



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3664/1
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2015 ASSEMBLY BILL 477

November 4, 2015 - Introduced by Representatives KRUG and KITCHENS, cosponsored by Senators COWLES, OLSEN and PETROWSKI. Referred to Committee on Environment and Forestry.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 281.34 (7); *to amend* 281.34 (1) (a) (intro.),
2 281.34 (2), 281.34 (4) (a) (intro.), 281.34 (5) (a), 281.34 (5) (b), 281.34 (5) (c) and
3 281.34 (5) (d); and *to create* 281.34 (1) (em), 281.34 (1) (er), 281.34 (1m), 281.34
4 (2g), 281.34 (4) (am), 281.34 (4g), 281.34 (5) (f), 281.34 (7) (b), 281.34 (7d), 281.34
5 (7g) and 281.34 (7m) of the statutes; **relating to:** approvals for high capacity
6 wells, designation of sensitive resource areas, providing exemptions from
7 emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

OVERVIEW

This bill makes various 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. Current law requires a person to obtain approval from the Department of Natural Resources (DNR) before constructing or operating a high capacity well. This bill specifies the conditions that DNR may impose or modify in an approval for an existing high capacity well and those that it may impose in an approval for a new high capacity well. The conditions vary depending on certain circumstances such as whether the well will be, or is, located in a sensitive resource area (SRA) designated by the legislature by statute.

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The bill establishes a procedure, more fully described below, under which an area may be designated as an SRA by statute. Generally, under the bill, DNR is required to evaluate and model the hydrology of (study) certain lakes, and the areas surrounding those lakes, that are located in Waushara County (specified Waushara County lake areas). Those lakes are Pleasant Lake, Plainfield Lake, Long Lake, and Huron Lake. In addition, if DNR receives certain information showing that cumulative groundwater withdrawals in an area of the state are collectively causing or may be likely to collectively cause certain adverse impacts to streams and lakes, DNR must request approval from the Joint Committee on Finance (JCF) to study that area. If DNR conducts the study, DNR must issue a decision upon conclusion of the study on whether to recommend that the area be designated as an SRA. DNR must hold a public hearing on its decision. Upon conclusion of the hearing and all administrative and judicial reviews, DNR must submit a report to the legislature on whether it recommends that the area be designated as an SRA. If it recommends such a designation, it must prepare and submit an additional report specifying any measures that it recommends be conducted to prevent or remedy certain adverse impacts to streams and lakes in the area.

Under the bill, an area may be designated as an SRA only by statute.

Environmental review

Current law requires DNR to conduct a specific type of environmental review (special environmental review) of applications for approval of a high capacity well that is located in an area within 1,200 feet of a trout stream or an exceptional or outstanding resource water; a high capacity well with a high water loss, in which less than 5 percent of the water withdrawn is returned after use to the basin from which it is withdrawn; and a high capacity well that may have a significant environmental impact on a qualifying spring.

This bill provides that DNR is required to conduct this special environmental review under these circumstances only if the high capacity well is located in an area designated by statute as an SRA. If it is not located in an SRA, DNR may, but is not required to, conduct this special environmental review.

The bill also changes the distance threshold that applies to a special environmental review for a high capacity well located near a trout stream or an exceptional or outstanding resource water. Under the bill, that review is required if the well is located within 1600 feet of such a stream or water.

Deadlines

This bill provides that DNR must approve an application for a high capacity well approval within 65 business days from the date on which the application is filed, if no special environmental review is conducted, and within 130 business days from the date of application if a special environmental review is conducted. These deadlines do not apply to an application for a high capacity well approval located in an SRA.

Rescinding and modifying existing approvals

This bill changes the statutory language under which DNR may rescind or modify a high capacity well approval. Under current law, DNR may rescind a high capacity well approval if the well does not conform with standards or conditions

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applicable to the approval for the well. This bill provides that DNR may not rescind the approval unless the well or the use of the well does not conform with conditions contained in the approval.

Current law also provides that DNR may modify a high capacity well approval if the well does not conform with standards or conditions applicable to the approval. This bill changes current law with respect to the modification of a high capacity well approval by providing that DNR may not impose new or modified conditions on an existing well unless a hearing examiner determines that these conditions are necessary in order to abate an infringement of public rights in navigable waters. The bill provides that if the high capacity well is located in an SRA, DNR may also impose new or modified conditions if DNR is authorized by statute to impose those conditions. The bill also provides that DNR may impose or modify a condition in an existing high capacity well approval if the well owner agrees to the imposition of the new or modified condition.

