



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1305/P6
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT** *to renumber and amend* 281.34 (7); *to amend* 281.34 (2), 281.34 (4)
2 (a) (intro.), 281.34 (5) (a), 281.34 (5) (b), 281.34 (5) (c) and 281.34 (5) (d); and *to*
3 **create** 281.34 (1) (em), 281.34 (1) (er), 281.34 (1m), 281.34 (2g), 281.34 (4) (am),
4 281.34 (4g), 281.34 (5) (f), 281.34 (7) (b), 281.34 (7d), 281.34 (7g) and 281.34 (7m)
5 of the statutes; **relating to:** approvals for high capacity wells, designation of
6 sensitive resource areas, establishing a method for determining impairment of
7 navigable waters, providing exemptions from emergency rule procedures, and
8 granting rule-making authority.

Analysis by the Legislative Reference Bureau

HIGH CAPACITY WELLS

This bill makes 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. Current law requires a person to obtain approval from the Department of Natural Resources (DNR) before constructing or operating a high capacity well.

Activities exempt from approval

This bill provides that no additional approval is needed for the owner of an approved high capacity well to repair or maintain the well; to reconstruct the existing

high capacity well; or to transfer the approval at the same time as the owner transfers the land on which the approved high capacity well is located. The bill also provides that under certain circumstances an additional approval is not required to replace an existing high capacity well. The new high capacity well must be constructed in accordance with department standards that apply to the construction of new high capacity wells on the date that construction of the replacement begins and must satisfy one of two other requirements. Either the well replacement must be undertaken to remedy or prevent contamination or the replacement well must be drilled to substantially the same depth as the existing well and be located within a 75-foot radius of the existing well. 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 conditions of the existing high capacity well approval. The conditions of the approval issued for the existing high capacity well continue to apply after any of these actions are taken.

Environmental review

Current law requires DNR to conduct a specific type of environmental review (special environmental review) of applications for approval of a high capacity well that is located in an area within 1,200 feet of a trout stream or an exceptional or outstanding resource water; a high capacity well with a high water loss, in which less than 5 percent of the water withdrawn is returned after use to the basin from which it is withdrawn; and a high capacity well that may have a significant environmental impact on a qualifying spring.

This bill provides that DNR is required to conduct a special environmental review under these circumstances only if the high capacity well is located in an area designated by statute as a sensitive resource area (SRA). If it is not located in an SRA, DNR may, but is not required to, conduct a special environmental review.

Deadlines

This bill provides that DNR must approve an application for a high capacity well approval within 65 business days from the date on which the application is filed, if no special environmental review is conducted, and within 130 business days from the date of application if a special environmental review is conducted. These deadlines do not apply to an application for a high capacity well approval located in an SRA.

Rescinding and modifying existing approvals

This bill changes the statutory language under which DNR may rescind or modify a high capacity well approval. Under current law, DNR may rescind a high capacity well approval if the well does not conform with standards or conditions applicable to the approval for the well. This bill eliminates failure to conform with the standards applicable to the approval as a basis for rescinding the approval.

Current law also provides that DNR may modify a high capacity well approval if the well does not conform with standards or conditions applicable to the approval. This bill changes current law with respect to the modification of a high capacity well approval by providing that DNR may not impose new or modified conditions on an existing well unless a hearing examiner determines that these conditions are

necessary in order to abate an impairment of public rights in navigable waters. The bill provides that if the high capacity well is located in an SRA, DNR may also impose new or modified conditions if the statute designating the area as an SRA authorizes DNR to impose those conditions.

Conditions in new approvals

Under current law, if an application is one for which DNR conducts a special environmental review, or if the application is for approval of a high capacity well that DNR determines may impair a public water supply, DNR may not approve the application unless it includes certain conditions in the approval. The conditions must ensure that, depending on the location of the well, the public water supply is protected, the well does not cause significant environmental impact, or the environmental impact is balanced by the public benefit of the well.

Generally, this bill provides that DNR may impose conditions in a high capacity well approval only to ensure that the well will not cause a significant adverse environmental impact to a navigable water and to require the owner of the high capacity well to remedy any impairment to another person's well that is not a high capacity well and to pay the costs for remediating the impairment.

This bill provides that DNR may not impose conditions in any approval issued for a new high capacity well, other than one located in an SRA, unless the conditions relate only to location, depth, pumping capacity, rate of flow, or ultimate use. The bill provides that DNR may also require monitoring as a condition in an approval if monitoring is necessary in order for DNR to determine whether the groundwater withdrawal in the amount or at the rate specified in the approval will not exceed the amount or rate allowed under the laws regulating high capacity well approvals. If DNR requires monitoring, the monitoring condition may only be imposed to allow DNR to assess the water levels of the navigable waters in the area or the quality of the groundwater withdrawn from the well. If the approval is for a high capacity well located in an SRA, DNR may also impose other conditions in the approval if the statute designating the area as an SRA authorizes the department to impose those other conditions.

The bill also provides that if the approval application is one for which DNR conducts a special environmental review, or is for a well that DNR determines may impair a public water supply, DNR must also impose conditions for the purposes required in those cases under current law.

IMPAIRMENT OF STREAM FLOWS AND LAKE WATER LEVELS

This bill requires DNR to promulgate rules establishing a method for determining whether the flow of a stream or the water level of a lake is impaired for the purpose of the laws relating to high capacity wells. The bill generally requires DNR to make this determination for a stream based upon the number of days that the stream would be likely to fall below a certain mean low flow and for a lake based upon the number of days that the lake would be likely to fall below a certain mean low water level. The bill authorizes DNR to use a different method as described in the bill to determine whether a stream's flow or lake's water level is impaired if the use of the alternative method will enable DNR to protect certain fish and aquatic life,

to ensure that typical navigation may be conducted on the stream or lake, or to ensure that water quality is protected.

SENSITIVE RESOURCE AREAS

This bill establishes a procedure under which DNR may determine whether a geographic area of the state should be designated as an SRA. The bill provides that if DNR has information or data from a professional geologist, hydrologist, or hydrogeologist showing that cumulative groundwater withdrawals from high capacity wells in an area of this state are collectively causing, or may be likely to collectively cause, an impairment of the flow of a stream or the water level of a lake, DNR may request approval from the Joint Committee on Finance (JCF) to model the hydrology of the area. The bill allows DNR to model the hydrology of the central sands region of this state or a part of the central sands region without requesting approval from JCF. The bill defines the central sands region as the contiguous geographic area of this state that is bounded on the west by the Wisconsin River, on the east by the Fox River, on the north by STH 153, and on the south by the Adams-Columbia county line.

