



2015 SENATE BILL 469

December 18, 2015 - Introduced by Senators HANSEN, VINEHOUT, BEWLEY, C. LARSON, LASSA, MILLER, RINGHAND, RISSER and SHILLING, cosponsored by Representatives GENRICH, MILROY, BERCEAU, CONSIDINE, GOYKE, HINTZ, KOLSTE, MASON, MEYERS, OHNSTAD, SINICKI, SPREITZER, C. TAYLOR, ZEPNICK, BROSTOFF and SUBECK. Referred to Committee on Natural Resources and Energy.

1 **AN ACT to renumber and amend** 281.16 (4) and 823.08 (3) (c) 2.; **to amend**
2 23.50 (1), 23.65 (1), 92.05 (3) (k), 92.05 (3) (L), 92.07 (2), 92.14 (6) (i) 2., 92.15
3 (2), 92.15 (3) (a), 92.15 (4), 93.90 (2) (a), 281.16 (3) (e), 281.65 (4) (e), 281.65 (4c)
4 (am) 1. a. and 823.08 (3) (c) 1.; and **to create** 92.04 (2) (m), 92.14 (3) (em), 281.16
5 (5), 281.163 and 823.08 (3) (c) 2. b. of the statutes; **relating to:** control of
6 nonpoint source water pollution in certain areas with carbonate bedrock and
7 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules to limit nonpoint source water pollution, that is, water pollution from diffuse sources, such as construction sites and feedlots.

This bill requires DNR, in consultation with DATCP, to promulgate rules to limit pollution of groundwater caused by the spreading of waste on land, including animal waste, septage, sewage sludge, and industrial waste (land spreading). Under the bill, the rules apply to certain areas with carbonate bedrock that are susceptible to groundwater contamination caused by land spreading and that are not sufficiently protected by the current rules concerning nonpoint source water pollution. The bill also requires DATCP to make its existing rules concerning nutrient management consistent with the new DNR rules concerning land spreading on susceptible lands.

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To identify the areas for which additional regulation of land spreading is potentially needed, the bill requires DNR to identify areas in this state that exhibit carbonate bedrock characteristics that may cause them to be susceptible to groundwater contamination from land spreading, including areas that have carbonate bedrock less than 50 feet from the surface of the land. The bill requires DNR to promulgate rules for ranking the land in potentially susceptible areas into categories according to relative vulnerability to groundwater contamination from land spreading, based on factors that include bedrock features and the depth and other characteristics of top soil, and to identify the categories for which additional regulation is needed.

The bill requires the county land conservation committee in a county in which a potentially susceptible area is located to categorize the land in potentially susceptible areas (as identified by DNR) in the county according to the rules for ranking those lands. The bill provides a process for a landowner or other person, including DNR or DATCP, to obtain a review of a land conservation committee's categorization of land. The bill also requires DATCP to produce maps that show land that is categorized under this process, by category, and to post those maps on its Internet site.

The bill authorizes DNR to enforce the rules concerning land spreading on susceptible lands by issuing citations, which are similar to traffic tickets. A district attorney may also proceed against a person who violates the rules.

The rules promulgated by DNR and DATCP under current law to limit nonpoint source water pollution, as described above, do not apply to an agricultural facility or practice that was in existence before October 14, 1997, unless financial assistance is available to pay a portion of the cost of complying with the rules.

Under this bill, the rules to limit nonpoint source water pollution apply to an agricultural facility or practice, in a county in which a potentially susceptible area is located, that was in existence before October 14, 1997, without regard to whether financial assistance is available, if the facility or practice is on land categorized in a category that has heightened vulnerability to groundwater contamination and is in an area with a level of groundwater contamination that may affect public health, as determined under rules promulgated by DNR.