Conditions in new approvals

Under current law, if an application is one for which DNR conducts a special environmental review, or if the application is for approval of a high capacity well that DNR determines may impair a public water supply, DNR may not approve the application unless it includes certain conditions in the approval. The conditions must ensure that, depending on the location of the well, the public water supply is protected, the well does not cause significant environmental impact, or the environmental impact is balanced by the public benefit of the well.

Generally, this bill provides that DNR may impose conditions in a high capacity well approval only to ensure that the well will not cause a significant adverse environmental impact to a navigable water and to require the owner of the high capacity well to remedy unreasonable harm to another person's well that is not a high capacity well and that was in existence on the date of the application for approval of the new high capacity well. The bill also provides that in reviewing an application for a high capacity well approval, DNR may not impose conditions on any other existing well, regardless of the location of the existing well.

This bill limits the conditions that DNR may impose in any approval issued for a new high capacity well, other than one located in an SRA. Among the conditions that DNR may impose are restrictions on the location, depth, and pumping capacity of the well and conditions consistent with DNR standards for the construction of high capacity wells. The bill provides that DNR may also require monitoring as a condition in an approval for a new high capacity well if monitoring is necessary in order for DNR to ensure that the groundwater withdrawal will not exceed the allowable amount or rate under the laws regulating high capacity well approvals. If DNR requires monitoring, the monitoring condition may only be imposed to allow DNR to assess the water levels of the navigable waters in the area or groundwater quality. If the approval is for a high capacity well located in an SRA, DNR may also impose other conditions in the approval if DNR is authorized to impose those other conditions by statute.

The bill also provides that if the approval application is one for which DNR conducts a special environmental review, or is for a well that DNR determines may

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impair a public water supply, DNR must also impose conditions for the purposes required in those cases under current law.

Minimum water levels; sensitive resource areas

This bill requires DNR to promulgate rules establishing a method for determining the minimum rate of flow of a stream and the minimum water level of a lake (minimum level) necessary to prevent endangerment of certain fish and aquatic life, impairment of navigation typically conducted on a stream or lake, deterioration of water quality, infringement upon a riparian owner's reasonable expectation of access to a lake, and impairment of any existing surface water diversions from a stream or lake.

This bill also establishes a procedure under which DNR may determine whether a geographic area of the state should be designated as an SRA. The bill provides that if DNR has information or data from a professional geologist, hydrologist, or hydrogeologist showing that cumulative groundwater withdrawals from high capacity wells in an area of this state are collectively causing, or may be likely to collectively cause a reduction of a stream's or lake's rate of flow or water level below its minimum level, DNR must request approval from JCF to study the area. The bill also requires DNR to study specified Waushara County lake areas without requesting approval from JCF.

The bill provides that if JCF approves DNR's request, or allows DNR to proceed without a JCF meeting to approve the request, DNR must conduct a study of the area for which the request is made. If upon conclusion of the study of that area, or of a specified Waushara County lake area, DNR determines that special measures relating to groundwater withdrawal are necessary in that area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level, DNR must issue a decision on whether it recommends designation of the area as an SRA. If DNR issues a decision recommending designation of the area as an SRA, DNR's decision must contain certain information including a description of the geographical boundaries of the area and a description of the extent to which DNR has determined that cumulative groundwater withdrawals in the area cause, or are expected to cause, a reduction of a stream's or lake's rate of flow or water level below its minimum level. The decision must also include any proposed measures that DNR recommends be taken in the area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level. These measures may include proposed regulations such as the use of conservation measures, the imposition of limits on groundwater withdrawals, the use of a groundwater withdrawal credit system, or other means of regulation.

The bill provides that after DNR issues its decision, it must hold a public hearing to solicit comments on its decision. The bill provides that any person may request that the hearing be treated as a contested case hearing and any person may be made a party to the hearing if the person makes a timely request to be made a party. After the exhaustion of the period of time established by law for all administrative reviews and judicial reviews of a final decision in a contested case, DNR must prepare, and submit to the legislature, a report on whether the area should be designated as a sensitive resource area. If DNR recommends that the area

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be designated as an SRA, DNR must prepare an additional report specifying any measures that it recommends be conducted in the area to prevent or remedy a reduction of a stream's or lake's rate of flow or water level below its minimum level.