The bill provides that if JCF approves DNR's request, DNR must conduct an evaluation and modeling of the area. If upon conclusion of the evaluation and modeling of an area for which DNR received approval from JCF, or of the central sands region, DNR determines that special regulations relating to groundwater withdrawal are necessary in that area to prevent or remedy the impairment of the flow of a stream or the water level of a lake in the area, DNR must issue a decision on whether it recommends designation of the area as an SRA. If DNR issues a decision recommending designation of the area as an SRA, DNR's decision must contain certain information including a description of the geographical boundaries of the area and a proposed method for regulating the area. The bill specifies that this method may include the use of conservation measures, the imposition of limits on groundwater withdrawals, the use of a groundwater withdrawal credit system, or other means of regulation.

The bill provides that after DNR issues its decision, it must hold a public hearing to solicit comments on its decision. The bill provides that any person may request that the hearing be treated as a contested case hearing and any person may be made a party to the hearing if the person makes a timely request to be made a party. After the exhaustion of the period of time established by law for all administrative reviews and judicial reviews of a final decision in a contested case, DNR must prepare, and submit to the legislature, a report on whether the area should be designated as a sensitive resource area.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

prelim

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

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

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

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

5 281.34 (1) (er) “Sensitive resource area” means an area designated as a
6 sensitive resource area by statute.

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

8 281.34 (1m) LIMITS ON REGULATORY AUTHORITY. (a) Notwithstanding ss. 281.11
9 and 281.12 (1), the department’s duty and authority, including rule-making
10 authority, with respect to issuance of high capacity well approvals is limited to the
11 duty and authority that is explicitly conferred upon the department by this section.

12 (b) Paragraph (a) does not limit the department’s authority to regulate water
13 withdrawals under ss. 281.346 and 281.35.

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

15 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. An Except as provided
16 under sub. (2g), an owner shall apply to the department for approval before
17 construction of a high capacity well begins. No Except as provided under sub. (2g),
18 no person may construct or withdraw water from a high capacity well without the
19 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
20 owner applying for approval under this subsection shall pay a fee of \$500. The
21 department shall issue an approval to construct a high capacity well to any person
22 who applies for an approval and pays the required fee if the high capacity well meets
23 the requirements of this section.

24 **SECTION 5.** 281.34 (2g) of the statutes is created to read:

INS.
5-23

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

- 6 1. Repair and maintain the existing high capacity well.
- 7 2. Construct a new high capacity well to replace the existing high capacity well
- 8 if the new high capacity well will be constructed in accordance with department
- 9 standards that apply to the construction of new high capacity wells on the date that
- 10 construction of the replacement high capacity well begins and if any of the following
- 11 applies:

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

X
15 b. The replacement high capacity well will be drilled to substantially the same
16 depth as the existing high capacity well and will be located within a 75-foot radius
17 of the existing high capacity well.

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- 18 3. Reconstruct the existing high capacity well.
- 19 4. Transfer the approval, concurrent with transferring the land on which the
- 20 approved high capacity well is located, to the person to whom the land is transferred.

21 (b) The department may not impose a fee for any action under par. (a).
22 (c) The owner shall notify the department of any action taken under par. (a) 2.,
23 3., or 4. on a form prescribed by the department.

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 6.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

7 281.34 (4) (a) (intro.) The department shall review an application for approval
8 of any of the following that are located in a sensitive resource area using the
9 environmental review process in its rules promulgated under s. 1.11:

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

11 281.34 (4) (am) The department may review an application for approval of a
12 high capacity well described in par. (a) 1. to 3. using the environmental review
13 process in its rules promulgated under s. 1.11 if the high capacity well is not located
14 in a sensitive resource area.

15 **SECTION 8.** 281.34 (4g) of the statutes is created to read:

16 281.34 (4g) APPROVAL DEADLINES. (a) Except as provided in par. (b), the
17 department shall approve or deny an application for an approval for a high capacity
18 well within the following period:

19 1. If an environmental review is not conducted under sub. (4), within 65
20 business days from the date of filing the application for the approval.

21 2. If an environmental review is conducted under sub. (4), within 130 business
22 days from the date of filing the application for the approval.

23 (b) This subsection does not apply to an approval application for a high capacity
24 well located in a sensitive resource area.

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

SECTION 9

1 281.34 (5) (a) *Public water supply.* If the department determines that a
2 proposed high capacity well may impair the water supply of a public utility engaged
3 in furnishing water to or for the public, the department may not approve the high
4 capacity well unless it is able to include and includes in the approval conditions,
5 ~~which may include conditions as to location, depth, pumping capacity, rate of flow,~~
6 ~~and ultimate use, limited to those described in par. (f) 3. and if applicable par. (f) 4.~~
7 and 5, that will ensure that the water supply of the public utility will not be
8 impaired.

9 **SECTION 10.** 281.34 (5) (b) of the statutes is amended to read:

10 281.34 (5) (b) *Groundwater protection area.* 1. Except as provided in subd. 2.,
11 if the department determines, under the environmental review process in sub. (4),
12 that an environmental impact report under s. 23.11 (5) must be prepared for a
13 proposed high capacity well located in a groundwater protection area, the
14 department may not approve the high capacity well unless it is able to include and
15 includes in the approval conditions, ~~which may include conditions as to location,~~
16 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
17 ~~in par. (f) 3. and if applicable par. (f) 4. and 5~~, that ensure that the high capacity well
18 does not cause significant environmental impact.

19 2. Subdivision 1. does not apply to a proposed high capacity well that is located
20 in a groundwater protection area and that is a water supply for a public utility
21 engaged in supplying water to or for the public, if the department determines that
22 there is no other reasonable alternative location for a well and is able to include and
23 includes in the approval conditions, ~~which may include conditions as to location,~~
24 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
25 ~~in par. (f) 3. and if applicable par. (f) 4. and 5~~, that ensure that the environmental

1 impact of the well is balanced by the public benefit of the well related to public health
2 and safety.