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

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

- 1 **SECTION 1.** 23.50 (1) of the statutes is amended to read:
- 2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
- 3 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
- 4 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.163 (5), 281.48 (2)

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1 to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and 299.64
2 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
3 administrative rules promulgated thereunder, violations specified under s. 280.98
4 (2) or 285.86, violations of s. 281.36 if the department chooses to proceed under s.
5 281.36 (14) (f), violations of ch. 951 if the animal involved is a captive wild animal,
6 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
7 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
8 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

9 **SECTION 2.** 23.65 (1) of the statutes is amended to read:

10 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
11 134.60, 281.163 (5), 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and
12 (4), 287.07, 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169,
13 or 350, or any administrative rule promulgated pursuant thereto, a violation
14 specified under s. 285.86, or a violation of ch. 951, if the animal involved is a captive
15 wild animal, has been committed the district attorney may proceed by complaint and
16 summons.

17 **SECTION 3.** 92.04 (2) (m) of the statutes is created to read:

18 92.04 (2) (m) *Review of carbonate bedrock area determinations.* The board shall
19 review and affirm or reverse decisions of county land conservation committees under
20 s. 281.163 (4) (b) when review is requested under s. 281.163 (4) (c). Under this
21 paragraph, the board may conduct an informal hearing that is not a contested case
22 under ch. 227.

23 **SECTION 4.** 92.05 (3) (k) of the statutes is amended to read:

24 92.05 (3) (k) *Nutrient management rules.* The department shall promulgate
25 rules to improve agricultural nutrient management in this state. The rules shall be

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1 consistent with rules promulgated under s. 281.16 (3) and, for lands categorized
2 under s. 281.163 (4) in categories identified under s. 281.163 (5) (a), with rules
3 promulgated under s. 281.163 (5) (b) and shall include incentives, educational and
4 outreach provisions and compliance requirements.

5 **SECTION 5.** 92.05 (3) (L) of the statutes is amended to read:

6 92.05 (3) (L) *Technical assistance; performance standards.* The department
7 shall provide technical assistance to county land conservation committees and local
8 units of government for the development of ordinances that implement standards
9 adopted under s. 92.07 (2), 92.15 (2) or (3) or 281.16 (3) and, for lands categorized
10 under s. 281.163 (4) in categories identified under s. 281.163 (5) (a), that implement
11 standards adopted under s. 281.163 (5) (b). The department's technical assistance
12 shall include preparing model ordinances, providing data concerning the standards
13 and reviewing draft ordinances to determine whether the draft ordinances comply
14 with applicable statutes and rules.

15 **SECTION 6.** 92.07 (2) of the statutes is amended to read:

16 92.07 (2) STANDARDS. Each land conservation committee may develop and
17 adopt standards and specifications for management practices to control erosion,
18 sedimentation and nonpoint source water pollution. The standards and
19 specifications for agricultural facilities and practices that are constructed or begun
20 on or after October 14, 1997, and, if cost-sharing is available to the owner or operator
21 under s. 92.14 or 281.65 or from any other source, for agricultural facilities and
22 practices that are constructed or begun before that date shall be consistent with the
23 performance standards, prohibitions, conservation practices, and technical
24 standards under s. 281.16 (3) and, for agricultural facilities and practices on land
25 categorized under s. 281.163 (4) in a category identified under s. 281.163 (5) (a), with

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1 the performance standards and prohibitions under s. 281.163 (5) (b). The land
2 conservation committee shall use the rules promulgated under s. 281.16 (3) (e) to
3 determine whether cost-sharing is available. The standards and specifications for
4 agricultural facilities or practices that are located on land that is categorized under
5 s. 281.163 (4) in a category designated under s. 281.16 (5) (b) 1. as having heightened
6 vulnerability to groundwater contamination and is in an area with characteristics
7 specified under s. 281.16 (5) (b) 2. that indicate a level of groundwater contamination
8 that affects public health shall be consistent with the performance standards,
9 prohibitions, conservation practices, and technical standards under s. 281.16 (3) and
10 with the performance standards and prohibitions under s. 281.163 (5) (b), without
11 regard to when the agricultural facilities or practices are constructed or begun.