Modification of previously issued approvals

This bill also allows certain owners of existing high capacity wells to obtain modification of a previously issued approval. Under the bill, if DNR issued an approval for a high capacity well on or after July 6, 2011, and before the effective date of the bill, DNR must, upon the well owner's request, review the conditions in that approval. If the conditions are not consistent with DNR's authority under this bill, DNR must remove or revise those conditions consistent with that authority.

Activities exempt from approval

This bill also provides that no additional approval is needed for the owner of an approved high capacity well to repair or maintain the well; to reconstruct the existing high capacity well if the reconstructed well meets certain conditions; or to transfer the approval at the same time as the owner transfers the land on which the approved high capacity well is located. The bill also provides that under certain circumstances an additional approval is not required to replace an existing high capacity well. The new high capacity well must be constructed in accordance with DNR standards that apply to the construction of new high capacity wells on the date that construction of the replacement begins and must satisfy certain other requirements. Either the well replacement must be undertaken to remedy or prevent contamination or the replacement well must be drilled to substantially the same depth as the existing well and be located within a certain radius of the existing well. 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 conditions of the existing high capacity well approval. The conditions of the approval issued for the existing high capacity well continue to apply after any of these actions are taken.

For further information see the *state* 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.** 281.34 (1) (a) (intro.) of the statutes is amended to read:
- 2 281.34 (1) (a) (intro.) "Groundwater protection area" means an area within
- 3 1,200 1,600 feet of any of the following:
- 4 **SECTION 2.** 281.34 (1) (em) of the statutes is created to read:

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1 281.34 (1) (em) “Reconstruct” means to modify original construction including
2 deepening, lining, installing or replacing a screen, and underreaming.

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

4 281.34 (1) (er) “Sensitive resource area” means an area designated as a
5 sensitive resource area by statute.

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

7 281.34 (1m) LIMITS ON REGULATORY AUTHORITY. (a) Notwithstanding ss. 281.11
8 and 281.12 (1), the department’s duty and authority, including public trust duties or
9 rule-making authority, with respect to issuance of high capacity well approvals is
10 limited to the duty and authority that is explicitly conferred upon the department
11 by this section.

12 (b) Paragraph (a) does not limit the department’s authority to regulate water
13 withdrawals under ss. 281.346 and 281.35.

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

15 281.34 (2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. An Except as provided
16 under sub. (2g), an owner shall apply to the department for approval before
17 construction of a high capacity well begins. No Except as provided under sub. (2g),
18 no person may construct or withdraw water from a high capacity well without the
19 approval of the department under this section or under s. 281.17 (1), 2001 stats. An
20 owner applying for approval under this subsection shall pay a fee of \$500. The
21 department shall issue an approval to construct a high capacity well to any person
22 who applies for an approval and pays the required fee if the high capacity well meets
23 the requirements of this section. If the department denies an approval under this
24 section, the department shall provide the applicant with a written explanation of the
25 reason for the denial.

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

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

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

8 2. Construct a new high capacity well to replace the existing high capacity well
9 if the new high capacity well will be constructed in accordance with department
10 standards that apply to the construction of new high capacity wells on the date that
11 construction of the replacement high capacity well begins, if the existing high
12 capacity well is filled and sealed as provided in rules promulgated by the department
13 in a manner that will protect public safety, and if any of the following applies:

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

17 b. The replacement high capacity well will be drilled to substantially the same
18 depth as the existing high capacity well and will be located within a 75-foot radius
19 of the existing high capacity well or, if located 75 feet or more from the existing high
20 capacity well, will be located farther from the nearest navigable stream or navigable
21 lake than the existing high capacity well and will not be located within 1,000 feet of
22 any other navigable stream or navigable lake.

23 3. Reconstruct the existing high capacity well, if the reconstructed high
24 capacity well is constructed to substantially the same depth and specifications as the
25 existing high capacity well.

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

3 (b) The department may not impose a fee for any action under par. (a).

