



State of Wisconsin
2015 - 2016 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 477**

February 5, 2016 – Offered by Representative KRUG.

1 **AN ACT to renumber and amend** 281.34 (4) (a) 1. and 281.34 (7); **to amend**
2 281.34 (2), 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b), 281.34 (5) (c),
3 281.34 (5) (d) and 281.34 (5m); and **to create** 281.34 (1) (bm), 281.34 (1) (cm),
4 281.34 (1) (em), 281.34 (1) (er), 281.34 (1m), 281.34 (2d), 281.34 (2g), 281.34 (4)
5 (a) 1. a. and b., 281.34 (4) (am), 281.34 (4g), 281.34 (5) (b) 3., 281.34 (5) (f), 281.34
6 (7) (b), 281.34 (7g), 281.34 (7m) and 281.34 (11) of the statutes; **relating to:**
7 approvals for high capacity wells, designation of sensitive resource areas,
8 liability to residential well owners, providing exemptions from emergency rule
9 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

OVERVIEW

This substitute amendment makes various 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 before constructing or operating a high capacity well.

This substitute amendment specifies the conditions that DNR may impose or modify in an approval for an existing high capacity well and those that it may impose in an approval for a new high capacity well. The conditions vary depending on certain circumstances such as whether the well will be, or is, located in a sensitive resource area (SRA) designated by the legislature by statute. The substitute amendment establishes a procedure under which an area may be designated as an SRA by statute. The substitute amendment also changes the requirements relating to environmental review of high capacity well approval applications, and requires certain high capacity well owners to compensate certain non-high capacity well owners for negative impacts to their water supply.

Special environmental review

Current law requires DNR to conduct a certain type of environmental review of an application for approval of 1) 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, 2) 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, or 3) a high capacity well that may have a significant environmental impact on a qualifying spring.

This substitute amendment changes the requirement to conduct a special environmental review of an application for a high capacity well that is located within 1,200 feet of a trout stream or an exceptional or outstanding resource water to a requirement to conduct a special environment review of an application for a high capacity well that is located within 1,200 feet of a trout stream or a navigable water.

The substitute amendment also provides that DNR is required to conduct a special environmental review only if the high capacity well is located in an area designated by statute as an SRA. If it is not located in an SRA, DNR may, but is not required to, conduct this special environmental review.

Deadlines

This substitute amendment 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. If an application has already been submitted to DNR by the effective date of this substitute amendment, these deadlines begin to run on the effective date. If the DNR does not meet these deadlines it must refund the application fee to the applicant.

Rescinding and modifying existing approvals

Current law allows DNR to rescind a high capacity well approval if the well does not conform with standards or conditions applicable to the approval for the well. This substitute amendment provides that DNR may only rescind the approval if the well or the use of the well does not conform with conditions contained in 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 substitute amendment provides that DNR may only impose new or modified conditions on an existing well if 1) a hearing examiner determines that those conditions are necessary in order to abate an infringement of public rights in navigable waters, 2) the high capacity well is located in an SRA and DNR is authorized by statute to impose those conditions, or 3) the well owner agrees to the imposition of the new or modified condition.

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.

This substitute amendment limits the conditions that DNR may impose in an approval issued for a new high capacity well, other than one located in an SRA. Under the substitute amendment, DNR may impose restrictions on the location, depth, pumping capacity, rate of flow, and ultimate use of a high capacity well. These conditions must be identical to the information provided in the application for the high capacity well approval, unless different conditions are necessary to ensure that the high capacity well will not significantly impair groundwater quality because of existing contaminants in the area or, if the approval application is one for which DNR conducts a special environmental review, to ensure that 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.

Minimum water levels; sensitive resource areas

The substitute amendment requires DNR to promulgate rules establishing a uniform method for determining the minimum rate of flow of a stream and the minimum water level of a lake necessary to prevent 1) endangerment of certain fish and aquatic life, 2) impairment of navigation typically conducted on a stream or lake, 3) deterioration of water quality resulting in a violation of water quality standards, 4) infringement upon a riparian owner's reasonable expectation of access to a lake, and 5) impairment of the use of any existing surface water diversions from a stream or lake.