12 **SECTION 7.** 92.14 (3) (em) of the statutes is created to read:

13 92.14 (3) (em) Grants to farmers for implementing land and water resource
14 management projects on lands categorized under s. 281.163 (4) undertaken to
15 comply with the requirements under s. 281.163 (5) (b).

16 **SECTION 8.** 92.14 (6) (i) 2. of the statutes is amended to read:

17 92.14 (6) (i) 2. Conduct all land management and pollutant management
18 activities in substantial accordance with the performance standards, prohibitions,
19 conservation practices, and technical standards under s. 281.16 and, if applicable,
20 under s. 281.163 (5) (b) and with plans approved under this section, under s. 92.15,
21 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

22 **SECTION 9.** 92.15 (2) of the statutes is amended to read:

23 92.15 (2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may
24 enact regulations of livestock operations that are consistent with and do not exceed
25 the performance standards, prohibitions, conservation practices, and technical

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1 standards under s. 281.16 (3) and, for livestock operations on lands categorized
2 under s. 281.163 (4) in categories identified under s. 281.163 (5) (a), the prohibitions
3 and performance standards under s. 281.163 (5) (b).

4 **SECTION 10.** 92.15 (3) (a) of the statutes is amended to read:

5 92.15 (3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit
6 may enact regulations of livestock operations that exceed the performance
7 standards, prohibitions, conservation practices, and technical standards under s.
8 281.16 (3) and, for livestock operations on land categorized under s. 281.163 (4) in
9 categories identified under s. 281.163 (5) (a), the prohibitions and performance
10 standards under s. 281.163 (5) (b) only if the local governmental unit demonstrates
11 to the satisfaction of the department of agriculture, trade and consumer protection
12 or the department of natural resources that the regulations are necessary to achieve
13 water quality standards under s. 281.15.

14 **SECTION 11.** 92.15 (4) of the statutes is amended to read:

15 92.15 (4) A local governmental unit may not apply a regulation under sub. (2)
16 or (3) to a livestock operation that exists on October 14, 1997, unless the local
17 governmental unit determines, using the rules promulgated under s. 281.16 (3) (e),
18 that cost-sharing is available to the owner or operator of the livestock operation
19 under s. 92.14 or 281.65 or from any other source or the livestock operation is located
20 on land that is categorized under s. 281.163 (4) in a category designated under s.
21 281.16 (5) (b) 1. as having heightened vulnerability to groundwater contamination
22 and is in an area with characteristics specified under s. 281.16 (5) (b) 2. that indicate
23 a level of groundwater contamination that affects public health.

24 **SECTION 12.** 93.90 (2) (a) of the statutes is amended to read:

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1 93.90 (2) (a) For the purposes of this section, the department shall promulgate
2 rules specifying standards for siting and expanding livestock facilities. In
3 promulgating the rules, the department may incorporate by cross-reference
4 provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8),
5 92.16, and 281.16 (3) and ch. 283 and, for lands to which the rules promulgated under
6 s. 281.163 (5) (b) apply, in those rules. The department may not promulgate rules
7 under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or
8 (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283 or, for lands to which the rules
9 promulgated under s. 281.163 (5) (b) apply, with those rules.

10 **SECTION 13.** 281.16 (3) (e) of the statutes is amended to read:

11 281.16 (3) (e) An Except as provided in sub. (5) (a), an owner or operator of an
12 agricultural facility or practice that is in existence before October 14, 1997, may not
13 be required by this state or a municipality to comply with the performance standards,
14 prohibitions, conservation practices or technical standards under this subsection
15 unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source,
16 to the owner or operator. For the purposes of this paragraph, sub. (4) (b) and ss. 92.07
17 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall
18 promulgate rules that specify criteria for determining whether cost-sharing is
19 available under s. 281.65 and the department of agriculture, trade and consumer
20 protection shall promulgate rules that specify criteria for determining whether
21 cost-sharing is available under s. 92.14 or from any other source. The rules may not
22 allow a determination that cost-sharing is available to meet local regulations under
23 s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance
24 standards, prohibitions, conservation practices or technical standards under this
25 subsection unless the cost-sharing is at least 70% of the cost of compliance or is from

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1 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the
2 rules.