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

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

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

14 **SECTION 7.** 281.34 (4) (a) (intro.) of the statutes is amended to read:

15 281.34 (4) (a) (intro.) The department shall review an application for approval
16 of any of the following that are located in a sensitive resource area using the
17 environmental review process in its rules promulgated under s. 1.11:

18 **SECTION 8.** 281.34 (4) (am) of the statutes is created to read:

19 281.34 (4) (am) The department may review an application for approval of a
20 high capacity well described in par. (a) 1. to 3. using the environmental review
21 process in its rules promulgated under s. 1.11 if the high capacity well is not located
22 in a sensitive resource area.

23 **SECTION 9.** 281.34 (4g) of the statutes is created to read:

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1 281.34 (4g) APPROVAL DEADLINES. (a) Except as provided in par. (b), the
2 department shall approve or deny an application for an approval for a high capacity
3 well within the following period:

4 1. If an environmental review is not conducted under sub. (4), within 65
5 business days from the date of filing the application for the approval.

6 2. If an environmental review is conducted under sub. (4), within 130 business
7 days from the date of filing the application for the approval.

8 (b) This subsection does not apply to an approval application for a high capacity
9 well located in a sensitive resource area.

10 **SECTION 10.** 281.34 (5) (a) of the statutes is amended to read:

11 281.34 (5) (a) *Public water supply.* If the department determines that a
12 proposed high capacity well may impair the water supply of a public utility engaged
13 in furnishing water to or for the public, the department may not approve the high
14 capacity well unless it is able to include and includes in the approval conditions,
15 ~~which may include conditions as to location, depth, pumping capacity, rate of flow,~~
16 ~~and ultimate use, limited to those described in par. (f) 3. and 3m. and if applicable~~
17 par. (f) 4., that will ensure that the water supply of the public utility will not be
18 impaired.

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

20 281.34 (5) (b) *Groundwater protection area.* 1. Except as provided in subd. 2.,
21 if the department determines, under the environmental review process in sub. (4),
22 that an environmental impact report under s. 23.11 (5) must be prepared for a
23 proposed high capacity well located in a groundwater protection area, the
24 department may not approve the high capacity well unless it is able to include and
25 includes in the approval conditions, ~~which may include conditions as to location,~~

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1 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
2 ~~in par. (f) 3. and 3m. and if applicable par. (f) 4.,~~ that ensure that the high capacity
3 well does not cause significant environmental impact.

4 2. Subdivision 1. does not apply to a proposed high capacity well that is located
5 in a groundwater protection area and that is a water supply for a public utility
6 engaged in supplying water to or for the public, if the department determines that
7 there is no other reasonable alternative location for a well and is able to include and
8 includes in the approval conditions, ~~which may include conditions as to location,~~
9 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
10 ~~in par. (f) 3. and 3m. and if applicable par. (f) 4.,~~ that ensure that the environmental
11 impact of the well is balanced by the public benefit of the well related to public health
12 and safety.

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

14 281.34 (5) (c) *High water loss.* If the department determines, under the
15 environmental review process in sub. (4), that an environmental impact report under
16 s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of
17 more than 95 percent of the amount of water withdrawn, the department may not
18 approve the high capacity well unless it is able to include and includes in the
19 approval conditions, ~~which may include conditions as to location, depth, pumping~~
20 ~~capacity, rate of flow, and ultimate use, limited to those described in par. (f) 3. and~~
21 ~~3m. and if applicable par. (f) 4.,~~ that ensure that the high capacity well does not cause
22 significant environmental impact.

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

24 281.34 (5) (d) *Impact on a spring.* 1. Except as provided in subd. 2., if the
25 department determines, under the environmental review process in sub. (4), that an

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1 environmental impact report under s. 23.11 (5) must be prepared for a proposed high
2 capacity well that may have a significant environmental impact on a spring, the
3 department may not approve the high capacity well unless it is able to include and
4 includes in the approval conditions, ~~which may include conditions as to location,~~
5 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
6 in par. (f) 3. and 3m. and if applicable par. (f) 4., that ensure that the high capacity
7 well does not cause significant environmental impact.

8 2. Subdivision 1. does not apply to a proposed high capacity well that may have
9 a significant environmental impact on a spring and that is a water supply for a public
10 utility engaged in supplying water to or for the public, if the department determines
11 that there is no other reasonable alternative location for a well and is able to include
12 and includes in the approval conditions, ~~which may include conditions as to location,~~
13 ~~depth, pumping capacity, rate of flow, and ultimate use, limited to those described~~
14 in par. (f) 3. and 3m. and if applicable par. (f) 4., that ensure that the environmental
15 impact of the well is balanced by the public benefit of the well related to public health
16 and safety.

