



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 679**

January 28, 2014 – Offered by Representative MURSAU.

1     **AN ACT** *to renumber* 281.34 (1) (a); *to renumber and amend* 281.34 (2); *to*  
2             *amend* 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b) 1., 281.34 (5) (d) 1.,  
3             281.34 (5) (dm), 281.34 (7), 281.344 (4s) (dm) and 281.346 (4s) (dm); and *to*  
4             *create* 281.34 (1) (ag), 281.34 (1) (eg), 281.34 (1) (er), 281.34 (2) (c), 281.34 (2c),  
5             281.34 (2g), 281.34 (4) (am), 281.34 (5) (dg) and 281.34 (11) of the statutes;  
6             **relating to:** high capacity well approvals.

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***Analysis by the Legislative Reference Bureau***

Current law requires a person to obtain approval from the Department of Natural Resources (DNR) before constructing a high capacity well. Under current law, a high capacity well is a well that, together with all other wells on the same property, has the capacity to withdraw more than 100,000 gallons of water per day.

This bill modifies current law by specifying the circumstances under which a person must obtain a high capacity well approval. Under the bill, an approval is required before constructing a proposed high capacity well or reconstructing or replacing an existing high capacity well. The bill defines a proposed high capacity well as a new high capacity well that will result in a new withdrawal of groundwater.

This bill also provides that within 65 business days from the date on which DNR receives a complete application for approval for construction of a proposed high

capacity well, or for reconstruction or replacement of an existing high capacity well, it must approve or deny the application. If DNR denies the application, the denial must include the reasons for the denial. If DNR fails to approve or deny the application within the deadline established in the bill, then the application is considered approved.

Under current law, DNR is required to impose conditions on a high capacity well under certain circumstances. For example, if DNR determines that a proposed high capacity well may impair the water supply of a public utility, DNR may not approve the high capacity well unless it includes conditions that will ensure that the water supply of the public utility will not be impaired. This bill provides that DNR may not impose conditions, other than those required in current law, in an approval for a proposed high capacity well or for the reconstruction of an existing high capacity well other than conditions relating to location, depth, pumping capacity, rate of flow, and casing depth.

This bill provides that DNR may issue an approval for the construction of a replacement high capacity well only if the replacement well is drilled to substantially the same depth as the existing high capacity well, it is located within a 75-foot radius of the existing high capacity well, and it will be constructed in accordance with DNR standards that apply on the date on which construction of the replacement high capacity well begins. The bill also prohibits DNR from including conditions in an approval for a replacement high capacity well that are different from the conditions in the approval for the high capacity well being replaced.

This bill also provides that if a person who owns property on which a high capacity well is located transfers the property, the owner may transfer the approval for the high capacity well to the person to whom the land is transferred without review by DNR and without having to pay a fee.

Under current law, DNR must review certain high capacity well approval applications using an environmental review process specified in rules promulgated by DNR. DNR must use this process in reviewing an application for approval of a high capacity well that is located in a groundwater protection area, that has a water loss of more than 95 percent of the amount of water withdrawn, or that has a significant environmental impact on a spring. This bill expressly limits DNR's authority so that it may use the environmental review process only when reviewing an application for approval of a proposed high capacity well.

The bill also provides that DNR's duty and authority to issue high capacity well approvals is limited to the duty and authority that is explicitly conferred by statute and that DNR's rule-making authority with regard to high capacity well approvals is expressly limited to the rule-making authority granted to DNR under current law. In addition, the bill provides that if DNR issued an approval to an owner of a high capacity well before July 6, 2011, and thereafter, but before the date on which the provisions of this bill take effect, and added new or more restrictive conditions to that approval, then DNR must, upon the owner's request, remove the new or more restrictive conditions from the approval unless the law specifically requires the conditions to be included.

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

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

1           **SECTION 1.** 281.34 (1) (a) of the statutes is renumbered 281.34 (1) (am).

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

3           281.34 (1) (ag) “Existing high capacity well” means a high capacity well that  
4 has been approved by the department under this section.

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

6           281.34 (1) (eg) “Proposed high capacity well” means a new high capacity well  
7 that will result in a new withdrawal of groundwater. “Proposed high capacity well”  
8 does not include a high capacity well constructed to replace an existing high capacity  
9 well.