3 **SECTION 14.** 281.16 (4) of the statutes is renumbered 281.16 (4) (a) and
4 amended to read:

5 281.16 (4) (a) If the department issues a notice of discharge under ch. 283 for
6 an animal feeding operation, the performance standards, prohibitions, conservation
7 practices and technical standards under sub. (3) apply to the animal feeding
8 operation, ~~except that if the~~ as provided in par. (b).

9 (b) If an animal feeding operation for which the department of natural
10 resources issues a notice of discharge under ch. 283 is in existence before
11 October 14, 1997, the performance standards, prohibitions, conservation practices
12 and technical standards only apply if the department determines that cost-sharing
13 is available to the owner or operator of the animal feeding operation under s. 92.14
14 or 281.65 or from any other source, except as provided in sub. (5) (a).

15 **SECTION 15.** 281.16 (5) of the statutes is created to read:

16 281.16 (5) APPLICATION IN CARBONATE BEDROCK AREAS. (a) Subsections (3) (e) and
17 (4) (b) do not apply to an agricultural facility or practice or animal feeding operation
18 that is located on land that is categorized under s. 281.163 (4) in a category
19 designated under par. (b) 1. as having heightened vulnerability to groundwater
20 contamination and is in an area with characteristics specified under par. (b) 2. that
21 indicate a level of groundwater contamination that affects public health.

22 (b) The department shall promulgate rules that do all of the following for the
23 purposes of par. (a) and ss. 92.07 (2), 92.15 (4), and 823.08 (3) (c):

24 1. Designate the categories under s. 281.163 (3) (a) that have heightened
25 vulnerability to groundwater contamination.

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1 2. Specify the characteristics that indicate levels of groundwater
2 contamination that affect public health, such as the existence in an area of a well in
3 which the concentration of contaminants exceeds a preventive action limit, as
4 defined in s. 160.01 (6).

5 **SECTION 16.** 281.163 of the statutes is created to read:

6 **281.163 Water quality protection; carbonate bedrock areas. (1)**

7 DEFINITIONS. In this section:

8 (a) "Land spreading" means spreading animal waste, septage, sewage sludge,
9 industrial waste, or any other type of solid waste on the surface of the land or
10 incorporating animal waste, septage, sewage sludge, industrial waste, or any other
11 type of solid waste into the surface layers of the soil.

12 (b) "Potentially susceptible area" means an area identified by the department
13 under sub. (2).

14 (c) "Septage" has the meaning given in s. 281.48 (2) (d).

15 **(2) IDENTIFICATION OF POTENTIALLY SUSCEPTIBLE AREAS.** Using information
16 available to it, the department shall identify areas in this state that exhibit
17 carbonate bedrock characteristics that may cause the areas to be susceptible to
18 groundwater contamination from land spreading. At a minimum, the department
19 shall identify an area under this subsection if the area has carbonate bedrock less
20 than 50 feet from the surface of the land, as shown by bedrock maps produced by the
21 geological and natural history survey and other maps identified by the department.

22 **(3) RULES FOR VULNERABILITY RANKING OF LAND IN POTENTIALLY SUSCEPTIBLE**
23 **AREAS.** (a) The department shall promulgate rules for ranking the land in potentially
24 susceptible areas by categories according to relative vulnerability to groundwater
25 contamination from land spreading, based on factors that include all of the following:

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1 1. Bedrock features.

2 2. Depth and other characteristics of top soil.

3 3. Whether the department has declared the land to be an area of special
4 eligibility for compensation for well contamination under s. 281.75 (2) (e).

5 4. Whether the department has established the land as a special well casing
6 pipe depth area under ch. NR 812, Wis. Adm. Code.

