



## Legislative Fiscal Bureau

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February 12, 2020

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 789/Senate Bill 724: Well Compensation Grant Program

Assembly Bill 789 and Senate Bill 724 would make changes to the well compensation grant program administered by the Department of Natural Resources (DNR). The bill includes recommendations described in the January, 2020, report of the Speaker's Task Force on Water Quality.

AB 789 was introduced on January 24, 2020, and referred to the Assembly Committee on Rural Development. A public hearing was held February 4, 2020. On February 6, 2020, the Assembly Committee on Rural Development recommended adoption of Assembly Amendment 2 by a vote of 8-4, and passage as amended by a vote of 12-0.

SB 724 was introduced on January 24, 2020, and referred to the Senate Committee on Natural Resources and Energy. A public hearing was held February 5, 2020.

### **CURRENT LAW**

The well compensation grant program provides financial assistance for replacing, reconstructing, or treating contaminated wells that serve certain private residences or are used for watering livestock. Grants can also pay costs of well abandonment. DNR determines whether a well meets eligibility criteria based on contamination from certain substances. In the past 15 years, well compensation grants have addressed contamination from livestock fecal bacteria, arsenic, metals, benzene, gasoline additives, nitrates, and pesticides.

An owner or lessee of the property on which the contaminated well is located may submit a claim. Eligible wells include private water supplies used for potable water and that are a: (a) residential water supply, which is a well that is used for humans, or humans and livestock, and is connected to 14 or fewer dwelling units; or (b) livestock water supply well used only for livestock. To be considered contaminated, the water supply must have been tested twice according to specified

procedures, at least two weeks apart, and the results must exceed state or federal water standards for contaminants.

Under certain circumstances, eligibility includes contamination from arsenic, livestock fecal bacteria, or nitrates. The statutes specify that if a claim is based on contamination by nitrates and not by any other substance, DNR may make a well compensation award only if the well: (a) is used as a source of drinking water for livestock or for both livestock and a residence; (b) is used at least three months of each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock; and (c) produces water containing nitrates exceeding 40 parts per million expressed as nitrate-nitrogen. Residential wells contaminated by nitrates and not by any other substance are not eligible unless they are also used for livestock as described above.

Bacterial contamination is eligible if it is from livestock fecal contamination and in an area DNR has declared to be an area of special eligibility. The statutes require DNR to declare an area of special eligibility if certified laboratory tests establish wells in an area are contaminated by fecal bacteria and evidence demonstrates the contamination is caused by livestock. DNR has declared 32 areas of special eligibility since 2006, seven of which were in Kewaunee County. Of 32 areas designated, DNR declared eight areas in 2016 through 2019, including four in Kewaunee County, and one in each of Brown, Dodge, Fond du Lac, and Washington Counties. The statutes specify that a claim is ineligible if the contaminated private water supply is a residential water supply, is contaminated by bacteria or nitrates or both, and is not contaminated by any other substance, except if it is in an area of special eligibility.

Grant recipients must have family income that does not exceed \$65,000, as determined by the Wisconsin adjusted gross income in the preceding tax year. The maximum for eligible costs is \$16,000 and the grant is 75% of eligible costs, equaling a maximum grant of \$12,000. Additionally, if annual family income of a claimant exceeds \$45,000, the grant award is reduced by 30% of the amount by which the claimant's annual family income exceeds \$45,000. Grant recipients must pay a \$250 copayment, unless the grant is for well abandonment. The following table shows the maximum grant at various incomes.

**Maximum Well Compensation Grant -- Current Law**

<u>Family Income</u>	<u>Income Exceeding Threshold</u>	<u>Income-Based Grant Reduction</u>	<u>Grant Amount</u>
\$0 to 45,000	\$0	\$0	\$12,000
\$55,000	-10,000	-3,000	9,000
\$65,000	-20,000	-6,000	6,000
Above \$65,000	Not eligible	Not eligible	0

The program is funded from a continuing appropriation in the segregated (SEG) environmental management account of the environmental fund, which means appropriated unexpended funds are carried forward for expenditure in subsequent years. The program is appropriated \$200,000 SEG in each of 2019-20 and 2020-21, and in addition had an available carry-

in balance of \$746,700 from 2018-19. As a result, approximately \$1,146,700 is available during the 2019-21 biennium for well compensation grants. Any funds not spent in the 2019-21 biennium will carry forward and be available for expenditure in subsequent fiscal years.