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

11          281.34 (1) (er) “Reconstruct” means to modify original construction and  
12 includes deepening, lining, installing or replacing a screen, and underreaming.

13          **SECTION 5.** 281.34 (2) of the statutes is renumbered 281.34 (2) (a) and amended  
14 to read:

15          281.34 (2) (a) An owner shall apply to the department for approval before  
16 beginning construction of a proposed high capacity well begins or before beginning  
17 reconstruction or replacement of an existing high capacity well.

18          **(b)** No person may construct a proposed high capacity well, replace or  
19 reconstruct an existing high capacity well, or withdraw water from a high capacity  
20 well without the approval of the department under this section or under s. 281.17 (1),  
21 2001 stats.

1           (c) An owner applying for approval under this subsection shall pay a fee of \$500.

2           **SECTION 6.** 281.34 (2) (c) of the statutes is created to read:

3           281.34 (2) (c) 1. Within 65 business days from the date on which the department  
4 receives a complete application for an approval under par. (a), the department shall  
5 approve or deny the application and shall notify the applicant of the decision in  
6 writing. If the department denies the application, the notification shall include the  
7 reasons for the denial.

8           2. Failure of the department to approve or deny an application under this  
9 subsection within 65 business days shall constitute the department's approval of the  
10 application. Upon the demand of the applicant, the department shall issue a written  
11 approval to the applicant.

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

13           281.34 (2c) REPLACEMENT HIGH CAPACITY WELLS. The department may issue an  
14 approval to construct a high capacity well to replace an existing high capacity well  
15 if the replacement high capacity well will be drilled to substantially the same depth  
16 as the existing high capacity well, will be located within a 75-foot radius of the  
17 existing high capacity well, and will be constructed in accordance with department  
18 standards that apply to the construction of proposed high capacity wells on the date  
19 that construction of the replacement high capacity well begins.

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

21           281.34 (2g) TRANSFER OF APPROVALS. If an owner transfers the land on which  
22 a high capacity well is located, and if the owner holds an approval issued under sub.  
23 (2) or under s. 281.17 (1), 2001 stats., for the high capacity well, the owner may  
24 transfer the approval to the person to whom the land is transferred without  
25 department review. The department may not impose a fee for the transfer. The

1 owner shall notify the department of the transfer on a form prescribed by the  
2 department.

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

4 281.34 (4) (a) (intro.) The department shall review an application for approval  
5 of any of the following using the environmental review process in its rules  
6 promulgated under s. 1.11, subject to par. (am):

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

8 281.34 (4) (am) In its review of an application for approval under par. (a), the  
9 department's use of the environmental review process in its rules promulgated under  
10 s. 1.11 is expressly limited to an application for approval of a proposed high capacity  
11 well.

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

13 281.34 (5) (a) *Public water supply.* If the department determines that a  
14 proposed high capacity well may impair the water supply of a public utility engaged  
15 in furnishing water to or for the public, the department may not approve the  
16 proposed high capacity well unless it is able to include and includes in the approval  
17 conditions, which may include conditions as to location, depth, pumping capacity,  
18 rate of flow, casing depth, and ultimate use, that will ensure that the water supply  
19 of the public utility will not be impaired.

20 **SECTION 12.** 281.34 (5) (b) 1. of the statutes is amended to read:

21 281.34 (5) (b) 1. Except as provided in subd. 2., if the department determines,  
22 under the environmental review process in sub. (4), that an environmental impact  
23 report under s. 23.11 (5) must be prepared for a proposed high capacity well located  
24 in a groundwater protection area, the department may not approve the proposed  
25 high capacity well unless it is able to include and includes in the approval conditions,

1 which may include conditions as to location, depth, pumping capacity, rate of flow,  
2 casing depth, and ultimate use, that ensure that the proposed high capacity well does  
3 not cause significant environmental impact to a groundwater protection area.