7 (b) In the rules under par. (a), the department shall identify types of uses of land
8 that cause land spreading on the land to be impossible or impracticable.

9 **(4) CATEGORIZING POTENTIALLY SUSCEPTIBLE LAND.** (a) The county land
10 conservation committee in a county in which a potentially susceptible area is located
11 shall categorize all land in potentially susceptible areas in the county, except for land
12 that is in a land use identified under sub. (3) (b), in accordance with the rules under
13 sub. (3) (a).

14 (b) 1. The owner of land categorized under par. (a), the department of natural
15 resources, the department of agriculture, trade and consumer protection, an
16 organization, or any other person may request a county land conservation committee
17 to review the categorization of land under par. (a) based on site-specific information
18 showing the categorization to be inconsistent with the rules under sub. (3).

19 2. A county land conservation committee receiving a request under subd. 1.
20 shall conduct an informal hearing on the request. A county land conservation
21 committee shall provide public notice of a request under this subdivision. Section
22 68.11 (2) does not apply to the hearing. The county land conservation committee
23 shall provide reasonable notice of the hearing to the person requesting the review;
24 the owner of the land, if the owner did not request the review; the department of

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1 natural resources; and the department of agriculture, trade and consumer
2 protection.

3 (c) The owner of land categorized under par. (a), the department of natural
4 resources, the department of agriculture, trade and consumer protection, an
5 organization, or any other person may obtain a review of the decision of a county land
6 conservation committee under par. (b) by filing a written request with the land and
7 water conservation board within 60 days after the day on which the county land
8 conservation committee issues the decision.

9 (d) The owner of land categorized under par. (a), the department of natural
10 resources, the department of agriculture, trade and consumer protection, the county
11 in which the land is located, an organization, or any other person may request a
12 contested case hearing under ch. 227 to review the decision of the land and water
13 conservation board under par. (c) by filing a written request with the department of
14 natural resources within 60 days after receiving an adverse decision of the land and
15 water conservation board.

16 **(4m)** MAPPING OF POTENTIALLY SUSCEPTIBLE LAND. The department of
17 agriculture, trade and consumer protection, in cooperation with county land
18 conservation committees, the natural resources conservation service of the federal
19 department of agriculture, the University of Wisconsin-Madison department of soil
20 science, the geological and natural history survey, and the department of natural
21 resources, shall indicate land categorized under sub. (4), by category, on maps that
22 also show areas in which nutrient applications are restricted under ss. 92.05 (3) (k)
23 and 281.16 (3) and shall post the maps on its Internet site.

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1 **(5) REGULATION.** The department of natural resources, in consultation with the
2 department of agriculture, trade and consumer protection, shall promulgate rules
3 that do all of the following:

4 (a) Identify the categories under sub. (3) (a) of potentially susceptible land for
5 which regulation of land spreading activities, in addition to regulation under s.
6 281.16, is needed to prevent or minimize nonpoint source pollution of groundwater.

7 (b) Prescribe performance standards and prohibitions to prevent or minimize
8 nonpoint source pollution of groundwater from land spreading on land in the
9 categories identified under par. (a).

10 **(6) ENFORCEMENT.** (a) The department may follow the procedures for the
11 issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture under s. 281.98
12 (1) for a violation of rules promulgated under sub. (5).

13 (b) A county land conservation committee may request the district attorney of
14 the county to exercise the district attorney's authority to proceed under s. 23.65
15 against a person for a violation of rules promulgated under sub. (5).