This substitute amendment also establishes a procedure under which DNR may determine whether a geographic area of the state should be designated as an SRA. The substitute amendment provides that if DNR has information or data that it determines to be credible 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 a reduction of a stream's or lake's rate of flow or water level below its minimum level, DNR must request approval from the Joint Committee on Finance to study and model the area. DNR must also request approval from JCF to study certain smaller subwatershed areas if DNR receives, in a calendar year, applications for high capacity well approvals within that area that would have a

cumulative withdrawal capacity of more than 15 million gallons per day. The substitute amendment also requires DNR to study certain parts of Waushara, Wood, and Marquette counties without requesting approval from JCF.

The substitute amendment provides that if JCF approves DNR's request, or allows DNR to proceed without a JCF meeting to approve the request, DNR must conduct a study of the area for which the request is made. If upon conclusion of the study of an area DNR determines that special measures relating to groundwater withdrawal are necessary in that area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level, 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 description of the extent to which DNR has determined that cumulative groundwater withdrawals in the area cause, or are expected to cause, a reduction of a stream's or lake's rate of flow or water level below its minimum level. The decision must also include any proposed measures that DNR recommends be taken in the area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level. These measures may include proposed regulations such as 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 substitute amendment provides that after DNR issues its decision, it must hold a public hearing to solicit comments on its decision. DNR must then prepare, and submit to the legislature, a report on whether the area should be designated as a sensitive resource area. If DNR recommends that the area be designated as an SRA, DNR must prepare an additional report specifying any measures that it recommends be conducted in the area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level.

Under the substitute amendment, an area may be designated as an SRA only by statute. After an area is designated as an SRA by statute, DNR must review the area every ten years and submit a report to the legislature as to whether the boundaries of the SRA and any of the special measures applicable to the SRA that have been adopted by statute should be changed. If an area is designated as an SRA, the substitute amendment requires DNR, in determining whether to approve or deny an application for approval of a high capacity well located in the SRA, to consider the cumulative environmental impacts of that high capacity well together with existing wells.

After DNR requests approval from JCF to study an area for possible designation as an SRA, it may not approve certain applications for new high capacity wells in that area unless DNR determines that the high capacity well will have no hydrologic connection to any existing navigable water, or that it will not cause a significant measurable drawdown of any navigable water. This restriction continues to apply until 1) JCF denies DNR's request to study the area, 2) DNR fails to recommend designation as an SRA within 30 months after requesting to study the area, 3) DNR determines that the area should not be designated as an SRA, 4) the

area is not designated as an SRA within 12 months after DNR recommends designation as an SRA, 5) DNR fails to recommend special measures relating to groundwater withdrawal that should be taken in an area within 12 months after recommending that the area be designated as an SRA, 6) DNR determines that no special measures relating to groundwater withdrawal should be taken in the area, 7) the legislature does not adopt special measures relating to groundwater withdrawal in an area within 12 months after DNR recommends special measures for that area, or 8) the legislature adopts special measures relating to groundwater withdrawal within the designated SRA.

Modification of previously issued approvals

This substitute amendment also allows certain owners of existing high capacity wells to obtain modification of a previously issued approval. Under the substitute amendment, if DNR issued an approval for a high capacity well on or after July 6, 2011, and before the effective date of the substitute amendment, DNR must, upon the well owner's request, review the conditions in that approval. If the conditions are not consistent with DNR's authority under this substitute amendment, DNR must remove or revise those conditions consistent with that authority.

Activities exempt from approval

This substitute amendment also provides that no additional approval is needed for the owner of an approved high capacity well to 1) repair or maintain the well, 2) reconstruct the existing high capacity well if the reconstructed well meets certain conditions, or 3) transfer the approval at the same time as the owner transfers the land on which the approved high capacity well is located. The substitute amendment 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 DNR standards that apply to the construction of new high capacity wells on the date that construction of the replacement begins and must satisfy certain other requirements. 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 certain 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.

Notice to other well owners

The substitute amendment requires an applicant for approval of a new high capacity well to provide notice to each owner of a non-high capacity well located within a one-mile radius of the proposed high capacity well.

Liability to other well owners

This substitute amendment also requires the owner of a high capacity well that causes a non-high capacity well to experience a substantial loss of water or a significant decrease in water pressure to provide compensation for replacing,

modifying, or repairing the well and provide an interim potable water supply to the owner of the non-high capacity well, under certain circumstances. A high capacity well owner that disputes that the high capacity well has caused the negative effects to the non-high capacity well may bring an action for declaratory judgment on the issue of causation.