4 **SECTION 13.** 281.34 (5) (d) 1. of the statutes is amended to read:

5 281.34 (5) (d) 1. Except as provided in subd. 2., if the department determines,  
6 under the environmental review process in sub. (4), that an environmental impact  
7 report under s. 23.11 (5) must be prepared for a proposed high capacity well that may  
8 have a significant environmental impact on a spring, the department may not  
9 approve the proposed high capacity well unless it is able to include and includes in  
10 the approval conditions, which may include conditions as to location, depth, pumping  
11 capacity, rate of flow, casing depth, and ultimate use, that ensure that the proposed  
12 high capacity well does not cause significant environmental impact to a spring.

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

14 281.34 (5) (dg) *Limitation on approval conditions.* 1. The department may  
15 include conditions in an approval to construct a proposed high capacity well or to  
16 reconstruct an existing high capacity well, but only as to location, depth, pumping  
17 capacity, rate of flow, and casing depth, unless the department is authorized to  
18 include other conditions in an approval under this subsection.

19 2. The department may not include conditions in an approval to replace an  
20 existing high capacity well that are different from the conditions in the approval for  
21 the existing high capacity well unless any of the following applies:

22 a. The replacement high capacity well is located in a groundwater protection  
23 area and the existing high capacity well is not located in a groundwater protection  
24 area.

1           b. The department determines that the replacement well may have a  
2 significant environmental impact on a spring.

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

4           281.34 (5) (dm) *Water supply service area plan.* If a proposed high capacity well  
5 is covered by an approved water supply service area plan under s. 281.348, the  
6 department may not approve the proposed high capacity well unless it is consistent  
7 with that plan.

8           **SECTION 16.** 281.34 (7) of the statutes is amended to read:

9           281.34 (7) **MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS.** The  
10 approval of a high capacity well issued under this section or under s. 281.17 (1), 2001  
11 stats., remains in effect unless the department modifies or rescinds the approval  
12 because the high capacity well or the use of the high capacity well is ~~not in~~  
13 ~~conformance with standards or~~ violates the conditions applicable to in the approval  
14 of the high capacity well.

15           **SECTION 17.** 281.34 (11) of the statutes is created to read:

16           281.34 (11) **REGULATORY AUTHORITY LIMITED.** (a) Notwithstanding ss. 281.11 and  
17 281.12 (1), the department's duty and authority to issue high capacity well approvals  
18 is limited to the duty and authority that is explicitly conferred upon the department  
19 by this section.

20           (b) The department's authority to promulgate rules under this section, other  
21 than rules governing construction standards for high capacity wells, is expressly  
22 limited to the authority granted under subs. (6) (b), (8) (a), and (9) (a) and (c).

23           **SECTION 18.** 281.344 (4s) (dm) of the statutes is amended to read:

24           281.344 (4s) (dm) *Requiring individual permit.* The department may require  
25 a person who is making or proposes to make a withdrawal that averages 100,000

1 gallons per day or more in any 30-day period, but that does not equal at least  
2 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit  
3 under sub. (5) if the withdrawal is located in a groundwater protection area, as  
4 defined in s. 281.34 (1) ~~(a)~~ (am), or a groundwater management area designated  
5 under s. 281.34 (9).

6 **SECTION 19.** 281.346 (4s) (dm) of the statutes is amended to read:

7 281.346 **(4s)** (dm) *Requiring individual permit.* The department may require  
8 a person who is making or proposes to make a withdrawal that averages 100,000  
9 gallons per day or more in any 30-day period, but that does not equal at least  
10 1,000,000 gallons per day for any 30 consecutive days, to obtain an individual permit  
11 under sub. (5) if the withdrawal is located in a groundwater protection area, as  
12 defined in s. 281.34 (1) ~~(a)~~ (am), or a groundwater management area designated  
13 under s. 281.34 (9).

14 **SECTION 20. Nonstatutory provisions.**

15 (1) (a) In this subsection:

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

18 (b) If the department issued an approval to an owner of a high capacity well  
19 under section 281.34 (2) of the statutes or under section 281.17 (1), 2001 stats., before  
20 July 6, 2011, and if the department added new or more restrictive conditions to that  
21 approval on or after July 6, 2011, and before the effective date of this paragraph, the  
22 department shall, upon a request made by the owner on or before June 30, 2014,  
23 remove the new or more restrictive conditions from the approval if those new or more



1 restrictive conditions are not required to be included in the approval under section  
2 281.34 of the statutes, as affected by this act.

3 (END)