16 **SECTION 17.** 281.65 (4) (e) of the statutes is amended to read:

17 281.65 (4) (e) Promulgate rules, in consultation with the department of
18 agriculture, trade and consumer protection, as are necessary for the proper
19 execution and administration of the program under this section. Before
20 promulgating rules under this paragraph, the department shall submit the rules to
21 the land and water conservation board for review under sub. (3) (at). The rules shall
22 include standards and specifications concerning best management practices which
23 are required for eligibility for cost-sharing grants under this section. The standards
24 and specifications shall be consistent with the performance standards, prohibitions,
25 conservation practices and technical standards under s. 281.16 and under s. 281.163

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1 (5) (b), where applicable. The department may waive the standards and
2 specifications in exceptional cases. The rules shall specify which best management
3 practices are cost-effective best management practices. Only persons involved in the
4 administration of the program under this section, persons who are grant recipients
5 or applicants and persons who receive notices of intent to issue orders under s. 281.20
6 (1) (b) are subject to the rules promulgated under this paragraph. Any rule
7 promulgated under this paragraph which relates or pertains to agricultural
8 practices relating to animal waste handling and treatment is subject to s. 13.565.

9 **SECTION 18.** 281.65 (4c) (am) 1. a. of the statutes is amended to read:

10 281.65 (4c) (am) 1. a. The need for compliance with performance standards
11 established by the department under s. ss. 281.16 (2) and (3) and 281.163 (5).

12 **SECTION 19.** 823.08 (3) (c) 1. of the statutes is amended to read:

13 823.08 (3) (c) 1. Subject to subd. 2., if a court requests the department of
14 agriculture, trade and consumer protection or the department of natural resources
15 for suggestions under par. (b) 2. a., the department of agriculture, trade and
16 consumer protection or the department of natural resources shall advise the court
17 concerning the relevant provisions of the performance standards, prohibitions,
18 conservation practices and technical standards under s. 281.16 (3) and, for lands to
19 which the rules promulgated under s. 281.163 (5) (b) apply, the prohibitions and
20 performance standards in those rules.

21 **SECTION 20.** 823.08 (3) (c) 2. of the statutes is renumbered 823.08 (3) (c) 2.

22 (intro.) and amended to read:

23 823.08 (3) (c) 2. (intro.) If the agricultural use or agricultural practice alleged
24 to be a nuisance was begun before October 14, 1997, a department may advise the
25 court under subd. 1. only if the one of the following applies:

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1 a. The department determines that cost-sharing is available to the defendant
2 under s. 92.14 or 281.65 or from any other source.

3 **SECTION 21.** 823.08 (3) (c) 2. b. of the statutes is created to read:

4 823.08 (3) (c) 2. b. The agricultural use or practice is located on land that is
5 categorized under s. 281.163 (4) in a category designated under s. 281.16 (5) (b) 1. as
6 having heightened vulnerability to groundwater contamination and is in an area
7 with characteristics specified under s. 281.16 (5) (b) 2. that indicate a level of
8 groundwater contamination that affects public health.

9 **SECTION 22. Nonstatutory provisions.**

10 (1) **ADVISORY COMMITTEE.** The department of natural resources shall appoint a
11 committee to advise it on the rules required under sections 281.16 (5) and 281.163
12 of the statutes, as created by this act. The department shall include scientists and
13 representatives of industry, agriculture, local government, environmental groups,
14 and other persons with interests that could be affected by the rules and shall ensure
15 that an adequate number of members are from areas thought to be susceptible to
16 groundwater contamination because of carbonate bedrock features.

17 (2) **TASK FORCE REPORT.** The department of natural resources and the advisory
18 committee under subsection (1) shall review the recommendations in the Final
19 Report of the Northeast Wisconsin Karst Task Force, February 9, 2007, before the
20 department promulgates the rules required under section 281.163 of the statutes, as
21 created by this act. The department shall incorporate recommendations in the report
22 in the rules required under section 281.163 of the statutes, as created by this act, as
23 appropriate.

24 (3) **PROPOSED RULES.** The department of natural resources shall submit in
25 proposed form the rules required under sections 281.16 (5) and 281.163 of the

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1 statutes, as created by this act, to the legislative council staff under section 227.15
2 (1) of the statutes no later than the first day of the 24th month beginning after the
3 natural resources board approves the statement of scope for the rules.

4 (END)