

2015 - 2016 LEGISLATURE

# 2015 ASSEMBLY BILL 637

January 7, 2016 - Introduced by Representatives GENRICH, MILROY, BERCEAU, CONSIDINE, GOYKE, HINTZ, KOLSTE, MASON, MEYERS, OHNSTAD, SINICKI, SPREITZER, SUBECK, C. TAYLOR, ZEPNICK and BROSTOFF, cosponsored by Senators HANSEN, VINEHOUT, BEWLEY, C. LARSON, LASSA, MILLER, RINGHAND, RISSER and SHILLING. Referred to Committee on Environment and Forestry.

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)

1 to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and  
2 299.64

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

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

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

**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

activities in substantial accordance with the performance standards, prohibitions, conservation practices, and technical standards under s. 281.16 and, if applicable, under s. 281.163 (5) (b) and with plans approved under this section, under s. 92.15, 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

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

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

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

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

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

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

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

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

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

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

281.16 (3) (e) As Except as provided in sub. (5) (a), an owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) (b) and ss. 92.07 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall 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

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.