## **SUMMARY OF BILL**

The bill would provide eligibility under the well compensation grant program for residential wells with water containing nitrates at a concentration of at least 10 parts per million (ppm) expressed as nitrate-nitrogen. It would eliminate the requirement that if a well is contaminated by nitrates only, it must also be used for watering livestock, be used at least three months in each year, and have nitrate concentrations in excess of 40 parts per million to be eligible for a grant.

Nitrate is a compound made up of nitrogen and oxygen. Typical sources of nitrate include nitrogen fertilizers, animal manure, and human waste from septic systems or wastewater treatment facilities. The state and federal nitrate drinking water standards are 10 parts per million (ppm). High levels of nitrates can negatively impact the ability of blood in a person's body to carry oxygen, which in infants can cause a harmful health condition known as "blue baby syndrome." Studies suggest that high levels of nitrates may also increase the risk of certain other health problems, such as thyroid disease, diabetes, and some types of cancer. DNR and the Department of Health Services (DHS) recommend that no infant or any female who is or may become pregnant should consume any water that exceeds the nitrate standard, either by drinking or eating foods prepared with the water. In addition, DHS recommends that all people avoid long-term consumption of water that has a nitrate level greater than 10 ppm.

The bill would repeal the limitation that a well contaminated with one or both of bacteria or nitrates, and not any other substance, is only eligible if in an area of special eligibility declared by DNR. It would also repeal the authority of DNR to declare an area of special eligibility for wells contaminated by fecal bacteria where the bacterial contamination is caused by livestock. Thus, wells contaminated by bacteria caused by livestock would be eligible for a well compensation grant without DNR having to first declare an area of special eligibility.

The bill would retain the current requirement that DNR allocate money for payment of claims in the order in which claims are received. However, the bill would require that when DNR receives claims of contamination by nitrates and not by any other substance, the Department would be required to allocate money for payment of those claims according to a priority order based on the amount of nitrate contamination. DNR would be required to determine the method for allocating money for the payment of claims with only nitrate contamination and claims with other types of contamination. DNR would be required to allocate money for payment of claims with nitrate contamination and no other type of contamination in the following order of priority: (a) claims based on water containing nitrates in excess of 40 parts per million expressed as nitrate-nitrogen; (b) claims based on water containing nitrates in excess of 30 parts per million expressed as nitrate-nitrogen; (c) claims based on water containing nitrates in excess of 25 parts per million expressed as nitrate-nitrogen; and (d) claims based on water containing no fewer than 10 parts per million and not in excess of 25 parts per million expressed as nitrate-nitrogen. For claims with nitrate concentrations between 10 and 25 parts per million, DNR would be required to emphasize the use of reverse osmosis

or similar methods prior to well remediation methods if the Department determines these methods are the most effective option for the health and welfare of the claimant.

The bill would create a requirement for all well compensation claims that DNR may issue an award only for the eligible cost that the Department determines is the remediation method that is most effective for the health and welfare of the claimant.

The bill would create a continuing appropriation for the payment of well compensation claims and would provide \$1,000,000 GPR beginning in 2020-21 for payment of claims. Provision of the funding in 2020-21 would mean it would be part of the base funding level when DNR prepares its 2021-23 biennial budget request in the fall of 2020. Under the continuing appropriation, any funds not spent in 2020-21 would be available for expenditure in subsequent fiscal years. The bill would retain the current SEG environmental management account appropriation for well compensation grants, the current funding level of \$200,000 SEG in each of 2019-20 and 2020-21, and the ability to carry forward the appropriation's unencumbered balance to the next year. Both the new GPR and current SEG appropriations could be used for grants under the program.

