

2015 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB239)

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Pre Topic:

No specific pre topic given

Topic:

Remove nuisance action provision from substitute amendment 1

Instructions:

Same as SSA1 to SB239, but include change made by SA1 to SSA1 to SB239.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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State of Wisconsin
2015 - 2016 LEGISLATURE

0399/1

LRBs 0399/1
MCP:cjs/ahe/amn

Now

SENATE SUBSTITUTE AMENDMENT ~~1~~
TO SENATE BILL 239

SA ✓

February 24, 2016 - Offered by Senator GUDEx.

Regen ✓

1 AN ACT *to amend* 281.34 (2); and *to create* 281.34 (1) (ek), 281.34 (2g), 281.34
 2 (7m) and 281.955 of the statutes; **relating to:** replacement, reconstruction, and
 3 transfer of an approved high capacity well, recommendation of special
 4 groundwater measures by the Department of Natural Resources, ^{and} metering
 5 requirements and grants for certain high capacity wells, and authorizing a
 6 private right of action.

Analysis by the Legislative Reference Bureau

This substitute amendment makes certain changes to the laws regulating high capacity wells, which are wells that, together with all other wells on the same property, have the capacity to withdraw more than 100,000 gallons of water per day.

Activities exempt from approval

Current law requires a person to obtain approval from the Department of Natural Resources before constructing or operating a high capacity well. This substitute amendment provides that no additional approval is needed for the owner of an approved high capacity well to 1) repair or maintain the well, 2) construct a replacement high capacity well, if the replacement well's purpose is to prevent contamination or if the replacement well will be substantially the same depth as and

either within a 75-foot radius of the existing well or farther from the nearest groundwater protection area than the existing well, 3) reconstruct the existing well to substantially the same depth and specifications as the existing well, or 4) transfer the approval at the same time as the owner transfers the land on which the approved high capacity well is located. No additional fee is required for any of these actions, but the owner of the existing approved high capacity well must notify DNR of any replacement, reconstruction, or transfer. The owner may not take any of these actions if they would be inconsistent with the standards or conditions of the existing high capacity well approval, and the standards and conditions of the approval continue to apply after any of these actions are taken.

Designated study area

This substitute amendment also requires DNR to evaluate and model the hydrology of Pleasant Lake in Waushara County and the Fourteenmile Creek Watershed, the Mecan River Watershed, and the Pine River and Willow Creek Watershed, located in parts of Adams, Green Lake, Juneau, Marquette, Portage, Waupaca, Waushara, Winnebago, and Wood counties (the designated study area). DNR must begin its study of this area within one year after the effective date of the substitute amendment. If DNR determines that special measures relating to existing and potential groundwater withdrawal are necessary in all or part of that area to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels, DNR must issue a decision on whether it recommends that the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area. DNR must hold a public hearing on its decision. Following the public hearing, the substitute amendment requires DNR to submit a report to the legislature describing what special measures, if any, it recommends that the legislature adopt in all or part of the designated study area. DNR must submit this report within three years after beginning its study of the designated study area.

The substitute amendment requires the owner of a new high capacity well located in the designated study area, or an owner who replaces, reconstructs, or transfers ownership of a high capacity well located in the designated study area, to provide, with the annual pumping report that it submits to DNR, readings from a water meter showing the well's water usage.

The substitute amendment also permits DNR to provide a qualified lake association or lake district with an approval to construct a high capacity well for the purpose of providing water to a lake located in the designated study area to assist DNR in evaluating and modeling the hydrology of that area, if DNR determines that the lake's water level has been significantly reduced below its average seasonal levels. Under the substitute amendment, DNR must waive the application fee and expedite the review and approval process for an application submitted by a qualified lake association or lake district, and may not issue an approval if it determines that providing water from the proposed high capacity well to a lake is likely to result in a violation of water quality standards for that lake. DNR must also develop and administer a financial assistance program to provide grants to qualified lake associations and lake districts to construct high capacity wells for this purpose.

