

1 **AN ACT** *to amend* 281.98 (1); and *to create* 14.95 (1), (2), (3), and (4) and 281.344 of
2 the statutes; **relating to:** implementing the Great Lakes–St. Lawrence River Basin
3 Water Resources Compact.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council’s special committee on great lakes water resources compact. The draft implements the state’s duties under the Great Lakes–St. Lawrence River basin water resources compact set forth in LRB–0058/P1. Once the committee approves this draft, it will be combined with LRB–0058/P1 into a single draft with a prefatory note that describes the combined draft.

The draft is based upon the duties of the parties to the compact specified in LRB–0058/P1 and drafting instructions interpreting those duties provided by the committee and its subcommittees, as set forth in the following memos:

- Memo No. 12, *Drafting Instructions From the Subcommittee on Water Conservation and Bottled Water – Version 4* (Revised February 15, 2007).
- Memo No. 13, *Drafting Instructions from the Subcommittee on Regulation of Withdrawals, Consumptive Uses, and Diversions – Version 3* (Revised February 15, 2007).
- Memo No. 14, *Drafting Instructions from the Subcommittee on Public Participation and Dispute Resolution* (February 14, 2007).
- Memo No. 15, *Drafting Instructions on Miscellaneous Topics – Version 1* (February 14, 2007).

The draft addresses the following:

- Designation of the governor’s alternate and advisor on the Great Lakes–St. Lawrence River Basin water resources council (the “council”).
- Specification of the actions the governor may take regarding the organization and operation of the council.

- Creation of a statewide registration and reporting system for significant water withdrawals.
- Regulation of new or increased water diversions from the Great Lakes basin.
- Regulation of new or increased water withdrawals and consumptive uses in the Great Lakes basin.
- Creation of water conservation and efficiency programs that apply either statewide or only within the Great Lakes basin and a water conservation advisory committee to advise the department of natural resources (DNR) on the establishment of the basin program.
- Procedures for tribal consultation and public participation on applications for new or increased diversions, withdrawals, or consumptive uses.
- Development of a water resources inventory and specification of DNR reporting requirements to the council.
- Clarification of the applicability of the dispute resolution provisions in the compact.

The draft identifies in section notes issues identified by committee members and staff that have not yet been resolved by the committee. These issues are also summarized in the above memos and in the memorandum to Senator Neal Kedzie, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes–St. Lawrence River Basin Water Resources Compact* (February 6, 2007). In addition, the draft does not address the following implementation issues identified in this memorandum:

- Procedures and criteria for implementing adaptive management provisions in the compact.
- Certification by an association of its member's water conservation practices.
- Enforcement of new regulations under the compact, including the duration, modification, and revocation of approvals issued under the draft.
- Funding and position authorizations for agencies implementing the compact, especially the DNR.
- The application of the decision-making standard to a proposal to withdraw water for bottled water in containers of 5.7 gallons or less and specification of the threshold level that would trigger this application.

This version of the draft does not contain provisions that reconcile requirements for registration and reporting of, and new approvals for, diversions, withdrawals, and consumptive uses required under s. 281.344, as created by this draft, with registration, reporting, and approvals for these activities required under existing law, including ss. 281.34 and 281.35. In addition, this version does not contain appropriate references in existing law to the new statutes created by the bill draft.

1 **SECTION 1.** 14.95 (1), (2), (3), and (4) of the statutes are created to read:

2 14.95 (1) GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COUNCIL. There
3 is created a Great Lakes-St. Lawrence River basin water resources council under s. 281.343
4 (2) (a). The governor may take such actions as are necessary for the initial organization and
5 operation of the Great Lakes-St. Lawrence River basin water resources council.

NOTE: This provision implements proposed s. 281.343 (9) (b) in
LRB-0058/P1 based on the drafting instructions in item IV. A. in Memo
No. 15.

6 (2) The governor shall serve as this state's representative on the Great Lakes-St.
7 Lawrence River basin water resources council. In discharging his or her responsibilities under
8 s. 281.343 (2) and (3), the governor may designate the secretary of natural resources, or the
9 secretary's designee, as the governor's alternate to attend all meetings of the Great Lakes-St.
10 Lawrence River basin water resources council and to vote at all meetings of the Great
11 Lakes-St. Lawrence River Basin Water Resources Council in the absence of the governor.
12 If the secretary chooses to specify a designee, the designee shall have knowledge of and
13 experience with great lakes water management issues. If the secretary of natural resources
14 chooses to specify a designee, his or her designee shall be nominated by the governor, and with
15 the advice and consent of the senate be appointed to serve at the pleasure of the governor.

NOTE: This provision implements proposed s. 281.343 (2) (c) in
LRB-0058/P1 based on the drafting instructions in item I. A. in Memo
No. 15.