The bill would create 1.0 GPR well compensation grant program administrator position and fund it from the new GPR appropriation. (The bill would need to be amended to specify that administration can be funded from the grants appropriation.) DNR would determine how much of the \$1,000,000 GPR would be needed for the position. The bill would also require DNR to allocate not less than \$200,000 annually from the GPR appropriation for claims of water containing nitrates at 10 to 25 parts per million, unless the Department determines there are insufficient claims at that level to expend those moneys. This requirement would be in addition to the current requirement that claims be funded in the order received, and the bill's requirement that nitrate claims be paid in order of priority according to the concentration of nitrates in the well water.

#### **ASSEMBLY AMENDMENT 1**

Assembly Amendment 1 (AA 1) to AB 789 would increase the maximum eligible family income for a well compensation grant from \$65,000 to \$100,000. It would also increase, from \$45,000 to \$65,000, the threshold at which the grant is reduced by 30% of the amount by which the claimant's family income exceeds the threshold. Under AA 1, households with family income not exceeding \$65,000 would have a maximum grant of \$12,000. Households with family income exceeding \$65,000, but not exceeding \$100,000, would receive a grant that is reduced by 30% of the amount by which the claimant's family income exceeds \$65,000.

#### **ASSEMBLY AMENDMENT 2/SENATE AMENDMENT 1**

Assembly Amendment 2 (AA 2) and Senate Amendment 1 (SA 1), which are identical, would remove the section of the bill that provides 1.0 GPR position in the new GPR grants appropriation. Instead, AA 2/SA 1 would direct DNR to reallocate 1.0 position in the Division of External Services GPR administrative appropriation for well compensation grant administration. It is anticipated a long-term vacancy from the watershed management program would be reallocated to the community financial assistance program. Currently, 1.0 GPR water regulation and zoning specialist position has

been vacant since October, 2018. The position is authorized for activities such as regulation of waterway permit, dam, and flood plain programs, and is located in the northern region.

## **FISCAL EFFECT**

The bill would increase expenditure authority by \$1,000,000 GPR each year, and 1.0 GPR position, beginning in 2020-21. In its fiscal estimate for the bill, DNR estimates that approximately \$109,100 of the \$1,000,000 would be used to fund the position, and the remaining \$890,900 would be used for well compensation grants. As a result, approximately \$2,037,600 would be available during the 2019-21 biennium for well compensation grants.

Under AA 2/SA 1, GPR grant funding would be \$1,000,000 each year. Total grant funding in the 2019-21 biennium would be \$2,146,700, including: (a) \$746,700 SEG carry forward balance from 2018-19; (b) \$200,000 SEG base funding in each of 2019-20 and 2020-21; and (c) \$1,000,000 GPR in 2020-21 from the new appropriation under the bill. Base grant funding would be \$1.2 million each year. The grant administration position would be funded using existing budget authority.

It cannot be immediately determined how program participation would increase under the bill's changes to eligibility. Residential wells with nitrate contamination of at least 10 parts per million would become eligible for a well compensation grant under the bill. DNR does not track how many residential wells have nitrate contamination of at least 10 parts per million. In the spring of 2019, the Department estimated that approximately 42,000 wells (6% of approximately 700,000 private wells in the state) produce water with nitrate contamination above the 10 ppm standard. Further, DNR reports the average cost to replace a nitrate-contaminated well is \$10,600. Under these assumptions, the total cost of replacing all nitrate-contaminated wells would be \$446 million. However, it should also be noted the DNR fiscal estimate suggests costs of remediation methods may be as little as \$5,000 in some cases, depending on a selected method of remediation.

The portion of costs that would be borne by the well compensation grant program also is not clear, as the income eligibility of households with contaminated wells is unknown. In the spring of 2019, DNR estimated that approximately half of the 42,000 wells with nitrate contamination exceeding 10 ppm, or 21,000 wells, belong to households with income less than \$100,000. (This was the maximum income proposed by the Governor in the 2019-21 biennial budget bill, though not enacted in Act 9, and proposed under AA 1.) DNR does not have further information as to how many households with wells with nitrate contamination exceeding 10 ppm have family income less than the current \$65,000 maximum family income, which the bill as introduced would maintain.