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

4 281.34 (5) (c) *High water loss.* If the department determines, under the
5 environmental review process in sub. (4), that an environmental impact report under
6 s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of
7 more than 95 percent of the amount of water withdrawn, the department may not
8 approve the high capacity well unless it is able to include and includes in the
9 approval conditions, ~~which may include conditions as to location, depth, pumping~~
10 ~~capacity, rate of flow, and ultimate use, limited to those described in par. (f) 3. and~~
11 ~~if applicable par. (f) 4. and 5),~~ that ensure that the high capacity well does not cause
12 significant environmental impact.

13 **SECTION 12.** 281.34 (5) (d) of the statutes is amended to read:

14 281.34 (5) (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the
15 department determines, under the environmental review process in sub. (4), that an
16 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
17 capacity well that may have a significant environmental impact on a spring, the
18 department may not approve the high capacity well unless it is able to include and
19 includes in the approval conditions, ~~which may include conditions as to location,~~
20 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
21 ~~in par. (f) 3. and if applicable par. (f) 4. and 5),~~ that ensure that the high capacity well
22 does not cause significant environmental impact.

23 2. Subdivision 1. does not apply to a proposed high capacity well that may have
24 a significant environmental impact on a spring and that is a water supply for a public
25 utility engaged in supplying water to or for the public, if the department determines

1 that there is no other reasonable alternative location for a well and is able to include
2 and includes in the approval conditions, ~~which may include conditions as to location,~~
3 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
4 ~~in par. (f) 3. and if applicable par. (f) 4. and 5,~~ ^{new} that ensure that the environmental
5 impact of the well is balanced by the public benefit of the well related to public health
6 and safety.

In reviewing an application for an approval for a high capacity well,

7 **SECTION 13.** 281.34 (5) (f) of the statutes is created to read:

8 281.34 (5) (f) *Limitations on approval conditions for new high capacity wells.*

9 1. The department may impose conditions in ^{of that} an approval ~~issued for a new high~~
10 ~~capacity well only~~ ^{if the conditions are imposed} for the following purposes, subject to subd. 2.:

11 a. To ensure that ^{any of} the high capacity well together with other wells on the same
12 property or on contiguous property owned by the ^{new} high capacity well owner will not
13 cause a significant adverse environmental impact to a navigable water. In making
14 this determination, the department shall consider the impact to a navigable water
15 caused only by ~~these wells~~ and may not consider the impact caused by any other
16 wells.

17 b. To require the owner of the ^{existing} high capacity well to remedy ~~any impairment~~ to
18 another person's well that is not a high capacity well ~~and to pay the costs for~~
19 ~~remediating the impairment.~~ ^{an unreasonable harm caused by the new} high capacity well

20 a. 2. (In an approval to which par. (a), (b), (c), or (d) applies, the department shall
21 also impose conditions for the purposes specified in par. (a), (b), (c), or (d),
22 respectively.

23 3. Except as provided in subds. 4. and 5, if the department imposes conditions
24 in any approval for a new high capacity well, the ~~conditions~~ may ~~relate~~ only to the
25 following:

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the new high capacity well together with other wells on the same property ... by the new high capacity well owner

Restrict the _____ of the high capacity well

- 1 a. Location.
- 2 b. Depth.
- 3 c. Pumping capacity.
- 4 d. Rate of flow.
- 5 e. Ultimate use, except that the department may not require the high capacity
- 6 well to be used for a purpose not proposed by the applicant in the approval
- 7 application.
- 8 f. ^{Impose} Conditions that the department is authorized to impose to meet the
- 9 requirements of subd. 1. b.

INS.
11-9

10 4. The department may require monitoring as a condition in an approval for

11 a high capacity well if all of the following apply:

12 a. The department cannot ensure, without requiring monitoring, that the

13 amount or rate of the groundwater withdrawal authorized in the approval will not

14 exceed the amount or rate of groundwater withdrawal allowed for high capacity wells

15 under this section or that the quality of the groundwater withdrawn from the well

16 will not be impaired.

17 b. The monitoring conditions are imposed only for the purpose of assessing the

18 water levels of navigable waters in the area or the quality of groundwater withdrawn

19 from the well.

X

20 ^{4.} 5. If the department issues an approval for a new high capacity well located in

21 a sensitive resource area, the department may impose conditions in the approval, in

22 addition to those specified under subds. 3. and 4., only if the statute designating the

23 area as a sensitive resource area authorizes the department to impose those

24 additional conditions.

1 **SECTION 14.** 281.34 (7) of the statutes is renumbered 281.34 (7) (a) and
2 amended to read:

3 281.34 (7) (a) The department may not rescind an approval of a high capacity
4 well issued under this section or under s. 281.17 (1), 2001 stats., ~~remains in effect~~
5 unless the ~~department modifies or rescinds the approval because the~~ high capacity
6 well or the use of the high capacity well is not in conformance with ~~standards or~~
7 ~~conditions applicable to the approval of the high capacity well.~~

8 **SECTION 15.** 281.34 (7) (b) of the statutes is created to read:

9 281.34 (7) (b) 1. Except as provided in subd. 2., the department may impose new
10 or modified conditions applicable to the approval of a high capacity well issued under
11 this section or under s. 281.17 (1), 2001 stats., only if a hearing examiner determines
12 that the imposition of new or modified conditions is necessary in order to abate an
13 impairment ^{infringement} of public rights in navigable waters and issues an order under s. 30.03
14 (4) requiring the owner of the high capacity well to comply with the new or modified
15 conditions.

16 2. In addition to the department's authority under subd. 1., the department
17 may impose new or modified conditions applicable to the approval of a high capacity
18 well issued under this section or under s. 281.17 (1), 2001 stats., if the well is located
19 in a sensitive resource area and the statute designating the area as a sensitive
20 resource area authorizes the department to impose the new or modified conditions.

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21 **SECTION 16.** 281.34 (7d) of the statutes is created to read:

22 281.34 (7d) **RULES; APPROVAL APPLICATIONS.** The department shall promulgate
23 rules establishing the procedures for reviewing and acting on applications for
24 approvals under this section.

25 **SECTION 17.** 281.34 (7g) of the statutes is created to read:

X

281.34 (7g) RULES: IMPAIRMENT (a) In this subsection:

1. "Actual number of low days" means the number of days in a particular year that the flow of a stream or the water level of a lake was or is likely to be at or below the natural 10-year low, determined according to the method established under par.

(b).

2. "Average number of low days" means the average number of days per year that the flow of a stream or the water level of a lake could be expected to be at or below the natural 10-year low absent any groundwater withdrawals affecting the stream or lake, determined according to the method established under par. (b).

