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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2021 Assembly Bill 728**

**Assembly Amendment 1**

### 2021 ASSEMBLY BILL 728

2021 Assembly Bill 728 makes various changes to the well compensation grant program administered by the Department of Natural Resources (DNR). Additionally, the bill expands eligibility for other grant programs administered by DNR and the Department of Agriculture, Trade and Consumer Protection (DATCP). Finally, the bill modifies the criteria that DATCP and DNR must consider when preparing an annual grant allocation plan.

#### Well Compensation Grant Eligibility

Under current law regarding the well compensation grant program, DNR provides grants for replacing, reconstructing, or treating contaminated wells that serve certain private residences or that supply water to livestock. Additionally, grants under the program may be used to cover the costs of connecting to a public water supply or of abandoning a contaminated well by filling and sealing it. A well is considered contaminated for the purposes of the program if it either: (1) produces water that fails to meet a national drinking water standard established by the U.S. Environmental Protection Agency under the Safe Drinking Water Act, or a groundwater protection standard established by DNR; or (2) is the subject of a written DNR human health advisory opinion.

Notwithstanding the contamination criteria described above, current law generally requires DNR to deny a well compensation grant claim if a well is contaminated by bacteria or nitrates and is not contaminated by any other substance. However, DNR may award grants for such wells when certain criteria are met:

- With regard to wells contaminated by bacteria, DNR may award a grant if a well is in an area of special eligibility established by the department. For DNR to establish such an area, tests must establish that wells in the area are contaminated by fecal bacteria and evidence must demonstrate that the bacterial contamination is caused by livestock.
- With regard to wells contaminated by nitrates, DNR may award a grant if a well is used at least three months each year and, while in use, supplies an average of more than 100 gallons per day for consumption by livestock. Additionally, DNR may only provide a grant for such a well if the well contains water with nitrate concentrations in excess of 40 parts per million (ppm) expressed as nitrate-nitrogen.

2021 Assembly Bill 728 eliminates the general restriction on grants for wells contaminated by bacteria. Additionally, the bill modifies the conditions under which grants may be awarded for wells contaminated by nitrates. Specifically, the bill provides that DNR may award a grant for a well contaminated by nitrates if the well is used at least three months each year. The bill eliminates the requirements regarding the volume of water used, the use of water by livestock, and the 40 ppm minimum level of nitrate contamination. Additionally, the bill establishes priority tiers, based upon

nitrate concentrations, that DNR must use when allocating grants for wells contaminated by nitrates.<sup>1</sup> The lowest priority tier established under the bill would require a well contaminated with nitrates to contain at least 10 ppm nitrate-nitrogen in order to be eligible for a well compensation grant.

## **Other Changes to the Well Compensation Grant Program**

In addition to the changes described above, the bill provides that DNR may only award a well compensation grant for a remediation method that the department determines is the most effective for the health and welfare of a claimant. Additionally, the bill directs DNR to submit a report on the well compensation grant program to the Joint Committee on Finance at the end of each fiscal year. This report must include the number of claims submitted and the amount of awards provided under the grant program during the fiscal year.

## **Grant Eligibility for Producer-Led Groups**

Current law directs DATCP to provide grants for nonpoint source pollution abatement activities conducted with the assistance of producer-led groups (“producer-led watershed protection grants”). In order to be eligible for these grants, a producer-led group must include at least five agricultural producers, each of whom operates an “eligible farm,” located in a single watershed.<sup>2</sup> 2021 Assembly Bill 728 expands eligibility for these grants by allowing this requirement to be satisfied by producers located in adjacent watersheds.

In addition to expanding eligibility for DATCP’s producer-led watershed protection grants, the bill also provides that producer-led groups may be eligible for DNR’s lake management planning grants, lake monitoring and protection grants, and river protection grants.

## **Annual Grant Allocation Plan**

Under current law, DATCP and DNR must prepare an annual grant allocation plan that identifies amounts to be provided to counties through DATCP’s soil and water resource management program, as well as DNR’s financial assistance programs for nonpoint source pollution abatement and storm water management. When preparing this plan, DATCP and DNR must consider various factors, including the location of impaired water bodies and agricultural enterprise areas. 2021 Assembly Bill 728 provides that if DATCP considers a county’s demonstrated commitment to implementing a soil and water resource management plan, the department must also consider externalities (e.g., weather) that may have impacted the county’s ability to implement the plan.

## **ASSEMBLY AMENDMENT 1**

As noted above, 2021 Assembly Bill 728 expands the definition of a “producer-led group,” allowing producers from adjacent watersheds to meet the definition for the purpose of grant eligibility. Assembly Amendment 1 clarifies that “watershed” means a watershed delineated by the U.S. Geological Survey using the agency’s 12-digit hydrologic unit code system.

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<sup>1</sup> Current law requires DNR to allocate money for well compensation grant claims according to the order in which claims are received. The bill retains this requirement, but provides that DNR must use the bill’s priority tiers when allocating payments among claims for wells contaminated by nitrates.

<sup>2</sup> “Eligible farm” is defined in [s. 91.86 \(1\), Stats.](#), as “a farm that produced at least \$6,000 in gross farm revenues during the taxable year preceding the year in which a petition is filed requesting [DATCP] to designate an area in which the farm is located as an agricultural enterprise area or a total of at least \$18,000 in gross farm revenues during the 3 taxable years preceding the year in which a petition is filed.”

Additionally, while the bill provides that producer-led groups may be eligible for DNR's lake management planning grants, lake monitoring and protection grants, and river protection grants, the amendment provides that producer-led groups may also be eligible for DNR's lake management and classification grants.

Finally, while the bill allows DNR to award well compensation grants for bacterial contamination, Assembly Amendment 1 directs the department to deny claims if the bacterial contamination does not pose a risk to human health.

## **BILL HISTORY**

Assembly Amendment 1 was offered by Representative Kitchens on December 22, 2021. On February 8, 2022, the Assembly Committee on Agriculture unanimously recommended adoption of the amendment and passage of the bill, as amended.

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