Nuisance actions

This substitute amendment also provides that a person who is unreasonably harmed by a lowering of the water table or a reduction in artesian pressure caused by another person's groundwater withdrawal may bring an action for nuisance against the person who withdraws the groundwater, regardless of whether the groundwater is used for a beneficial purpose.

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

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

2 281.34 (1) (ek) "Reconstruct" means to modify original construction including
3 deepening, lining, installing or replacing a screen, and underreaming.

4 **SECTION 2.** 281.34 (2) of the statutes is amended to read:

5 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. An Except as provided
6 under sub. (2g), an owner shall apply to the department for approval before
7 construction of a high capacity well begins. No Except as provided under sub. (2g),
8 no person may construct or withdraw water from a high capacity well without the
9 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
10 owner applying for approval under this subsection shall pay a fee of \$500.

11 **SECTION 3.** 281.34 (2g) of the statutes is created to read:

12 281.34 (2g) REPAIR, REPLACEMENT, RECONSTRUCTION, AND TRANSFER OF OWNERSHIP
13 OF AN APPROVED HIGH CAPACITY WELL. (a) Except as provided in par. (e), if an existing
14 high capacity well has been approved under this section or under s. 281.17 (1), 2001
15 stats., the owner of that well may take any of the following actions without obtaining
16 an additional approval under this section:

17 1. Repair and maintain the existing high capacity well.

18 2. Construct a new high capacity well to replace the existing high capacity well
19 if the new high capacity well will be constructed in accordance with department

1 standards that apply to the construction of new high capacity wells on the date that
2 construction of the replacement high capacity well begins, if the existing high
3 capacity well is filled and sealed as provided in rules promulgated by the
4 department, and if any of the following applies:

5 a. The purpose of replacement is to remedy or prevent contamination. The
6 owner of the well shall submit documentation of the contamination to the
7 department in the manner and form required by the department.

8 b. The replacement high capacity well will be drilled to substantially the same
9 depth as the existing high capacity well and either will be located within a 75-foot
10 radius of the existing high capacity well or will be located farther from the nearest
11 groundwater protection area than the existing high capacity well and not be located
12 within any other groundwater protection area.

13 3. Reconstruct the existing high capacity well, if the reconstructed high
14 capacity well is constructed to substantially the same depth and specifications as the
15 existing high capacity well.

16 4. Transfer the approval, concurrent with transferring the land on which the
17 approved high capacity well is located, to the person to whom the land is transferred.

18 (b) The department may not impose a fee for any action under this subsection.

19 (c) No later than 90 days after taking any action under par. (a) 2., 3., or 4. the
20 owner of the high capacity well shall notify the department of the action taken on a
21 form prescribed by the department. For any action taken under par. (a) 2. the owner
22 shall, on the same form, notify the department of the location of the replacement high
23 capacity well and the method by which the existing well was filled and sealed.

1 (d) Except as provided in sub. (7), the conditions of the existing high capacity
2 well approval continue to apply after an owner takes any of the actions under par.
3 (a).

4 (e) An owner of a well may not take an action under par. (a) if the action would
5 be inconsistent with the conditions of the existing high capacity well approval.

6 **SECTION 4.** 281.34 (7m) of the statutes is created to read:

7 281.34 (7m) DESIGNATED STUDY AREA. (a) In this subsection:

8 1. “Designated study area” means the area made up of the Fourteenmile Creek
9 Watershed in Adams, Juneau, Portage, Waushara, and Wood counties, the Mecan
10 River Watershed in Green Lake, Marquette, and Waushara counties, and the Pine
11 River and Willow Creek Watershed in Waupaca, Waushara, and Winnebago
12 counties.

13 2. “Qualified lake association” means an association that meets the
14 qualifications under s. 281.68 (3m) (a).