Further, state grant expenditures would vary depending on the actual income of households with wells with nitrate contamination exceeding 10 ppm, as households with annual family income exceeding \$45,000 have grants reduced 30¢ for every dollar in additional income. For instance, at a \$10,600 replacement cost, a well replacement grant would average \$7,763 for a household with annual family income of \$45,000 after applying the \$250 copayment. However, a household with annual family income of \$65,000 would receive a reduced grant of \$1,763. Under AA 1, an applicant with annual family income of \$100,000 could receive a maximum grant of \$1,500, due to the income-based grant reduction. Such an applicant would have to have eligible costs of at least

\$14,000, or the income-based reduction would fully offset any grant.

It is uncertain how many owners of wells with nitrate contamination exceeding 10 ppm would submit well compensation grant applications during the 2019-21 biennium or in subsequent biennia. In the spring of 2019, DNR indicated it was not able to estimate the number of applications that might be submitted during the next few years if program eligibility were to expand. If a significant portion of the anticipated additional claims for nitrate contamination would be submitted during the coming two to six years, it would create a significant workload and potential backlog of eligible claims waiting for funding to become available. It is also possible that some owners of contaminated wells would seek other means of replacing their well rather than wait an indefinite period of time to address their contaminated drinking water supply with limited grant funding.

Beginning in 2020-21, approximately \$1,090,900 annually in newly appropriated funding would be available for grants under the bill as introduced, excluding funding for the position and carry forward balance from prior years. DNR estimates that the new annual grant funding of \$890,900 would be estimated to fund remediation of between 119 and 238 nitrate-contaminated wells annually, assuming: (a) a grant of 75% of costs; (b) annual family income of \$45,000, which would avoid an income-based grant reduction and provide a full 75% state share; and (c) a remediation cost of \$5,000 to \$10,000 per well, depending on the remediation method. Allocation of \$109,100 for grants instead of for administration of grants under AA 2/SA 1 would provide sufficient funding for payment of 11 to 22 additional well compensation grants annually.

DNR assumes that a 1.0 grant administrator would spend approximately four hours per application to review the grant application, determine income eligibility, apply a method of prioritizing claims based on nitrate concentration, process claims and issue awards. The Department states this would require approximately 0.5 full-time equivalent position. DNR anticipates the other 0.5 FTE of the position would respond to an anticipated high volume of inquiries and applications beyond the available funds, and assist low-income individuals who may not have computers or consultants to understand and complete application materials.

DNR estimates that the bill's requirement for the Department to develop a method for assessing each claim to determine the most effective remediation method for the health and welfare of the claimant would require approximately four hours per application by a hydrogeologist to complete a technical analysis and assessment. The Department anticipates this would require approximately 0.5 full-time equivalent position, to review annual well compensation claims. DNR estimates the 0.5 FTE hydrogeologist would cost \$47,400 annually. The Department's fiscal estimate indicates it does not have the staff or resources to absorb this cost.

Finally, DNR estimates it would incur one-time costs of \$22,100 for 420 hours of staff time to promulgate procedures for nitrate eligibility and prioritization of claims. The Department also anticipates additional one-time costs to develop implementation procedures, and update grant application forms and instructions, grant web page, and other outreach materials.

The bill as introduced would fund the new 1.0 GPR position from the new \$1,000,000 GPR grants appropriation. Thus, DNR would allocate a portion of the funding in the grants appropriation

to salary and fringe benefit costs for the position. When the Department submits its 2021-23 biennial budget request, it would include in standard budget adjustments any changes needed to fully fund the position. It should be noted that typically state appropriations for grants and appropriations for administration are budgeted separately, rather than have a grants appropriation also fund administration. This allows the state budgetary system to more clearly and separately track the amount of funding for grants and administration of grants.

AA 2/SA 1 would remove the position's costs from the available grants funds, and budget the position consistent with current practice. Reallocating an existing vacant position to administer the expanded well compensation grant program, instead of creating a new position, would result in no change in the number of positions authorized in DNR. Reallocation of an existing position would result in use of all of the new \$1,000,000 GPR for well compensation grants.

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