3. "Natural 10-year low" means the following:

a. For a stream, the 7-day mean low stream flow expected to occur on the average of once in 10 years absent any groundwater withdrawals affecting the stream.

b. For a lake, the 7-day mean low lake water level expected to occur on the average of once in 10 years absent any groundwater withdrawals affecting the lake.

pull up

(b) The department shall promulgate rules establishing a method for determining the actual number of low days and the average number of low days for

a stream or lake.

(c) 1. The department shall determine that the flow of a stream is impaired for purposes of this section if the actual number of low days exceeds the average number of low days by a factor of X.

2. The department may determine that the flow of a stream is impaired for purposes of this section if the department determines that the actual number of low days is likely to cause any of the following:

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13-16

a stream or lake to

SECTION 17

- 1 (a) Endangerment of fish and aquatic life that are naturally sustainable absent
- 2 any groundwater withdrawals affecting the stream. *or lake*
- 3 (b) Impairment of navigation of the type typically conducted on the stream. *or lake*
- 4 (c) Deterioration of the water quality of the stream *or lake* below public health and
- 5 safety standards.

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4-5

6 (d) 1. The department shall determine that the water level of a lake is impaired

7 for purposes of this section if the actual number of low days exceeds the average

8 number of low days by a factor of **X**.

9 2. The department may determine that the water level of a lake is impaired for

10 purposes of this section if the department determines that the actual number of low

11 days is likely to cause any of the following:

- 12 a. Endangerment of fish and aquatic life that are naturally sustainable absent
- 13 any groundwater withdrawals affecting the lake.
- 14 b. Impairment of navigation of the type typically conducted on the lake.
- 15 c. Deterioration of the water quality of the lake below public health and safety
- 16 standards.

SECTION 18. 281.34 (7m) of the statutes is created to read:

17 281.34 (7m) SENSITIVE RESOURCE AREAS. (a) 1. In this paragraph, "central sands

18 region" means the contiguous geographic area of this state that is bounded on the

19 west by the Wisconsin River, on the east by the Fox River, on the north by STH 153,

20 and on the south by the Adams-Columbia county line.

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21 2. Except as provided in subd. 3., if the department has information or data

22 from a professional geologist, professional hydrologist, or professional

23 hydrogeologist showing that cumulative groundwater withdrawals from high

24 capacity wells and other wells in an area of this state are collectively causing or may

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15-3

1 be likely to collectively cause an impairment of the flow of a stream or the water level
2 of a lake, ^{one or more of the impacts under sub. (7g) to occur in the area} the department shall request approval from the joint committee on finance
3 to evaluate and model the hydrology of that area.

4 3. The department may evaluate or model the hydrology of the central sands
5 region or a part of the central sands region without requesting approval from the
6 joint committee on finance. ^{Pleasant Lake area}

7 (b) If a majority of the members of the joint committee on finance approve the
8 department's request under par. (a) 2., the department shall conduct an evaluation
9 and modeling of the area. ^{If upon conclusion of the evaluation and modeling of an}
10 area ^{as authorized under par. (a) 2.} ^{Pleasant Lake area} under this paragraph or of the central sands region, the department determines
11 that special regulations relating to groundwater withdrawal are necessary in that
12 area to prevent or remedy the impairment of the flow of a stream or the water level
13 of a lake, ^{occurrence} of one or more impacts under sub. (7g) in the area, the department shall issue a decision on whether it recommends
14 designation of the area as a sensitive resource area. If the department issues a
15 decision recommending designation of the area as a sensitive resource area, the
16 decision shall contain all of the following information:

17 1. A description of the extent to which the department has determined that
18 cumulative groundwater withdrawals in the area ^{cause} impair, or are expected to impair,
19 the flow of a stream or the water level of a lake in the area.

20 2. A description of the geographical boundaries of the area that the department
21 recommends for designation as a sensitive resource area. ^{INS. 15-21}

22 3. ^{INS. 15-22} Proposed method for regulating the area recommended for designation as
23 a sensitive resource area. ^{INS. 15-23} The method may include the use of conservation measures,
24 the imposition of limits on groundwater withdrawals, the use of a groundwater
25 withdrawal credit system, or other means of regulation. ^{INS. 15-25}

INS.
15-19

X

cause, one or more of the impacts under sub. (7g) to occur

1 (c) The department shall hold a public informational hearing to solicit
2 comments on the department's decision.

3 (d) 1. Notwithstanding s. 227.42 (1), any person is entitled to request that the
4 hearing under par. (c) be treated as a contested case under ch. 227 if the person makes
5 the request within 30 days after the department issues its decision under par. (b).

6 2. Any person may participate as a party if the person files a written notice with
7 the hearing examiner setting forth his or her interest within 30 days after the date
8 on which the request under subd. 1. is granted.

9 (e) A person seeking judicial review of a final decision in a contested case under
10 par. (d) shall comply with the requirements for service and filing in s. 227.53 (1) (a)
11 and shall commence the action no more than 30 days after a decision in the contested
12 case is rendered.

13 (f) After the exhaustion of the period established for all administrative reviews
14 and judicial reviews of a final decision in a contested case under par. (d), the
15 department shall prepare a report on whether the area described in its decision
16 under par. (b) should be designated as a sensitive resource area. The department
17 shall submit the report to the chief clerk of each house of the legislature, for
18 distribution under s. 13.172 (3) to the appropriate legislative standing committees
19 generally responsible for legislation related to environmental issues.

20 **SECTION 19. Nonstatutory provisions.**

21 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
22 the department of natural resources shall promulgate the rules required under
23 section 281.34 (7d) and (7g) of the statutes, as created by this act, as emergency rules.
24 The emergency rules shall remain in effect for the period before the effective date of
25 the permanent rules promulgated under section 281.34 (7d) and (7g) of the statutes,

IWS.
16-19

1 as created by this act but not to exceed the period authorized under section 227.24
2 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
3 Notwithstanding section 227.24 (2) of the statutes, the department may seek any
4 number of extensions of the effective period of emergency rules under section 227.24
5 (2) of the statutes except that no extension shall be allowed after July 1, 2018.
6 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
7 is not required to provide evidence that promulgating a rule under this subsection
8 as an emergency rule is necessary for the preservation of the public peace, health,
9 safety, or welfare and is not required to provide a finding of emergency for a rule
10 promulgated under this subsection.

