

**2013 DRAFTING REQUEST**

**Assembly Amendment (AA-AB40)**

Received: 5/22/2013 Received By: rkite  
Wanted: As time permits Same as LRB:  
For: Legislative Fiscal Bureau By/Representing: Bonderud  
May Contact: Drafter: rkite  
Subject: Environment - water quality Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Legislative Fiscal Bureau  
Carbon copy (CC) to:

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**Pre Topic:**

LFB:.....Bonderud -

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**Topic:**

Cumulative impacts of high capacity wells

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**Instructions:**

See attached

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**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>
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FE Sent For:

<END>

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5/23/13

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NATURAL RESOURCES -- ENVIRONMENTAL QUALITY

Cumulative Environmental Impacts of High Capacity Wells -  
Not Grounds to Challenge Permitting Decision

Motion:

Move to specify that a person may not challenge an application for, or a permit for, a high capacity well based on the lack of consideration of the cumulative environmental impacts of the proposed high capacity well together with existing wells when approving the high capacity well permit. This provision would apply to applications for high capacity well permits and high capacity well permits in effect before, on, or after, the effective date of the bill, and for applications and permits for which final administrative or judicial review has not been completed on the effective date of the bill.

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Note:

Section 281.34 of the statutes requires an owner to obtain approval from DNR before construction of a high capacity well. A "high capacity well" means a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day.

Section 281.34 (4) relates to environmental review and requires that DNR shall review an application for approval of any of the following using the environmental review process in its rules promulgated under s. 1.11 of the statutes: (1) A high capacity well that is located in a groundwater protection area; (2) A high capacity well with a water loss of more than 95 percent of the amount of water withdrawn; or (3) A high capacity well that may have a significant environmental impact on a spring. If the department requests an environmental impact report under s. 23.11 (5) for a proposed high capacity well, the department may only request information in that report that relates to the decisions that the department makes under this section related to the proposed high capacity well. Section 281.34 (5) includes standards and conditions for approval of high capacity wells.

Issues have been raised in legal proceedings regarding the extent to which DNR must consider, may consider, or may not consider, the environmental impacts of existing wells when making a decision on whether or not to approve a permit for a proposed high capacity well related to both statutory requirements and Article 9, Section 1 of the Wisconsin Constitution (known as the public trust doctrine). For example, a recent DNR decision to approve a high capacity well permit for a confined animal feeding operation is currently the subject of a contested case hearing, relating to whether DNR should have considered cumulative environmental impacts when it issued the permit.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0156/2

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Jld

LFB:.....Bonderud - Cumulative impacts of high capacity wells ✓

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY BILL 40**

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

2 1. Page 922, line 16: after that line insert: ✓

3 "SECTION 2092m. 281.34 (5m) of the statutes is created to read: ✓

4 281.34 (5m) CONSIDERATION OF CUMULATIVE IMPACTS. (a) No person may ✓

5 challenge an approval ~~issued~~, or an application for approval of a high capacity well ✓ a

6 based on the lack of consideration of the cumulative environmental impacts of that

7 high capacity well together with existing wells. ✓

8 (b) Paragraph (a) applies to approvals issued by the department and to ✓

9 applications for approvals submitted to the department before, on, or after the

10 effective date of this paragraph .... [LRB inserts date] including those that are the ✓

1 subject of a pending administrative or judicial review proceeding on the effective  
2 date of this paragraph .... [LRB inserts date].”

3 (END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBb0156/1  
RNK:jld:rs

LFB:.....Bonderud – Cumulative impacts of high capacity wells

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2 date of this paragraph .... [LRB inserts date].”

3 (END)