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

18 281.34 (5) (f) *Limitations on approval conditions for new high capacity wells.*

19 1. In reviewing an application for an approval for a new high capacity well, the
20 department may not impose conditions on any other existing well, regardless of the
21 location of the existing well. The department may impose conditions in the approval
22 for the new high capacity well only if the conditions are imposed for any of the
23 following purposes, subject to subd. 2.:

24 a. To ensure that the new high capacity well together with other wells on the
25 same property or on contiguous property owned by the new high capacity well owner

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1 will not cause a significant adverse environmental impact to a navigable water. In
2 making this determination, the department shall consider the impact to a navigable
3 water caused only by the new high capacity well together with other wells on the
4 same property or on contiguous property owned by the new high capacity well owner
5 and may not consider the impact caused by any other wells.

6 b. To require the owner of the new high capacity well to remedy an
7 unreasonable harm caused by the new high capacity well to another person's well if
8 the other person's well is not a high capacity well and it was in existence on the date
9 of the application for approval of the new high capacity well.

10 2. a. In an approval to which par. (a), (b), (c), or (d) applies, the department shall
11 also impose conditions for the purposes specified in par. (a), (b), (c), or (d),
12 respectively.

13 b. Subdivision 1. a. does not apply to a new high capacity well that may cause
14 a significant adverse environmental impact to a navigable water and that is a water
15 supply for a public utility engaged in supplying water to or for the public if the
16 department determines that there is no other reasonable alternative location for the
17 well and determines that the environmental impact of the well is balanced by the
18 public benefit of the well related to public health and safety.

19 3. Except as provided in subds. 3m. and 4., if the department imposes
20 conditions in any approval for a new high capacity well, the department may only do
21 the following:

22 a. Restrict the location of the high capacity well.

23 b. Restrict the depth of the high capacity well.

24 c. Restrict the pumping capacity of the high capacity well.

25 d. Restrict the rate of flow of the high capacity well.

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1 e. Restrict the ultimate use of the high capacity well, except that the
2 department may not require the high capacity well to be used for a purpose not
3 proposed by the applicant in the approval application.

4 f. Impose conditions that the department is authorized to impose to meet the
5 requirements of subd. 1. b.

6 g. Impose conditions consistent with department standards that apply to the
7 construction of high capacity wells.

8 3m. Notwithstanding the limitations in subd. 1., the department may require
9 monitoring as a condition in an approval for a new high capacity well if all of the
10 following apply:

11 a. The department cannot ensure, without requiring monitoring, that the
12 amount or rate of the groundwater withdrawal will not exceed the allowable amount
13 or rate under this section or that the quality of the groundwater will not be impaired.

14 b. The monitoring conditions are imposed only for the purpose of assessing the
15 water levels of navigable waters in the area or groundwater quality.

16 c. If a monitoring condition requires groundwater testing, the department
17 requires testing of only groundwater withdrawn by the new high capacity well.

18 4. If the department issues an approval for a new high capacity well located in
19 a sensitive resource area, the department may impose conditions in the approval, in
20 addition to those specified under subds. 3. and 3m., only if they are consistent with
21 the department's authority granted by statute.

22 **SECTION 15.** 281.34 (7) of the statutes is renumbered 281.34 (7) (a) and
23 amended to read:

24 281.34 (7) (a) The department may not rescind an approval of a high capacity
25 well issued under this section or under s. 281.17 (1), 2001 stats., ~~remains in effect~~

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1 unless the department ~~modifies or rescinds the approval because the high capacity~~
2 well or the use of the high capacity well is not in conformance with ~~standards or~~
3 conditions ~~applicable to~~ contained in the approval of the high capacity well.

4 **SECTION 16.** 281.34 (7) (b) of the statutes is created to read:

5 281.34 (7) (b) 1. Except as provided in subd. 2., the department may impose new
6 or modified conditions applicable to the approval of a high capacity well issued under
7 this section or under s. 281.17 (1), 2001 stats., only if a hearing examiner determines
8 that the imposition of new or modified conditions is necessary in order to abate an
9 infringement of public rights in navigable waters and issues an order under s. 30.03
10 (4) requiring the owner of the high capacity well to comply with the new or modified
11 conditions.