11 **SECTION 20. Initial applicability.**

12 (1) The treatment of section 281.34 (1m) and (5) (a), (b), (c), (d), and (f) of the
13 statutes first applies to high capacity well approvals issued on the effective date of
14 this subsection.

15 (2) The treatment of section 281.34 (2g) of the statutes first applies to repair,
16 replacement, or reconstruction of a high capacity well that begins, or transfer of
17 ownership that occurs, on the effective date of this subsection.

18 (3) The treatment of section 281.34 (4) (a) (intro.) and (am) and (4g) of the
19 statutes first applies to applications for high capacity well approvals filed on the
20 effective date of this subsection.

INS. 21

17-20

(END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1305/P7ins.
RNK:.....

INSERT 5-23

1 *no 9/* If the department denies an approval under this section, the department shall
2 provide the applicant with a written explanation of the reason for the denial.

INSERT 6-17

3 c. The replacement well will be located within a 75-foot radius of the existing
4 high capacity well, except that if the replacement well is located in a groundwater
5 protection area, it may be located within a radius greater than 75 feet of the existing
6 high capacity well with the approval of the department.

INSERT 10-22

7 b. Subdivision 1. a. does not apply to a new high capacity well that may cause
8 a significant adverse environmental impact to a navigable water and that is a water
9 supply for a public utility engaged in supplying water to or for the public if the
10 department determines that there is no other reasonable alternative location for the
11 well and determines that the environmental impact of the well is balanced by the
12 public benefit of the well related to public health and safety.

INSERT 11-9

13 g. Impose conditions consistent with department standards that apply to the
14 construction of high capacity wells.

INSERT 12-20

15 3. Nothing in this paragraph prohibits the department from imposing
16 conditions applicable to the approval of a high capacity well if the high capacity well
17 owner agrees to the imposition of the other conditions.

INSERT 13-16

1 *no ch* whether a stream's rate of flow is below the rate necessary to prevent all of the
2 following and for determining whether a lake's water level is below the level
3 necessary to prevent all of the following:

4

(d)
(d)

INSERT 14-5

5 *(d)* d. Infringement upon a riparian owner's ability to obtain reasonable access to
6 a lake.

INSERT 14-21

7 *no ch* "Pleasant Lake area" means Pleasant Lake in Waushara County and the area
8 surrounding Pleasant Lake in Waushara County

INSERT 15-3

9 *no ch* The department may proceed with the requested action if within 14 working
10 days of the request the committee does not schedule a meeting for the purpose of
11 reviewing the department's request. If the committee schedules a meeting for the
12 purpose of reviewing the department's request, the department may not take the
13 requested action unless the committee approves the request.

INSERT 15-19

14 1m. A description of the concrete scientific information that the department
15 used to establish that there is a hydrologic connection between the groundwater in
16 the area and the navigable waters in the area.

INSERT 15-21

17 *no ch* The department shall identify in the description the specific navigable water
18 or part of the navigable water that is or may be affected by the cumulative

1 groundwater withdrawals and shall identify the location of the groundwater
2 withdrawals that the department has determined ~~is~~ causing ~~one~~ or more of the
3 impacts under sub. (7g) ~~(b)~~ to occur in the area.

are or may cause

INSERT 15-22

4 (bg) After the department issues its decision under par. (b), the department
5 shall issue a report containing a

INSERT 15-23

6 *mod* or for taking other action to prevent or remedy the occurrence of one or more
7 of the impacts under sub. (7g) ~~(b)~~ in the area

INSERT 15-25

8 *mod* The department shall specify in the report the length of time that it will
9 reasonably require to review ~~of~~ *re* an application for approval of a new high capacity
10 wells *re* in the area. The report shall identify the specific navigable water or part of the
11 navigable water that is or may be affected by cumulative groundwater withdrawals
12 in the area and shall identify the location of the groundwater withdrawals that the
13 department has determined ~~is~~ causing the impacts under sub. (7g) ~~(b)~~ to occur in the
14 area.

are or may cause

INSERT 16-19

15 (g) An area may be designated as a sensitive resource area only by statute.

INSERT 17-20

16 **SECTION 1. Nonstatutory provisions.**

17 ~~#~~ ~~#~~ (1) ~~(a)~~ In this subsection:

18 ~~#~~ 1. "Department" means the department of natural resources.

Modification of previously issued approvals. (4)

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

(b) If the department issued an approval to an owner of a high capacity well under section 281.34 (2) of the statutes on or after July 6, 2011, and before the effective date of this paragraph, the department shall, upon the owner's request, review the conditions in the approval. If the conditions in the approval are not consistent with the department's authority under section 281.34 of the statutes, as affected by this act, the department shall remove or revise the conditions in the approval consistent with that authority.

SECTION 2. Initial applicability.

(1) This act first applies to applications for a high capacity well approval received by the department of natural resources but not acted upon on the effective date of this subsection.

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1305/P7
RNK:cjs&wlj

Stays
↓

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to renumber and amend** 281.34 (7); **to amend** 281.34 (2), 281.34 (4)
2 (a) (intro.), 281.34 (5) (a), 281.34 (5) (b), 281.34 (5) (c) and 281.34 (5) (d); and **to**
3 **create** 281.34 (1) (em), 281.34 (1) (er), 281.34 (1m), 281.34 (2g), 281.34 (4) (am),
4 281.34 (4g), 281.34 (5) (f), 281.34 (7) (b), 281.34 (7d), 281.34 (7g) and 281.34 (7m)
5 of the statutes; **relating to:** approvals for high capacity wells, designation of
6 sensitive resource areas, establishing a method for determining impairment of
7 navigable waters, providing exemptions from emergency rule procedures, and
8 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

1 281.34 (1) (em) “Reconstruct” means to modify original construction including
2 deepening, lining, installing or replacing a screen, and underreaming.

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

4 281.34 (1) (er) “Sensitive resource area” means an area designated as a
5 sensitive resource area by statute.

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

7 281.34 (1m) LIMITS ON REGULATORY AUTHORITY. (a) Notwithstanding ss. 281.11
8 and 281.12 (1), the department’s duty and authority, including rule-making
9 authority, with respect to issuance of high capacity well approvals is limited to the
10 duty and authority that is explicitly conferred upon the department by this section.

11 (b) Paragraph (a) does not limit the department’s authority to regulate water
12 withdrawals under ss. 281.346 and 281.35.