15 (am) The department shall evaluate and model the hydrology of Pleasant Lake
16 in Waushara County and any other navigable stream or navigable lake located in the
17 designated study area for which the department seeks to determine whether existing
18 and potential groundwater withdrawals are causing or are likely to cause a
19 significant reduction of the navigable stream’s or navigable lake’s rate of flow or
20 water level below its average seasonal levels. The department may request, under
21 s. 13.10, the joint committee on finance to provide funding and positions for the
22 evaluation and modeling under this paragraph. The evaluation under this
23 paragraph shall include all relevant factors that may affect groundwater and water
24 levels and rates of flow of navigable waters, including topography, ground cover,
25 annual and seasonal variations in precipitation, and plant life. The department

1 shall begin the evaluation and modeling under this paragraph no later than one year
2 after the effective date of this paragraph [LRB inserts date].

3 (b) If upon conclusion of the evaluation and modeling of the area under par.
4 (am) the department determines that special measures relating to existing and
5 potential groundwater withdrawal are necessary in all or part of that area to prevent
6 or remedy a significant reduction of a navigable stream's or navigable lake's rate of
7 flow or water level below its average seasonal levels, the department shall issue a
8 decision on whether it recommends that the legislature adopt, by statute, special
9 measures relating to groundwater withdrawal in all or part of that area. If the
10 department issues a decision recommending that the legislature adopt, by statute,
11 special measures relating to groundwater withdrawal in all or part of that area, the
12 decision shall contain all of the following information:

13 1. A description of the extent to which the department has determined that
14 cumulative groundwater withdrawals in all or part of the area cause, or are expected
15 to cause, a significant reduction of a navigable stream's or navigable lake's rate of
16 flow or water level below its average seasonal levels.

17 1m. A description of the concrete scientific information that the department
18 used to establish that there is a hydrologic connection between the groundwater in
19 all or part of the area and the navigable waters in all or part of the area and a causal
20 relationship between groundwater withdrawal in all or part of the area and an
21 existing or potential significant reduction of a navigable stream's or navigable lake's
22 rate of flow or water level below its average seasonal levels, and the degree to which
23 the department verified the connection and causal relationship by the use of field
24 work or field study.

1 2. A description of the geographical boundaries of the area to which the
2 department recommends special measures relating to groundwater withdrawal
3 should apply. The department shall identify in the description the specific navigable
4 water or part of the navigable water that is or may be affected by cumulative
5 groundwater withdrawals and shall identify the location of the groundwater
6 withdrawals that the department has determined are causing or may cause a
7 significant reduction of a navigable stream's or navigable lake's rate of flow or water
8 level below its average seasonal levels.

9 3. Any proposed special measures in the area described under subd. 2. that the
10 department recommends that the legislature adopt, by statute, to prevent or remedy
11 a significant reduction of a navigable stream's or navigable lake's rate of flow or
12 water level below its average seasonal levels.

13 4. An economic impact analysis of the economic effect of the special measures
14 recommended under subd. 3. on specific businesses, business sectors, public utility
15 ratepayers, local governmental units, and the state's economy as a whole.

16 (c) The department shall hold a public informational hearing to solicit
17 comments on the department's decision under par. (b). The department shall give
18 notice of the hearing to each person who owns land in the area that would be affected
19 by the proposed special measures under par. (b) 3. and to each owner of a well in that
20 area if the well owner has notified the department of the location of that well.

21 (f) After holding the public hearing under par. (c), the department shall prepare
22 a report on whether it recommends that the legislature adopt, by statute, special
23 measures relating to groundwater withdrawal in the area described in its decision
24 under par. (b) 2. No later than 3 years after beginning the evaluation and modeling
25 under par. (am), the department shall submit the report to the joint committee on

1 finance and to the chief clerk of each house of the legislature, for distribution under
2 s. 13.172 (3) to the appropriate legislative standing committees generally
3 responsible for legislation related to environmental issues.

4 (g) If the department recommends in its report submitted under par. (f) that
5 the legislature adopt, by statute, special measures relating to groundwater
6 withdrawal in the area described in its decision under par. (b) 2., the department
7 shall prepare an additional report specifying the special measures relating to
8 groundwater withdrawal in that area that the department recommends that the
9 legislature adopt, by statute, to prevent or remedy a significant reduction of a
10 navigable stream's or navigable lake's rate of flow or water level below its average
11 seasonal levels. No later than 3 years after beginning the evaluation and modeling
12 under par. (am), the department shall submit the report to the joint committee on
13 finance and to the chief clerk of each house of the legislature, for distribution under
14 s. 13.172 (3) to the appropriate legislative standing committees generally
15 responsible for legislation related to environmental issues.