12 2. In addition to the department's authority under subd. 1., the department
13 may impose new or modified conditions applicable to the approval of a high capacity
14 well issued under this section or under s. 281.17 (1), 2001 stats., if the well is located
15 in a sensitive resource area and the department is authorized to impose the new or
16 modified conditions by statute.

17 3. Nothing in this paragraph prohibits the department from imposing a new
18 condition, or modifying an existing condition, in an existing high capacity well
19 approval if the high capacity well owner agrees to the imposition of the new or
20 modified condition.

21 **SECTION 17.** 281.34 (7d) of the statutes is created to read:

22 281.34 (7d) RULES; APPROVAL APPLICATIONS. The department shall promulgate
23 rules establishing the procedures for reviewing and acting on applications for
24 approvals under this section.

25 **SECTION 18.** 281.34 (7g) of the statutes is created to read:

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1 281.34 **(7g)** RULES. The department shall promulgate rules establishing a
2 method for determining the minimum rate of flow of a stream and the minimum
3 water level of a lake necessary to prevent all of the following:

4 (a) Endangerment of fish and aquatic life that are naturally sustainable absent
5 any groundwater withdrawals affecting the stream or lake.

6 (b) Impairment of navigation of the type typically conducted on the stream or
7 lake.

8 (c) Deterioration of the water quality of the stream or lake below public health
9 and safety standards.

10 (d) Infringement upon a riparian owner's reasonable expectation of access to
11 a lake.

12 (e) Impairment of any existing surface water diversions from the stream or
13 lake.

14 **SECTION 19.** 281.34 (7m) of the statutes is created to read:

15 281.34 **(7m)** SENSITIVE RESOURCE AREAS. (a) In this subsection:

16 1. "Minimum level" means the rate of flow of a stream or the water level of a
17 lake that is the minimum determined by the department using the method
18 established under sub. (7g).

19 2. "Specified Waushara County lake areas" means Pleasant Lake in Waushara
20 County, Plainfield Lake in Waushara County, Long Lake in Waushara County, and
21 Huron Lake in Waushara County and the areas surrounding those lakes.

22 (ag) If the department has information or data from a professional geologist,
23 professional hydrologist, or professional hydrogeologist showing that cumulative
24 groundwater withdrawals from high capacity wells and other wells in an area of this
25 state are collectively causing or may be likely to collectively cause a reduction of a

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1 stream's or lake's rate of flow or water level below its minimum level, the department
2 shall request approval from the joint committee on finance to evaluate and model the
3 hydrology of that area. The department may proceed with the requested action if
4 within 14 working days of the request the committee does not schedule a meeting for
5 the purpose of reviewing the department's request. If the committee schedules a
6 meeting for the purpose of reviewing the department's request, the department may
7 not take the requested action unless the committee approves the request.

8 (ar) The department shall evaluate and model the hydrology of all of the
9 specified Waushara County Lake areas. The department shall conduct the activities
10 required under this paragraph without requesting or obtaining approval from the
11 joint committee on finance.

12 (b) If upon conclusion of the evaluation and modeling of an area under par. (ag)
13 or (ar), the department determines that special measures relating to groundwater
14 withdrawal are necessary in that area to prevent or remedy a reduction of a stream's
15 or lake's rate of flow or water level below its minimum level, the department shall
16 issue a decision on whether it recommends designation of the area as a sensitive
17 resource area. If the department issues a decision recommending designation of the
18 area as a sensitive resource area, the decision shall contain all of the following
19 information:

20 1. A description of the extent to which the department has determined that
21 cumulative groundwater withdrawals in the area cause, or are expected to cause, a
22 reduction of a stream's or lake's rate of flow or water level below its minimum level.

23 1m. A description of the concrete scientific information that the department
24 used to establish that there is a hydrologic connection between the groundwater in

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1 the area and the navigable waters in the area and the degree to which the
2 department verified the connection by the use of field work or field study.

3 2. A description of the geographical boundaries of the area that the department
4 recommends for designation as a sensitive resource area. The department shall
5 identify in the description the specific navigable water or part of the navigable water
6 that is or may be affected by the cumulative groundwater withdrawals and shall
7 identify the location of the groundwater withdrawals that the department has
8 determined are causing or may cause a reduction of a stream's or lake's rate of flow
9 or water level below its minimum level.