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

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

2 281.34 (1) (bm) “Intermittent stream” means a stream that does not have a
3 continuous flow every day of every year in which there is average precipitation.

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

5 281.34 (1) (cm) “Navigable water” means a natural navigable water and does
6 not include an artificial water body, as defined under s. 30.19 (1b) (a), or a farm
7 drainage ditch, as defined under s. 30.10 (4) (c).

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

9 281.34 (1) (em) “Reconstruct” means to modify original construction including
10 deepening, lining, installing or replacing a screen, and underreaming.

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

12 281.34 (1) (er) “Sensitive resource area” means an area designated as a
13 sensitive resource area by statute.

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

15 281.34 (1m) LIMITS ON REGULATORY AUTHORITY. (a) Notwithstanding ss. 281.11
16 and 281.12 (1), the department’s duty and authority, including public trust duties or
17 rule-making authority, with respect to issuance of high capacity well approvals is
18 limited to the duty and authority that is explicitly conferred upon the department
19 by this section.

1 (b) Paragraph (a) does not limit the department's authority to regulate water
2 withdrawals under ss. 281.346 and 281.35.

3 **SECTION 6.** 281.34 (2) of the statutes is amended to read:

4 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. ~~An Except as provided~~
5 ~~under sub. (2g), an~~ owner shall apply to the department for approval before
6 construction of a high capacity well begins. ~~No Except as provided under sub. (2g),~~
7 ~~no~~ person may construct or withdraw water from a high capacity well without the
8 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
9 owner applying for approval under this subsection shall specify in the application the
10 location, depth, maximum pumping capacity, maximum rate of flow, and ultimate
11 use of the proposed high capacity well and shall pay a fee of \$500. The department
12 shall issue an approval to construct a high capacity well to any person who applies
13 for an approval, pays the required fee, and complies with the notice requirement
14 under sub. (2d), if the high capacity well meets the requirements of this section. If
15 the department denies an approval under this section, the department shall provide
16 the applicant with a written explanation of the reason for the denial.

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

18 281.34 (2d) NOTICE TO OTHER WELL OWNERS. An owner who applies for approval
19 of a new high capacity well under this section shall provide notice to each owner of
20 a well that is not a high capacity well within a one-mile radius of the location of the
21 proposed high capacity well, or the applicant shall request the clerk of each town,
22 city, or village within a one-mile radius of the location of the proposed high capacity
23 well to provide, and the clerk shall provide, the notice. The notice shall include the
24 location of the proposed high capacity well and inform well owners of their rights

1 under sub. (11). The notice shall be provided no later than the date on which the
2 application for approval is filed.

3 **SECTION 8.** 281.34 (2g) of the statutes is created to read:

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

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

10 2. Construct a new high capacity well to replace the existing high capacity well
11 if the new high capacity well will be constructed in accordance with department
12 standards that apply to the construction of new high capacity wells on the date that
13 construction of the replacement high capacity well begins, if the existing high
14 capacity well is filled and sealed as provided in rules promulgated by the
15 department, and if any of the following applies:

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

19 b. The replacement high capacity well will be drilled to substantially the same
20 depth as the existing high capacity well and will be located within a 75-foot radius
21 of the existing high capacity well or, if located 75 feet or more from the existing high
22 capacity well, will be located farther from the nearest navigable water than the
23 existing high capacity well and will not be located within 1,200 feet of any other
24 navigable water. In this subd. 2. b., “navigable water” does not include an
25 intermittent stream unless it is a trout stream described in sub. (1) (a) 3.

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

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

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

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

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

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

17 **SECTION 9.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

18 281.34 (4) (a) (intro.) The department shall review an application for approval
19 of any of the following that are located in a sensitive resource area using the
20 environmental review process in its rules promulgated under s. 1.11:

21 **SECTION 10.** 281.34 (4) (a) 1. of the statutes is renumbered 281.34 (4) (a) 1.
22 (intro.) and amended to read:

23 281.34 (4) (a) 1. (intro.) A high capacity well that is located ~~in a groundwater~~
24 ~~protection area.~~ within 1,200 feet of one of the following:

25 **SECTION 11.** 281.34 (4) (a) 1. a. and b. of the statutes are created to read:

1 281.34 (4) (a) 1. a. A trout stream described in sub. (1) (a) 3.

2 b. A navigable water, not including an intermittent stream other than a trout
3 stream described in sub. (1) (a) 3.

