to the duty and authority that is explicitly conferred upon
7 the department by this section."[✓]

8 (END)

Kite, Robin

From: Johnson, Dan
Sent: Monday, October 28, 2013 10:41 AM
To: Kite, Robin
Subject: RE: SB 302 amendment request

Yea, I believe that works. Thanks!

Dan

From: Kite, Robin
Sent: Monday, October 28, 2013 10:36 AM
To: Johnson, Dan
Subject: RE: SB 302 amendment request

Dan:

I discussed this language with Rachel and we felt that it would be best refer to DNR's duty and authority "to issue high capacity well approvals". I think that this language is more specific and addresses your concerns. Do you agree?

Robin

From: Johnson, Dan
Sent: Friday, October 18, 2013 9:15 AM
To: Kite, Robin
Subject: RE: SB 302 amendment request

Hi Robin,

I shared the amendment with Rachel Letzing, and she feels the use of the word "to regulate" is too broad, and might preclude the ability of DNR to proceed under s. 30.03 against someone for possible violation of public rights in navigable waters caused by pumping from a high capacity well.

Thus, she believes the language may need to be more specific, and I would agree. She did say, though, that if the language were narrowed, then the previous rule-making authority may need to be reinserted, but I'm not sure about that.

She offered some language and if you could redraft the amendment in the following manner, I'd appreciate it. This language does not reinsert the previous rule-making authority, but I will defer to you if you also believe it needs to be restored:

281.34 (11) REGULATORY AUTHORITY LIMITED. Notwithstanding ss. 281.11 and 281.12 (1), the department's duty and authority with respect to high capacity well approvals, other than its authority to promulgate rules governing construction standards for high capacity wells, is limited to the duty and authority that is explicitly conferred upon the department by this section."

Thanks again....

Dan Johnson

Senator Neal Kedzie

11th Senate District

608.266.2635

From: Kite, Robin

Sent: Monday, October 14, 2013 5:05 PM

To: Johnson, Dan

Subject: RE: SB 302 amendment request

No. If the language says that DNR's regulatory authority is explicitly limited to the authority conferred under s. 281.34, then unless that statute explicitly says that DNR may promulgate a rule, it cannot do so. Also, keep in mind that s. 227.11 (2) (a) 1. and 2., stats., already significantly limits an agency's authority to promulgate rules beyond authority explicitly conferred. If you feel that you need to refer to rule-making, then the language could probably say that DNR's "regulatory authority, including the authority to promulgate a rule" is explicitly limited, to the authority conferred under s. 281.34. Give me a call if you want to discuss this in more detail.

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I will need to discuss this with Senator Kedzie, and get back to you. One question: would the new replacement language make the DNR's rule-making authority more broad than it currently is under the bill? In other words, would the DNR then be allowed to write rules for additional sections under 281.34, whereas currently under the bill, it is limited to subs. (6)(b), (8)(a), and (9)(a) and (c).

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From: Johnson, Dan

Sent: Monday, October 14, 2013 11:29 AM

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“Any authority or general duty that may be granted or delegated to the department under ss. 281.11 or 281.12 is explicitly limited by this section with regard to the department’s authority to review, approve, or regulate high capacity wells in this state.”

If you have any questions regarding this amendment, please let me know. Thank you!

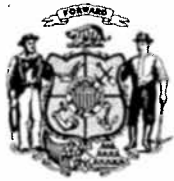
Dan Johnson

Chief of Staff

Senator Neal Kedzie

11th Senate District

608.266.2635



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE AMENDMENT,
TO SENATE BILL 302

JW
10/28

1 At the locations indicated, amend the bill as follows:

2 Fix component
↳

1. Page 7, line 13: delete lines 13 to 16 and substitute:

that line

3 "281.34 (11) REGULATORY AUTHORITY LIMITED. (a) Notwithstanding ss. 281.11 and

4 281.12 (1), the department's duty and authority to regulate high capacity wells ~~other~~

5 than its authority to promulgate rules governing construction standards for high

6 capacity wells ~~is~~ ^{approvals} is limited to the duty and authority that is explicitly conferred upon

7 the department by this section. ~~is~~

8 (END)

text:
treat

4 (b) The department's authority to ")".

Kite, Robin

From: Johnson, Dan
Sent: Tuesday, October 29, 2013 12:45 PM
To: Kite, Robin
Subject: RE: SB 302 amendment request

Hi Robin,

Thank you for the 0995/P2 amendment. We've looked it over and it meets the intent; thus, please draft it for introduction as a /1.

Thanks again!

Dan Johnson
Senator Neal Kedzie
11th Senate District
608.266.2635

From: Kite, Robin
Sent: Monday, October 28, 2013 10:36 AM
To: Johnson, Dan
Subject: RE: SB 302 amendment request

Dan:

I discussed this language with Rachel and we felt that it would be best refer to DNR's duty and authority "to issue high capacity well approvals". I think that this language is more specific and addresses your concerns. Do you agree?

Robin

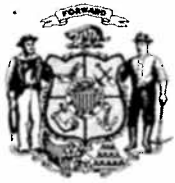
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Thus, she believes the language may need to be more specific, and I would agree. She did say, though, that if the language were narrowed, then the previous rule-making authority may need to be reinserted, but I'm not sure about that.

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*rm
run
1*

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SENATE AMENDMENT,
TO SENATE BILL 302

*In
10/29*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 13: delete that line and substitute:

3 “281.34 (11) REGULATORY AUTHORITY LIMITED. (a) Notwithstanding ss. 281.11
4 and 281.12 (1), the department’s duty and authority to issue high capacity well
5 approvals is limited to the duty and authority that is explicitly conferred upon the
6 department by this section.

7 (b) The department’s authority to”.

8 (END)