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

14 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. ~~An~~ Except as provided
15 under sub. (2g), an owner shall apply to the department for approval before
16 construction of a high capacity well begins. ~~No~~ Except as provided under sub. (2g),
17 no person may construct or withdraw water from a high capacity well without the
18 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
19 owner applying for approval under this subsection shall pay a fee of \$500. The
20 department shall issue an approval to construct a high capacity well to any person
21 who applies for an approval and pays the required fee if the high capacity well meets
22 the requirements of this section. If the department denies an approval under this
23 section, the department shall provide the applicant with a written explanation of the
24 reason for the denial.

25 **SECTION 5.** 281.34 (2g) of the statutes is created to read:

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

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

7 2. Construct a new high capacity well to replace the existing high capacity well
8 if the new high capacity well will be constructed in accordance with department
9 standards that apply to the construction of new high capacity wells on the date that
10 construction of the replacement high capacity well begins and if any of the following
11 applies:

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

15 b. The replacement high capacity well will be drilled to substantially the same
16 depth as the existing high capacity well.

17 c. The replacement well will be located within a 75-foot radius of the existing
18 high capacity well, except that if the replacement well is located in a groundwater
19 protection area, it may be located within a radius greater than 75 feet of the existing
20 high capacity well with the approval of the department.

21 3. Reconstruct the existing high capacity well.

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

24 (b) The department may not impose a fee for any action under par. (a).

1 (c) The owner shall notify the department of any action taken under par. (a) 2.,
2 3., or 4. on a form prescribed by the department.

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

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

8 **SECTION 6.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

9 281.34 (4) (a) (intro.) The department shall review an application for approval
10 of any of the following that are located in a sensitive resource area using the
11 environmental review process in its rules promulgated under s. 1.11:

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

13 281.34 (4) (am) The department may review an application for approval of a
14 high capacity well described in par. (a) 1. to 3. using the environmental review
15 process in its rules promulgated under s. 1.11 if the high capacity well is not located
16 in a sensitive resource area.

17 **SECTION 8.** 281.34 (4g) of the statutes is created to read:

18 281.34 (4g) APPROVAL DEADLINES. (a) Except as provided in par. (b), the
19 department shall approve or deny an application for an approval for a high capacity
20 well within the following period:

21 1. If an environmental review is not conducted under sub. (4), within 65
22 business days from the date of filing the application for the approval.

23 2. If an environmental review is conducted under sub. (4), within 130 business
24 days from the date of filing the application for the approval.

1 (b) This subsection does not apply to an approval application for a high capacity
2 well located in a sensitive resource area.

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

4 281.34 (5) (a) *Public water supply.* If the department determines that a
5 proposed high capacity well may impair the water supply of a public utility engaged
6 in furnishing water to or for the public, the department may not approve the high
7 capacity well unless it is able to include and includes in the approval conditions,
8 ~~which may include conditions as to location, depth, pumping capacity, rate of flow,~~
9 ~~and ultimate use, limited to those described in par. (f) 3. and if applicable par. (f) 4.,~~
10 that will ensure that the water supply of the public utility will not be impaired.

11 **SECTION 10.** 281.34 (5) (b) of the statutes is amended to read:

12 281.34 (5) (b) *Groundwater protection area.* 1. Except as provided in subd. 2.,
13 if the department determines, under the environmental review process in sub. (4),
14 that an environmental impact report under s. 23.11 (5) must be prepared for a
15 proposed high capacity well located in a groundwater protection area, the
16 department may not approve the high capacity well unless it is able to include and
17 includes in the approval conditions, ~~which may include conditions as to location,~~
18 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
19 ~~in par. (f) 3. and if applicable par. (f) 4.,~~ that ensure that the high capacity well does
20 not cause significant environmental impact.

21 2. Subdivision 1. does not apply to a proposed high capacity well that is located
22 in a groundwater protection area and that is a water supply for a public utility
23 engaged in supplying water to or for the public, if the department determines that
24 there is no other reasonable alternative location for a well and is able to include and
25 includes in the approval conditions, ~~which may include conditions as to location,~~

1 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
2 ~~in par. (f) 3. and if applicable par. (f) 4.,~~ that ensure that the environmental impact
3 of the well is balanced by the public benefit of the well related to public health and
4 safety.

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

6 281.34 (5) (c) *High water loss.* If the department determines, under the
7 environmental review process in sub. (4), that an environmental impact report under
8 s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of
9 more than 95 percent of the amount of water withdrawn, the department may not
10 approve the high capacity well unless it is able to include and includes in the
11 approval conditions, ~~which may include conditions as to location, depth, pumping~~
12 ~~capacity, rate of flow, and ultimate use, limited to those described in par. (f) 3. and~~
13 ~~if applicable par. (f) 4.,~~ that ensure that the high capacity well does not cause
14 significant environmental impact.

15 **SECTION 12.** 281.34 (5) (d) of the statutes is amended to read:

16 281.34 (5) (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the
17 department determines, under the environmental review process in sub. (4), that an
18 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
19 capacity well that may have a significant environmental impact on a spring, the
20 department may not approve the high capacity well unless it is able to include and
21 includes in the approval conditions, ~~which may include conditions as to location,~~
22 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
23 ~~in par. (f) 3. and if applicable par. (f) 4.,~~ that ensure that the high capacity well does
24 not cause significant environmental impact.

1 2. Subdivision 1. does not apply to a proposed high capacity well that may have
 2 a significant environmental impact on a spring and that is a water supply for a public
 3 utility engaged in supplying water to or for the public, if the department determines
 4 that there is no other reasonable alternative location for a well and is able to include
 5 and includes in the approval conditions, ~~which may include conditions as to location,~~
 6 ~~depth, pumping capacity, rate of flow, and ultimate use,~~ limited to those described
 7 in par. (f) 3. and if applicable par. (f) 4., that ensure that the environmental impact
 8 of the well is balanced by the public benefit of the well related to public health and
 9 safety.

SECTION 13. 281.34 (5) (f) of the statutes is created to read:

281.34 (5) (f) *Limitations on approval conditions for new high capacity wells.*

JNS.
7-13

1. In reviewing an application for an approval for a new high capacity well, the
 department may impose conditions in ~~that~~ ^{the} approval only if the conditions are
 imposed for any of the following purposes, subject to subd. 2.:
 ↑ for the new high capacity well

a. To ensure that the new high capacity well together with other wells on the
 same property or on contiguous property owned by the new high capacity well owner
 will not cause a significant adverse environmental impact to a navigable water. In
 making this determination, the department shall consider the impact to a navigable
 water caused only by the new high capacity well together with other wells on the
 same property or on contiguous property owned by the new high capacity well owner
 and may not consider the impact caused by any other wells.

b. To require the owner of the new high capacity well to remedy an
 unreasonable harm caused by the new high capacity well to another person's existing
 well ^{if the other person's well} ~~that~~ is not a high capacity well.