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

5 281.34 (4) (am) The department may review an application for approval of a
6 high capacity well described in par. (a) 1. to 3. using the environmental review
7 process in its rules promulgated under s. 1.11 if the high capacity well is not located
8 in a sensitive resource area.

9 **SECTION 13.** 281.34 (4g) of the statutes is created to read:

10 281.34 (4g) APPROVAL DEADLINES. (a) Except as provided in par. (b), the
11 department shall approve or deny an application for an approval for a high capacity
12 well within the following period:

13 1. If an environmental review is not conducted under sub. (4), within 65
14 business days from the date of filing the application for the approval for applications
15 filed on or after the effective date of this subdivision [LRB inserts date], or within
16 65 business days from the effective date of this subdivision [LRB inserts date], for
17 applications filed before that date.

18 2. If an environmental review is conducted under sub. (4), within 130 business
19 days from the date of filing the application for the approval for applications filed on
20 or after the effective date of this subdivision [LRB inserts date], or within 130
21 business days from the effective date of this subdivision [LRB inserts date], for
22 applications filed before that date.

23 (am) The department shall refund to the applicant the application fee for a high
24 capacity well approval if the department does not approve or deny the application
25 within the period specified under par. (a).

1 (b) This subsection does not apply to an approval application for a high capacity
2 well located in a sensitive resource area, if a different deadline is specified for that
3 sensitive resource area by statute.

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

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

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

13 281.34 (5) (b) ~~Groundwater protection area~~ Within 1,200 feet of a navigable
14 water or trout stream. 1. Except as provided in subd. 2., if the department
15 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 will be located in a groundwater protection area within 1,200 feet of a~~
18 navigable water or a trout stream described in sub. (1) (a) 3., the department may
19 not approve the high capacity well unless it is able to include and includes in the
20 approval conditions, ~~which may include conditions as to location, depth, pumping~~
21 ~~capacity, rate of flow, and ultimate use, limited to those described in par. (f),~~ that
22 ensure that the high capacity well does not cause significant environmental impact.

23 2. Subdivision 1. does not apply to a proposed high capacity well that is located
24 ~~in a groundwater protection area within 1,200 feet of a navigable water or a trout~~
25 stream described in sub. (1) (a) 3. and that is a water supply for a public utility

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

7 **SECTION 16.** 281.34 (5) (b) 3. of the statutes is created to read:

8 281.34 (5) (b) 3. In this paragraph, “navigable water” does not include an
9 intermittent stream unless it is a trout stream described in sub. (1) (a) 3.

10 **SECTION 17.** 281.34 (5) (c) of the statutes is amended to read:

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

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

20 281.34 (5) (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the
21 department determines, ~~under the environmental review process in sub. (4), that an~~
22 ~~environmental impact report under s. 23.11 (5) must be prepared for a proposed high~~
23 ~~capacity well that may have a significant environmental impact on a spring, the~~
24 department may not approve the high capacity well unless it 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),~~ that ensure that the high capacity well does not cause significant
3 environmental impact.

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

12 **SECTION 19.** 281.34 (5) (f) of the statutes is created to read:

13 281.34 (5) (f) *Limitations on approval conditions for new high capacity wells.*

14 1. Except as provided in subds. 4. and 5., the department may include conditions in
15 an approval for a high capacity well only on the following:

- 16 a. The location of the high capacity well.
- 17 b. The depth of the high capacity well.
- 18 c. The pumping capacity of the high capacity well.
- 19 d. The rate of flow of the high capacity well.
- 20 e. The ultimate use of the high capacity well, except that the department may
21 not require the high capacity well to be used for a purpose not proposed by the
22 applicant in the approval application.

23 2. The department may include the conditions under subd. 1. in the approval
24 for a new high capacity well only if the conditions are included for any of the following
25 purposes:

1 a. To ensure that the new high capacity well will not significantly impair
2 groundwater quality or exacerbate an impairment to groundwater quality because
3 of existing contaminants in the area where the proposed well will be located. In
4 making this determination, the department may consider the impact caused only by
5 the new high capacity well together with other wells on the same property or on
6 contiguous property owned by the new high capacity well owner, and may not
7 consider the impact caused by any other wells.

8 b. For the purposes specified in par. (a), (b), (c), or (d), if applicable.

9 3. Except as provided in subd. 5., the conditions under subd. 1. a. to e. that are
10 included in an approval shall be identical to the information provided in the approval
11 application unless different conditions are necessary to meet the purposes described
12 in subd. 2.