10 3. Any proposed measures relating to groundwater withdrawal that the
11 department recommends be taken in the area recommended for designation as a
12 sensitive resource area to prevent or remedy a reduction of a stream's or lake's rate
13 of flow or water level below its minimum level. If the department recommends
14 special regulations for the area, the regulations may include the use of conservation
15 measures, the imposition of limits on groundwater withdrawals, the use of a
16 groundwater withdrawal credit system, or other means of regulation.

17 4. The length of time that the department will reasonably require to review an
18 application for approval of a new high capacity well in the area.

19 (c) The department shall hold a public informational hearing to solicit
20 comments on the department's decision.

21 (d) 1. Notwithstanding s. 227.42 (1), any person is entitled to request that the
22 hearing under par. (c) be treated as a contested case under ch. 227 if the person makes
23 the request within 30 days after the department issues its decision under par. (b).

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1 2. Any person may participate as a party if the person files a written notice with
2 the hearing examiner setting forth his or her interest within 30 days after the date
3 on which the request under subd. 1. is granted.

4 (e) A person seeking judicial review of a final decision in a contested case under
5 par. (d) shall comply with the requirements for service and filing in s. 227.53 (1) (a)
6 and shall commence the action no more than 30 days after a decision in the contested
7 case is rendered.

8 (f) After the exhaustion of the period established for all administrative reviews
9 and judicial reviews of a final decision in a contested case under par. (d), the
10 department shall prepare a report on whether the area described in its decision
11 under par. (b) should be designated as a sensitive resource area. The department
12 shall submit the report to the chief clerk of each house of the legislature, for
13 distribution under s. 13.172 (3) to the appropriate legislative standing committees
14 generally responsible for legislation related to environmental issues.

15 (g) If the department recommends in its report submitted under par. (f) that
16 the area described under par. (b) be designated as a sensitive resource area, the
17 department shall prepare an additional report specifying any measures that the
18 department recommends be conducted in that area to prevent or remedy a reduction
19 of a stream's or lake's rate of flow or water level below its minimum level. The
20 department shall submit the report to the chief clerk of each house of the legislature,
21 for distribution under s. 13.172 (3) to the appropriate legislative standing
22 committees generally responsible for legislation related to environmental issues.

23 (h) An area may be designated as a sensitive resource area only by statute.

24 **SECTION 20. Nonstatutory provisions.**

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1 (1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
2 the department of natural resources shall promulgate the rules required under
3 section 281.34 (7d) and (7g) of the statutes, as created by this act, as emergency rules.
4 The emergency rules shall remain in effect for the period before the effective date of
5 the permanent rules promulgated under section 281.34 (7d) and (7g) of the statutes,
6 as created by this act but not to exceed the period authorized under section 227.24
7 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
8 Notwithstanding section 227.24 (2) of the statutes, the department may seek any
9 number of extensions of the effective period of emergency rules under section 227.24
10 (2) of the statutes except that no extension shall be allowed after July 1, 2018.
11 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
12 is not required to provide evidence that promulgating a rule under this subsection
13 as an emergency rule is necessary for the preservation of the public peace, health,
14 safety, or welfare and is not required to provide a finding of emergency for a rule
15 promulgated under this subsection.

16 (2) MODIFICATION OF PREVIOUSLY ISSUED APPROVALS.

17 (a) In this subsection:

18 1. "Department" means the department of natural resources.

19 2. "Owner" has the meaning given in section 281.34 (1) (d) of the statutes.

20 (b) If the department issued an approval to an owner of a high capacity well
21 under section 281.34 (2) of the statutes on or after July 6, 2011, and before the
22 effective date of this paragraph, the department shall, upon the owner's request,
23 review the conditions in the approval. If the conditions in the approval are not
24 consistent with the department's authority under section 281.34 of the statutes, as

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1 affected by this act, the department shall remove or revise the conditions in the
2 approval consistent with that authority.

3 **SECTION 21. Initial applicability.**

4 (1) This act first applies to applications for a high capacity well approval
5 received by the department of natural resources but not acted upon on the effective
6 date of this subsection.

7 (END)