JNS.
7-24

1 2. a. In an approval to which par. (a), (b), (c), or (d) applies, the department shall
2 also impose conditions for the purposes specified in par. (a), (b), (c), or (d),
3 respectively.

4 b. Subdivision 1. a. does not apply to a new high capacity well that may cause
5 a significant adverse environmental impact to a navigable water and that is a water
6 supply for a public utility engaged in supplying water to or for the public if the
7 department determines that there is no other reasonable alternative location for the
8 well and determines that the environmental impact of the well is balanced by the
9 public benefit of the well related to public health and safety.

10 3. Except as provided in subd. 4., if the department imposes conditions in any
11 approval for a new high capacity well, the department may only do the following:

12 a. Restrict the location of the high capacity well.

13 b. Restrict the depth of the high capacity well.

14 c. Restrict the pumping capacity of the high capacity well.

15 d. Restrict the rate of flow of the high capacity well.

16 e. Restrict the ultimate use of the high capacity well, except that the
17 department may not require the high capacity well to be used for a purpose not
18 proposed by the applicant in the approval application.

19 f. Impose conditions that the department is authorized to impose to meet the
20 requirements of subd. 1. b.

21 g. Impose conditions consistent with department standards that apply to the
22 construction of high capacity wells.

23 4. If the department issues an approval for a new high capacity well located in
24 a sensitive resource area, the department may impose conditions in the approval, in
25 addition to those specified under subd. 3., only if the statute designating the area as

they are consistent with
the department's authority granted by

1 a sensitive resource area authorizes the department to impose those additional
2 conditions.

3 SECTION 14. 281.34 (7) of the statutes is renumbered 281.34 (7) (a) and
4 amended to read:

5 281.34 (7) (a) The department may not rescind an approval of a high capacity
6 well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect
7 unless the department modifies or rescinds the approval because the high capacity
8 well or the use of the high capacity well is not in conformance with standards or
9 conditions applicable to the approval of the high capacity well.

10 SECTION 15. 281.34 (7) (b) of the statutes is created to read:

11 281.34 (7) (b) 1. Except as provided in subd. 2., the department may impose new
12 or modified conditions applicable to the approval of a high capacity well issued under
13 this section or under s. 281.17 (1), 2001 stats., only if a hearing examiner determines
14 that the imposition of new or modified conditions is necessary in order to abate an
15 infringement of public rights in navigable waters and issues an order under s. 30.03
16 (4) requiring the owner of the high capacity well to comply with the new or modified
17 conditions.

18 2. In addition to the department's authority under subd. 1., the department
19 may impose new or modified conditions applicable to the approval of a high capacity
20 well issued under this section or under s. 281.17 (1), 2001 stats., if the well is located
21 in a sensitive resource area and the statute designating the area as a sensitive
22 resource area authorizes the department to impose the new or modified conditions.

23 3. Nothing in this paragraph prohibits the department from imposing
24 conditions applicable to the approval of a high capacity well if the high capacity well
25 owner agrees to the imposition of the conditions.

a new
in an existing
approval
or modifying an existing condition,
new or modified by statute

1 SECTION 16. 281.34 (7d) of the statutes is created to read:

2 281.34 (7d) RULES; APPROVAL APPLICATIONS. The department shall promulgate
3 rules establishing the procedures for reviewing and acting on applications for
4 approvals under this section.

5 SECTION 17. 281.34 (7g) of the statutes is created to read:

6 281.34 (7g) RULES. The department shall promulgate rules establishing a
7 method for determining whether a stream's rate of flow is below the rate necessary
8 to prevent all of the following and for determining whether a lake's water level is
9 below the level necessary to prevent all of the following:

INS.
10-9

10 (a) Endangerment of fish and aquatic life that are naturally sustainable absent
11 any groundwater withdrawals affecting the stream or lake.

12 (b) Impairment of navigation of the type typically conducted on the stream or
13 lake.

14 (c) Deterioration of the water quality of the stream or lake below public health
15 and safety standards.

16 (d) Infringement upon a riparian owner's ability to obtain reasonable access to
17 a lake.

reasonable expectation of

INS. 10-19

18 SECTION 18. 281.34 (7m) of the statutes is created to read:

19 281.34 (7m) SENSITIVE RESOURCE AREAS. (a) 1. In this paragraph, "Pleasant
20 Lake area" means Pleasant Lake in Waushara County and the area surrounding
21 Pleasant Lake in Waushara County.

22 2. Except as provided in subd. 3., if the department has information or data
23 from a professional geologist, professional hydrologist, or professional
24 hydrogeologist showing that cumulative groundwater withdrawals from high
25 capacity wells and other wells in an area of this state are collectively causing or may

INS.
11-2

1 be likely to collectively cause one or more of the impacts under sub. (7g) to occur in
 2 the area, the department shall request approval from the joint committee on finance
 3 to evaluate and model the hydrology of that area. The department may proceed with
 4 the requested action if within 14 working days of the request the committee does not
 5 schedule a meeting for the purpose of reviewing the department's request. If the
 6 committee schedules a meeting for the purpose of reviewing the department's
 7 request, the department may not take the requested action unless the committee
 8 approves the request.

9 3. The department may evaluate or model the hydrology of the Pleasant Lake
 10 area without requesting approval from the joint committee on finance.

11 (b) If upon conclusion of the evaluation and modeling of an area as authorized
 12 under par. (a) 2. or of the Pleasant Lake area, the department determines that special

13 regulations ^{measures} relating to groundwater withdrawal are necessary in that area to
 14 prevent or remedy the occurrence of one or more impacts under sub. (7g) in the area,
 15 the department shall issue a decision on whether it recommends designation of the
 16 area as a sensitive resource area. If the department issues a decision recommending
 17 designation of the area as a sensitive resource area, the decision shall contain all of
 18 the following information:

INS.
11-14

19 1. A description of the extent to which the department has determined that
 20 cumulative groundwater withdrawals in the area cause, or are expected to cause, one
 21 or more of the impacts under sub. (7g) to occur in the area. INS. 11-21

22 1m. A description of the concrete scientific information that the department
 23 used to establish that there is a hydrologic connection between the groundwater in
 24 the area and the navigable waters in the area. INS. 11-24

1 2. A description of the geographical boundaries of the area that the department
 2 recommends for designation as a sensitive resource area. The department shall
 3 identify in the description the specific navigable water or part of the navigable water
 4 that is or may be affected by the cumulative groundwater withdrawals and shall
 5 identify the location of the groundwater withdrawals that the department has
 6 determined are causing or may cause one or more of the impacts under sub. (7g) to
 7 occur in the area.