13 4. In addition to the conditions under subd. 1., the department may include the
14 following conditions in an approval for a high capacity well:

15 a. A requirement that the owner of the high capacity well comply with the
16 compensation requirements under sub. (11).

17 b. A requirement that the high capacity well comply with department
18 standards that apply to the construction of high capacity wells.

19 5. If the department issues an approval for a high capacity well located in a
20 sensitive resource area, the department may include conditions in the approval in
21 addition to those under subds. 1. and 4. if they are consistent with the department's
22 authority granted by statute. Subdivision 3. does not apply to conditions included
23 in an approval for a high capacity well located in a sensitive resource area.

1 6. In reviewing an application for an approval for a new high capacity well, the
2 department may not impose conditions on any other existing well, regardless of the
3 location of the existing well, unless the department is authorized to do so by statute.

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

5 281.34 **(5m)** CONSIDERATION OF CUMULATIVE IMPACTS. No person may challenge
6 an approval, or an application for approval, of a high capacity well based on the lack
7 of consideration of the cumulative environmental impacts of that high capacity well
8 together with existing wells, unless the high capacity well is located in a sensitive
9 resource area.

10 **SECTION 21.** 281.34 (7) of the statutes is renumbered 281.34 (7) (a) and
11 amended to read:

12 281.34 **(7)** (a) The department may not rescind an approval of a high capacity
13 well issued under this section or under s. 281.17 (1), 2001 stats., ~~remains in effect~~
14 unless the department ~~modifies or rescinds the approval because the high capacity~~
15 well or the use of the high capacity well is not in conformance with ~~standards or~~
16 conditions ~~applicable to~~ contained in the approval of the high capacity well.

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

18 281.34 **(7)** (b) 1. Except as provided in subd. 2., the department may impose new
19 or modified conditions applicable to the approval of a high capacity well issued under
20 this section or under s. 281.17 (1), 2001 stats., only if a hearing examiner determines
21 that the imposition of new or modified conditions is necessary in order to abate an
22 infringement of public rights in navigable waters and issues an order under s. 30.03
23 (4) requiring the owner of the high capacity well to comply with the new or modified
24 conditions.

1 2. In addition to the department's authority under subd. 1., the department
2 may impose new or modified conditions applicable to the approval of a high capacity
3 well issued under this section or under s. 281.17 (1), 2001 stats., if the well is located
4 in a sensitive resource area and the department is authorized to impose the new or
5 modified conditions by statute.

6 3. Nothing in this paragraph prohibits the department from imposing a new
7 condition, or modifying an existing condition, in an existing high capacity well
8 approval if the high capacity well owner agrees to the imposition of the new or
9 modified condition and the condition is of the type that the department is authorized
10 to impose under sub. (5) (f).

11 **SECTION 23.** 281.34 (7g) of the statutes is created to read:

12 281.34 **(7g)** RULES. (a) For the purpose of establishing a minimum level under
13 sub. (7m), the department shall promulgate rules establishing the method for
14 determining the minimum rate of flow of each stream and the minimum water level
15 of each lake necessary to prevent all of the following:

16 1. Endangerment of fish and aquatic life that are naturally sustainable absent
17 any groundwater withdrawals affecting the stream or lake.

18 2. Impairment of navigation of the type typically conducted on the stream or
19 lake.

20 3. Deterioration of the water quality of the stream or lake, caused by the
21 reduction of the rate of flow or water level of the stream or lake, that results in a
22 violation of a water quality standard set under rules promulgated by the department
23 under s. 281.15.

24 4. Infringement upon a riparian owner's reasonable expectation of access to a
25 lake.

1 5. Reduction in the amount of water available for any existing surface water
2 diversion from the stream or lake that impairs the diversion's use.

3 (b) The department shall promulgate rules defining what constitutes a
4 significant measurable drawdown of a navigable water for purposes of sub. (7m) (m)

5 2. The department shall define a significant measurable drawdown as the amount
6 of reduction of a rate of flow or a water level of a navigable water that is greater than
7 the seasonal variation for that navigable water. The definition of a significant
8 measurable drawdown shall be limited to rates of flow and water levels only, and
9 shall not include any biological or other factors.

10 (c) The department shall promulgate rules, consistent with this section,
11 establishing its administrative procedures for receiving, reviewing, and acting on
12 applications for approvals under this section.