16 (gm) Neither a decision of the department under par. (b) nor a recommendation
17 of the department under par. (f) are final decisions. Notwithstanding ss. 227.42 (1)
18 and ss. 227.52, no person is entitled to administrative or judicial review of a
19 department decision under par. (b) or a department recommendation under par. (f).

20 (h) The special measures relating to groundwater withdrawal recommended
21 by the department under par. (b) 3. or par. (g) shall not be effective unless adopted
22 by the legislature by statute. Notwithstanding par. (m), nothing in this subsection
23 shall affect the department's review of applications and issuance of approvals for
24 high capacity wells located in the area studied under par. (am).

1 (L) The owner of a high capacity well that is constructed in the area studied
2 under par. (am) after the effective date of this paragraph [LRB inserts date], or
3 who takes any of the actions described in sub. (2g) 2. to 4. in the area studied under
4 par. (am) after the effective date of this paragraph [LRB inserts date], shall
5 provide to the department, with the owner's annual pumping report under sub. (5)
6 (e) 2., readings of a water meter showing the volume of water usage of that high
7 capacity well in gallons.

8 (m) 1. The department may issue an approval under this section to a qualified
9 lake association or lake district to construct and operate a new high capacity well,
10 or to operate an existing approved high capacity well, for the sole purpose of
11 providing water to a lake that is located wholly or partially in the area studied under
12 par. (am) to assist the department in evaluating and modeling the hydrology of that
13 area under par. (am), if the department determines that the lake's water level has
14 been significantly reduced below its average seasonal levels. For any approval
15 application submitted by a qualified lake association or lake district under this
16 paragraph, the department shall waive the application fee under sub. (2), expedite
17 the review and approval process to the greatest extent possible, and include, as a
18 condition of the approval, a limit on the water level of the lake that may be reached
19 as a result of the water provided by the proposed well. The department may not issue
20 an approval to a qualified lake association or lake district under this paragraph if it
21 determines that providing water from the proposed high capacity well to a lake is
22 likely to result in a violation of a water quality standard under s. 281.15 for that lake.

23 2. The department shall develop and administer a financial assistance
24 program to provide assistance to qualified lake associations and lake districts for all
25 or part of the cost of constructing or operating an approved high capacity well under

1 this paragraph. The financial assistance program shall include provisions relating
2 to cost-sharing from qualified lake associations and lake districts receiving
3 assistance under the program.

4 3. The department shall consider, in its evaluation and modeling under par.
5 (am), the effects of the groundwater withdrawal and the supply of water to a lake
6 resulting from any high capacity well constructed under this paragraph.

7 (n) Paragraphs (L) and (m) cease to apply in, and, notwithstanding sub. (7),
8 approvals shall expire that were issued under par. (m) in, any part of the area studied
9 under par. (am) to which any of the following applies:

10 1. The department submits a report under par. (f) recommending that no
11 special measures relating to groundwater withdrawal in that part of the area be
12 adopted.

13 1m. The department does not submit the report under par. (f) or (g) within 3
14 years after beginning the evaluation and modeling under par. (am).

15 2. The legislature does not adopt, by statute, special measures relating to
16 groundwater withdrawal in that part of the area within 12 months after receiving
17 a report from the department under par. (g).

18 3. The legislature adopts, by statute, special measures relating to groundwater
19 withdrawal in that part of the area.

20 **SECTION 5.** 281.955 of the statutes is created to read:
21 **281.955 Nuisance action.** (1) Any person who is unreasonably harmed by
22 a lowering of the water table or a reduction in artesian pressure caused by another
23 person's groundwater withdrawal may bring an action for nuisance against the
24 person who withdrew the groundwater, regardless of whether the groundwater is
25 used for a beneficial purpose.

