



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 302

**Senate
Amendments 1 and 2**

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Senate Bill 302

Senate Bill 302 makes various changes relating to the regulation of high capacity wells. Although the bill modifies certain directives and responsibilities of the Department of Natural Resources (DNR) with regard to high capacity well approvals, the bill generally does not affect the DNR's general authority under ss. 281.11 and 281.12 (1), Stats., which set forth the purposes and policies of subch. II of ch. 281, Stats., and outline the DNR's duties to protect and preserve the waters of the state.

Among the changes the bill makes to the regulation of high capacity wells is a provision that limits the conditions that the DNR may include in an approval to construct a proposed high capacity well or to reconstruct an existing high capacity well. The bill specifies that the DNR may only include conditions as to location, depth, pumping capacity, and rate of flow, unless the DNR is expressly authorized to include other approval conditions.

Senate Amendment 1

Senate Amendment 1 provides that, notwithstanding ss. 281.11 and 281.12 (1), Stats., the DNR's duty and authority to issue high capacity well approvals is limited to the duty and authority that is explicitly conferred upon the DNR by s. 281.34, Stats. In *Lake Beulah Management District v. DNR*, 2011 WI 54, the Wisconsin Supreme Court held that the DNR, when reviewing a proposed high capacity well, has a "general duty," grounded in its delegated obligations as trustee under the public trust doctrine and reflected in the DNR's general obligations under ss. 281.11 and 281.12 (1), Stats., to investigate or consider potential harm from the proposed well on waters of the state. Senate Amendment 1 would appear to prevent the DNR from making such general considerations that are not explicitly provided for in s. 281.34, Stats., when reviewing an application for a high capacity well approval.

Senate Amendment 2

Senate Amendment 2 adds “casing depth” as one of the conditions that the DNR may include in an approval to construct a proposed high capacity well or to reconstruct an existing high capacity well.

Bill History

Senate Amendment 1 was offered by Senator Kedzie on November 4, 2013. Senate Amendment 2 was offered by Senator Miller on November 6, 2013.

On November 7, 2013, the Senate Committee on Natural Resources recommended adoption of Senate Amendment 1 on a vote of Ayes, 3; Noes, 2; and recommended adoption of Senate Amendment 2 on a vote of Ayes, 5; Noes, 0. The committee recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

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