13 **SECTION 24.** 281.34 (7m) of the statutes is created to read:

14 281.34 **(7m)** SENSITIVE RESOURCE AREAS. (a) In this subsection:

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

18 2. "Navigable stream or navigable lake" does not include an artificial water
19 body, as defined under s. 30.19 (1b) (a), or a farm drainage ditch, as defined under
20 s. 30.10 (4) (c).

21 (ag) If the department has information or data, that the department
22 determines to be credible, from a professional geologist, professional hydrologist, or
23 professional hydrogeologist that shows that cumulative groundwater withdrawals
24 from high capacity wells and other wells in an area of this state are collectively
25 causing or may be likely to collectively cause a reduction of a navigable stream's or

1 navigable lake's rate of flow or water level below the minimum level determined for
2 that stream or lake, the department shall request approval from the joint committee
3 on finance to evaluate and model the hydrology of that area.

4 (aj) If, during a calendar year, the department receives approval applications
5 under this section for high capacity wells, located in a subwatershed area described
6 by a 12-digit hydrologic unit code by the federal department of the interior or the
7 federal department of agriculture, that would have a cumulative withdrawal
8 capacity of more than 15 million gallons per day, the department shall request
9 approval from the joint committee on finance to evaluate and model the hydrology
10 of that area.

11 (am) The department may proceed with the action requested under par. (ag)
12 or (aj) if within 14 working days of the request the joint committee on finance does
13 not schedule a meeting for the purpose of reviewing the department's request. If the
14 committee schedules a meeting for the purpose of reviewing the department's
15 request, the department may not take the requested action unless the committee
16 approves the request.

17 (ar) The department shall evaluate and model the hydrology of sections 32, 33,
18 and 34 of the town of Coloma in Waushara County, the town of Oasis in Waushara
19 County, the town of Saratoga in Wood County, and sections 2, 3, and 4 of the town of
20 Springfield in Marquette County. The department shall conduct the activities
21 required under this paragraph without requesting or obtaining approval from the
22 joint committee on finance.

23 (b) If upon conclusion of the evaluation and modeling of an area under par. (am)
24 or (ar), the department determines that special measures relating to existing and
25 potential groundwater withdrawal are necessary in that area to prevent or remedy

1 a reduction of a navigable stream's or navigable lake's rate of flow or water level
2 below its minimum level, the department shall issue a decision on whether it
3 recommends designation of the area as a sensitive resource area. If the department
4 issues a decision recommending designation of the area as a sensitive resource area,
5 the decision shall contain all of the following information:

6 1. A description of the extent to which the department has determined that
7 cumulative groundwater withdrawals in the area cause, or are expected to cause, a
8 reduction of a navigable stream's or navigable lake's rate of flow or water level below
9 its minimum level.

10 1m. A description of the concrete scientific information that the department
11 used to establish that there is a hydrologic connection between the groundwater in
12 the area and the navigable waters in the area and the degree to which the
13 department verified the connection by the use of field work or field study.

14 2. A description of the geographical boundaries of the area that the department
15 recommends for designation as a sensitive resource area. The department shall
16 identify in the description the specific navigable water or part of the navigable water
17 that is or may be affected by the cumulative groundwater withdrawals and shall
18 identify the location of the groundwater withdrawals that the department has
19 determined are causing or may cause a reduction of a navigable stream's or navigable
20 lake's rate of flow or water level below its minimum level.

21 3. Any proposed measures relating to existing and potential groundwater
22 withdrawal that the department recommends be taken in the area recommended for
23 designation as a sensitive resource area to prevent or remedy a reduction of a
24 navigable stream's or navigable lake's rate of flow or water level below its minimum
25 level. If the department recommends special regulations for the area, the

1 regulations may include the use of conservation measures, the imposition of limits
2 on groundwater withdrawals, the use of a groundwater withdrawal credit system,
3 or other means of regulation.

4 4. The length of time that the department will reasonably require to review an
5 application for approval of a new high capacity well in the area.

6 (c) The department shall hold a public informational hearing to solicit
7 comments on the department's decision. The department shall give notice of the
8 hearing to each person who owns land in the area recommended for designation as
9 a sensitive resource area and to each owner of a well in the area recommended for
10 designation as a sensitive resource area if the well owner has notified the department
11 of the location of that well.

