



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0340/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 874**

February 15, 2016 - Offered by Representative KRUG.

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

Analysis by the Legislative Reference Bureau

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

Activities exempt from approval

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

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

Designated study area

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

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

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

Nuisance actions

This substitute amendment also provides that a person who is unreasonably harmed by a lowering of the water table or a reduction in artesian pressure caused

by another person's groundwater withdrawal may bring an action for nuisance against the person who withdraws the groundwater, regardless of whether the groundwater is used for a beneficial purpose.

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

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

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

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

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

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

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

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

18 2. Construct a new high capacity well to replace the existing high capacity well
19 if the new high capacity well will be constructed in accordance with department
20 standards that apply to the construction of new high capacity wells on the date that

1 construction of the replacement high capacity well begins, if the existing high
2 capacity well is filled and sealed as provided in rules promulgated by the
3 department, and if any of the following applies:

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

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

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

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

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

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

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

25 (a).

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

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

4 281.34 **(7m)** DESIGNATED STUDY AREA. (a) In this subsection:

5 1. "Designated study area" means the area made up of the Fourteenmile Creek
6 Watershed in Adams, Juneau, Portage, Waushara, and Wood counties, the Mecan
7 River Watershed in Green Lake, Marquette, and Waushara counties, and the Pine
8 River and Willow Creek Watershed in Waupaca, Waushara, and Winnebago
9 counties.

10 2. "Qualified lake association" means an association that meets the
11 qualifications under s. 281.68 (3m) (a).

12 (am) The department shall evaluate and model the hydrology of the designated
13 study area, except for any part of the designated study area in which the department
14 determines that special measures relating to existing and potential groundwater
15 withdrawal are not necessary to prevent or remedy a significant reduction of a
16 navigable stream's or navigable lake's rate of flow or water level below its average
17 seasonal levels. The evaluation under this paragraph shall include all relevant
18 factors that may affect groundwater and water levels and rates of flow of navigable
19 waters, including topography, ground cover, annual and seasonal variations in
20 precipitation, and plant life.

21 (b) If upon conclusion of the evaluation and modeling of the area under par.
22 (am) the department determines that special measures relating to existing and
23 potential groundwater withdrawal are necessary in all or part of that area to prevent
24 or remedy a significant reduction of a navigable stream's or navigable lake's rate of
25 flow or water level below its average seasonal levels, the department shall issue a

1 decision on whether it recommends that the legislature adopt, by statute, special
2 measures relating to groundwater withdrawal in all or part of that area. If the
3 department issues a decision recommending that the legislature adopt, by statute,
4 special measures relating to groundwater withdrawal in all or part of that area, the
5 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 all or part of the area cause, or are expected
8 to cause, a significant reduction of a navigable stream's or navigable lake's rate of
9 flow or water level below its average seasonal levels.

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 all or part of the area and the navigable waters in all or part of the area and a causal
13 relationship between groundwater withdrawal in all or part of the area and an
14 existing or potential significant reduction of a navigable stream's or navigable lake's
15 rate of flow or water level below its average seasonal levels, and the degree to which
16 the department verified the connection and causal relationship by the use of field
17 work or field study.

18 2. A description of the geographical boundaries of the area to which the
19 department recommends special measures relating to groundwater withdrawal
20 should apply. The department shall identify in the description the specific navigable
21 water or part of the navigable water that is or may be affected by cumulative
22 groundwater withdrawals and shall identify the location of the groundwater
23 withdrawals that the department has determined are causing or may cause a
24 significant reduction of a navigable stream's or navigable lake's rate of flow or water
25 level below its average seasonal levels.

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

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

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

13 (f) After holding the public hearing under par. (c), the department shall prepare
14 a report on whether it recommends that the legislature adopt, by statute, special
15 measures relating to groundwater withdrawal in the area described in its decision
16 under par. (b) 2. The department shall submit the report to the joint committee on
17 finance and to the chief clerk of each house of the legislature, for distribution under
18 s. 13.172 (3) to the appropriate legislative standing committees generally
19 responsible for legislation related to environmental issues.

20 (g) If the department recommends in its report submitted under par. (f) that
21 the legislature adopt, by statute, special measures relating to groundwater
22 withdrawal in the area described in its decision under par. (b) 2., the department
23 shall prepare an additional report specifying the special measures relating to
24 groundwater withdrawal in that area that the department recommends that the
25 legislature adopt, by statute, to prevent or remedy a significant reduction of a

1 navigable stream's or navigable lake's rate of flow or water level below its average
2 seasonal levels. The department shall submit the report to the joint committee on
3 finance and to the chief clerk of each house of the legislature, for distribution under
4 s. 13.172 (3) to the appropriate legislative standing committees generally
5 responsible for legislation related to environmental issues.

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

10 (h) The special measures relating to groundwater withdrawal recommended
11 by the department under par. (b) 3. or par. (g) shall not be effective unless adopted
12 by the legislature by statute.

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

19 (m) 1. The department may issue an approval under this section to a qualified
20 lake association to construct and operate a high capacity well for the sole purpose of
21 providing water to a lake that is located wholly or partially in the area studied under
22 par. (am) to assist the department in evaluating and modeling the hydrology of that
23 area under par. (am), if the department determines that the lake's water level has
24 been significantly reduced below its average seasonal levels. For any approval
25 application submitted by a qualified lake association under this paragraph, the

1 department shall waive the application fee under sub. (2), expedite the review and
2 approval process to the greatest extent possible, and include, as a condition of the
3 approval, a limit on the water level of the lake that may be reached as a result of the
4 water provided by the proposed well. The department may not issue an approval to
5 a qualified lake association under this paragraph if it determines that providing
6 water from the proposed high capacity well to a lake is likely to result in a violation
7 of a water quality standard under s. 281.15 for that lake.

8 2. The department shall develop and administer a financial assistance
9 program to provide assistance to qualified lake associations for all or part of the cost
10 of constructing an approved high capacity well under this paragraph. The financial
11 assistance program shall include provisions relating to cost-sharing from qualified
12 lake associations receiving assistance under the program.

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

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

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

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