INS.
12-7

8 (bg) After the department issues its decision under par. (b), the department
 9 shall issue a report containing a proposed method for regulating the area
 10 recommended for designation as a sensitive resource area or for taking other action
 11 to prevent or remedy the occurrence of one or more of the impacts under sub. (7g) in

INS.
12-9

INS.
12-12

12 the area. The method may include the use of conservation measures, the imposition
 13 of limits on groundwater withdrawals, the use of a groundwater withdrawal credit
 14 system, or other means of regulation. The department shall specify in the report the
 15 length of time that it will reasonably require to review an application for approval
 16 of a new high capacity well in the area. The report shall identify the specific
 17 navigable water or part of the navigable water that is or may be affected by
 18 cumulative groundwater withdrawals in the area and shall identify the location of
 19 the groundwater withdrawals that the department has determined are causing or
 20 may cause the impacts under sub. (7g) to occur in the area.

INS 12-20

21 (c) The department shall hold a public informational hearing to solicit
 22 comments on the department's decision.

23 (d) 1. Notwithstanding s. 227.42 (1), any person is entitled to request that the
 24 hearing under par. (c) be treated as a contested case under ch. 227 if the person makes
 25 the request within 30 days after the department issues its decision under par. (b).

1 2. Any person may participate as a party if the person files a written notice with
2 the hearing examiner setting forth his or her interest within 30 days after the date
3 on which the request under subd. 1. is granted.

4 (e) A person seeking judicial review of a final decision in a contested case under
5 par. (d) shall comply with the requirements for service and filing in s. 227.53 (1) (a)
6 and shall commence the action no more than 30 days after a decision in the contested
7 case is rendered.

8 (f) After the exhaustion of the period established for all administrative reviews
9 and judicial reviews of a final decision in a contested case under par. (d), the
10 department shall prepare a report on whether the area described in its decision
11 under par. (b) should be designated as a sensitive resource area. The department
12 shall submit the report to the chief clerk of each house of the legislature, for
13 distribution under s. 13.172 (3) to the appropriate legislative standing committees
14 generally responsible for legislation related to environmental issues.

15 ~~(g)~~ An area may be designated as a sensitive resource area only by statute.

16 (h)
SECTION 19. Nonstatutory provisions.

17 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
18 the department of natural resources shall promulgate the rules required under
19 section 281.34 (7d) and (7g) of the statutes, as created by this act, as emergency rules.
20 The emergency rules shall remain in effect for the period before the effective date of
21 the permanent rules promulgated under section 281.34 (7d) and (7g) of the statutes,
22 as created by this act but not to exceed the period authorized under section 227.24
23 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
24 Notwithstanding section 227.24 (2) of the statutes, the department may seek any
25 number of extensions of the effective period of emergency rules under section 227.24

INS,
13-14

1 (2) of the statutes except that no extension shall be allowed after July 1, 2018.
2 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
3 is not required to provide evidence that promulgating a rule under this subsection
4 as an emergency rule is necessary for the preservation of the public peace, health,
5 safety, or welfare and is not required to provide a finding of emergency for a rule
6 promulgated under this subsection.

7 (2) MODIFICATION OF PREVIOUSLY ISSUED APPROVALS.

8 (a) In this subsection:

- 9 1. "Department" means the department of natural resources.
10 2. "Owner" has the meaning given in section 281.34 (1) (d) of the statutes.

11 (b) If the department issued an approval to an owner of a high capacity well
12 under section 281.34 (2) of the statutes on or after July 6, 2011, and before the
13 effective date of this paragraph, the department shall, upon the owner's request,
14 review the conditions in the approval. If the conditions in the approval are not
15 consistent with the department's authority under section 281.34 of the statutes, as
16 affected by this act, the department shall remove or revise the conditions in the
17 approval consistent with that authority.

18 **SECTION 20. Initial applicability.**

19 (1) This act first applies to applications for a high capacity well approval
20 received by the department of natural resources but not acted upon on the effective
21 date of this subsection.

22 (END)

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LRB-1305/P7ins.
RNK:...

INSERT 7-13

1 *No of* may not impose conditions on any other existing well, regardless of the location
2 of the existing well. The department

INSERT 7-24

3 *No of* and it was in existence on the date of the application for approval of the new
4 high capacity well

INSERT 10-9

5 *No of* the minimum rate of flow of a stream and the minimum water level of a lake

INSERT 10-19

6 *No of* In this *subsection* paragraph:

7 a. "Minimum level" means the rate of flow of a stream or the water level of a
8 lake that is the minimum level determined by the department using the method
9 established under sub. (7g).

10 b. "Pleasant

INSERT 11-2

11 *No of* a reduction of a stream or lake's minimum level

INSERT 11-14

12 *No of* a reduction of a stream or lake's minimum level

INSERT 11-21

13 *No of* a reduction of a stream or lake's minimum level

14

INSERT 11-24

actual rate of flow or water level below its

1 *No* *and* the degree to which the department verified the connection by the use of field
2 work or field study

INSERT 12-7

3 *No* a reduction of a stream or lake's minimum level

4

INSERT 12-9

5 *No* proposed measures relating to groundwater withdrawal that the department
6 recommends be taken in

INSERT 12-12

7 *No* a reduction of a stream or lake's minimum level. If the department recommends
8 special regulations for the area, the recommend regulations

INSERT 12-20

9 *No* a reduction of a stream or lake's minimum level

INSERT 13-14

10 (g) If the department recommends in its report submitted under par. (f) that
11 the area described under par. (b) be designated as a sensitive resource area, the
12 department shall prepare an additional report specifying any measures that the
13 department recommends be conducted in that area to prevent or remedy a reduction
14 of a stream or lake's minimum level

*actual
rate of
flow or
water level
below its*