12 (f) After holding the public hearing under par. (c), the department shall prepare
13 a report on whether the area described in its decision under par. (b) should be
14 designated as a sensitive resource area. The department shall submit the report to
15 the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to
16 the appropriate legislative standing committees generally responsible for legislation
17 related to environmental issues.

18 (g) If the department recommends in its report submitted under par. (f) that
19 the area described under par. (b) be designated as a sensitive resource area, the
20 department shall prepare an additional report specifying any measures that the
21 department recommends be conducted in that area to prevent or remedy a reduction
22 of a navigable stream's or navigable lake's rate of flow or water level below its
23 minimum level. The department shall submit the report to the chief clerk of each
24 house of the legislature, for distribution under s. 13.172 (3) to the appropriate

1 legislative standing committees generally responsible for legislation related to
2 environmental issues.

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

7 (h) An area may be designated as a sensitive resource area only by statute.

8 (j) The department's duty and authority with respect to high capacity well
9 approvals in a sensitive resource area is limited to the duty and authority that is
10 explicitly conferred upon the department by statute.

11 (k) At least every 10 years after an area is designated as a sensitive resource
12 area the department shall review the boundaries of the sensitive resource area and
13 any measures that have been adopted by statute relating to the sensitive resource
14 area to determine whether the boundaries and measures continue to be appropriate
15 under this subsection. The department shall prepare a report on whether the
16 boundaries and measures continue to be appropriate, whether the designation of the
17 area as a sensitive resource area should be removed, or whether the boundaries and
18 measures should be changed and, if so, the department's recommended changes. The
19 department shall submit the report to the chief clerk of each house of the legislature,
20 for distribution under s. 13.172 (3) to the appropriate legislative standing
21 committees generally responsible for legislation related to environmental issues.

22 (L) The designation of an area as a sensitive resource area may be removed only
23 by an act of the legislature.

24 (m) Subject to par. (n), the department may not issue an approval for a new high
25 capacity well located in an area that the department has requested to evaluate and

1 model under par. (ag) if the application for approval is filed after the department
2 submits its request to the joint committee on finance, in an area described in par. (ar),
3 or in an area that the department has requested to evaluate and model under par.
4 (aj), unless any of the following occurs:

5 1. The applicant provides the department with information that shows, and the
6 department determines, that the proposed high capacity well will have no hydrologic
7 connection to any existing navigable water.

8 2. The applicant provides the department with information that shows, and the
9 department determines, that the proposed high capacity well will not cause a
10 significant measurable drawdown, as defined by the department by rule under sub.
11 (7g) (b), of any navigable water to which the proposed well is hydrologically
12 connected.

13 (n) The restriction under par. (m) ceases to apply if one of the following events
14 occurs:

15 1. The joint committee on finance denies the department's request for approval
16 under par. (ag) or (aj), if within 14 working days of the department requesting
17 approval the joint committee on finance schedules a meeting for the purpose of
18 reviewing the department's request.

19 2. The department does not submit the report under par. (f) within 30 months
20 after requesting approval under par. (ag) or (aj) or, with respect to an area described
21 in par. (ar), within 30 months after the effective date of this subdivision [LRB
22 inserts date].

23 3. The department submits a report under par. (f) recommending that the area
24 not be designated as a sensitive resource area.

1 4. The legislature does not designate an area as a sensitive resource area by
2 statute within 12 months after receiving a report from the department under par. (f)
3 recommending that the area be designated as a sensitive resource area.

4 5. The department does not submit the report under par. (g) within 12 months
5 after submitting a report under par. (f) recommending that an area be designated as
6 a sensitive resource area.

7 6. The department submits a report under par. (g) recommending that no
8 special measures relating to groundwater withdrawal be conducted in the area.

9 7. The legislature does not adopt, by statute, special measures relating to
10 groundwater withdrawal in an area within 12 months after receiving a report from
11 the department under par. (g).

12 8. The legislature adopts, by statute, special measures relating to groundwater
13 withdrawal in a designated sensitive resource area.

14 (p) In determining whether to approve or deny an application for approval to
15 construct or withdraw water from a high capacity well located in a sensitive resource
16 area, the department shall consider the cumulative environmental impacts of that
17 high capacity well together with existing wells.

18 **SECTION 25.** 281.34 (11) of the statutes is created to read:

19 281.34 **(11) LIABILITY TO OTHER WELL OWNERS.** (a) In this subsection, “residential
20 well” means a well that is not a high capacity well.

21 (b) The owner of a high capacity well constructed after the effective date of this
22 paragraph [LRB inserts date], shall provide compensation for replacing,
23 modifying, or repairing a residential well to provide a well of similar type and design
24 as the original well, and provide an interim potable water supply, to the owner of the
25 residential well if all of the following apply:

1 1. The residential well owner provides a notice to the owner of the high capacity
2 well claiming that the residential well has experienced or is experiencing a
3 significant loss of water or a significant decrease in water pressure that is caused by
4 the high capacity well, and requests compensation from the owner of the high
5 capacity well. The residential well owner shall provide the notice under this
6 subdivision within 5 years after the high capacity well owner receives an approval
7 under this section.

8 2. The residential well was constructed before the construction of the high
9 capacity well.

10 3. The residential well owner has a well log on file with the department, or
11 provides the owner of the high capacity well with a written report from a certified
12 well driller or licensed plumber, completed within 6 months of the high capacity well
13 owner or clerk submitting the notice under sub. (2d), that shows the construction
14 details, depth, static water level, and pump setting, if applicable, of the well.

15 4. The residential well owner provides the owner of the high capacity well with
16 a written statement from a certified well driller or licensed plumber verifying that
17 the residential well owner has experienced or is experiencing a significant loss of
18 water or a significant decrease in water pressure because of a reduction of the well's
19 static water level as compared to the level reported under subd. 3.

20 (c) The owner of a high capacity well that receives a request for compensation
21 under par. (b) may bring an action for a declaratory judgment on the issue of whether
22 the high capacity well has caused or is causing the residential well to experience a
23 significant loss of water or a significant decrease in water pressure. The owner of the
24 high capacity well shall provide an interim potable water supply to the residential
25 well owner until the final resolution of an action under this paragraph.

1 Notwithstanding s. 814.04 (1), if the court determines in an action under this
2 paragraph that the high capacity well has caused or is causing the residential well
3 to experience a significant loss of water or a significant decrease in water pressure,
4 the court shall award the residential well owner its reasonable attorney fees. The
5 owner of the high capacity well may seek contribution from owners of other high
6 capacity wells constructed after the construction of the residential well and after the
7 effective date of this paragraph [LRB inserts date].

8 **SECTION 26. Nonstatutory provisions.**

9 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
10 the department of natural resources shall promulgate the rules required under
11 section 281.34 (7g) of the statutes, as created by this act, as emergency rules. The
12 emergency rules shall remain in effect for the period before the effective date of the
13 permanent rules promulgated under section 281.34 (7g) of the statutes, as created
14 by this act but not to exceed the period authorized under section 227.24 (1) (c) of the
15 statutes, subject to extension under section 227.24 (2) of the statutes.
16 Notwithstanding section 227.24 (2) of the statutes, the department may seek any
17 number of extensions of the effective period of emergency rules under section 227.24
18 (2) of the statutes except that no extension shall be allowed after July 1, 2018.
19 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
20 is not required to provide evidence that promulgating a rule under this subsection
21 as an emergency rule is necessary for the preservation of the public peace, health,
22 safety, or welfare and is not required to provide a finding of emergency for a rule
23 promulgated under this subsection.

24 (2) MODIFICATION OF PREVIOUSLY ISSUED APPROVALS.

25 (a) In this subsection:

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

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

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

10 **SECTION 27. Initial applicability.**

11 (1) (a) This act first applies to applications for a high capacity well approval
12 filed by the effective date of this paragraph but not approved, conditionally approved,
13 or denied by the department by the effective date of this paragraph, except as
14 provided in paragraphs (b) and (c).

15 (b) The treatment of sections 281.34 (2) (with respect to requiring an applicant
16 to specify in an application the location, depth, maximum pumping capacity,
17 maximum rate of flow, and ultimate use of a proposed high capacity well) and 281.34
18 (2d) of the statutes first applies to an application filed on the effective date of this
19 paragraph.

20 (c) The treatment of sections 281.34 (4g), (5) (f) 2. a., and (7m) (m) and (n) of the
21 statutes does not apply to an application filed by the effective date of this paragraph
22 but not approved, conditionally approved, or denied by the department by the
23 effective date of this paragraph if all of the following apply:

24 1. The application is for a high capacity well in an area described under section
25 281.34 (7m) (ar) of the statutes, as affected by this act.