1 **(3)** In discharging his or her responsibilities under s. 281.343 (2) and (3), the governor
2 may appoint an advisor to attend all meetings of the Great Lakes–St. Lawrence River Basin
3 Water Resources Council and its committees. The governor’s advisor may not vote at
4 meetings of the council. The advisor shall have knowledge of and experience with Great
5 Lakes water management issues. The advisor shall be nominated by the governor, and with
6 the advice and consent of the senate be appointed to serve at the pleasure of the governor.

NOTE: This provision implements proposed s. 281.343 (2) (e) in
LRB–0058/P1 based on the drafting instructions in item II. A. in Memo
No. 15.

7 **(4)** Prior to voting under s. 281.343 (3) (a) 2., regarding any regulation that amends or
8 revises the standard of review and decision under s. 281.343 (1e) (rm), the governor or the
9 governor’s alternate shall obtain approval by legislation enacted by both houses of the
10 legislature. The governor or the governor’s alternate shall cast his or her vote according to
11 the terms of the full legislature’s authorization.

NOTE: This provision implements proposed s. 281.343 (3) (a) 2. in
LRB–0058/P1 based on drafting instructions in item VII. A. in Memo
No. 13.

QUESTION: The standard of review and decision under s. 281.343 (1e)
(rm) includes the exception standard, decision–making standard, and
technical reviews of the council that are mainly procedural. Should the
provision in this draft be limited just to the exception standard and the
decision–making standard?

12 **SECTION 2.** 281.344 of the statutes is created to read:

13 **281.344 Great Lakes water resources regulation. (1) DEFINITIONS.** In this section:

NOTE: This draft does not include certain definitions provided in
proposed s. 281.343 (1e) in LRB–0058/P1. These definitions are the
following:

“Adaptive management” is not included because that term is not used in
connection with the implementation of the compact.

“Agreement” is not included because the name of the agreement is included in the definition of “regional body under sub. (1) (q) of this draft.

“Applicant” is not needed in this draft.

“Council review” is not included because council review is described in the relevant regulatory sections of this draft.

“Decision-making standard” is not included because this draft uses cross-references to the provision containing the standard under sub. (6) of this draft.

“Exception” is not included because the word is not used in this draft except as part of the term “exception standard”.

The terms “measures”, “new or increased diversion”, and “originating party” were not needed in this draft.

“Proposal” is not included because of the way the word is used in this draft.

“Province” is not needed in this draft.

“Purposes” is not included because the definition defines a substance rather than a purpose.

“Standard of review and decision” is not needed in this draft.

“State” is not needed in this draft.

“Water”, as defined in s. 281.343 (1e) (r), is not included in this draft because the word is used also to refer to water that is not in the basin.

This draft only uses the defined term “waters of the basin” and not “basin water”.

1 (c) “Basin” means the watershed of the Great Lakes and the St. Lawrence River
2 upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

3 (cm) “Basin ecosystem” means the interacting components of air, land, water, and
4 living organisms, including humans, within the basin.

5 (d) “Community within a straddling county” means any city, village, or town that is not
6 a straddling community and that is located outside the basin but wholly within a county that
7 lies partly within the basin.

NOTE: This provision includes towns in the definition of a community within a straddling county based on drafting instructions in item VII. A. in Memo No. 13. The subcommittee on regulation of withdrawals, consumptive uses, and diversions did not reach consensus about: (1) whether special purpose districts that are water utilities should be included in this definition; and (2) the date on which the boundaries of a straddling community and a community within a straddling county are established. See bullet points 1. and 2. on page 2 in the memorandum, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes–St. Lawrence River Basin Water Resources Compact* (February 6, 2007).

1 (dm) “Compact” means the Great Lakes–St. Lawrence River Basin Water Resources
2 Compact under s. 281.343.

3 (dr) “Compact’s effective date” means the effective date of the compact under s.
4 281.343 (9) (d).

5 (e) “Consumptive use” means that portion of the water withdrawn or withheld from the
6 basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into
7 products, or other processes.

8 (em) “Council” means the Great Lakes–St. Lawrence River Basin Water Resources
9 Council, created under s. 281.343 (2) (a).

10 (fm) “County” has the meaning specified in ch. 2 with the boundaries that exist as of
11 December 13, 2005.

12 (g) “Cumulative impacts” means the impacts on the basin ecosystem that result from
13 incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition
14 to other past, present, and reasonably foreseeable future withdrawals, diversions, and
15 consumptive uses regardless of who undertakes the other withdrawals, diversions, and
16 consumptive uses, including individually minor but collectively significant withdrawals,
17 diversions, and consumptive uses taking place over a period of time.

1 (h) "Diversion" means a transfer of water from the basin into a watershed outside the
2 basin, or from the watershed of one of the Great Lakes into that of another, by any means of
3 transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction
4 of a water course, tanker ship, tanker truck, or rail tanker, except that "diversion" does not
5 include any of the following:

6 1. The transfer of a product produced in the basin or in the watershed of one of the Great
7 Lakes, using waters of the basin, out of the basin or out of that watershed.

8 2. The transmission of water within a line that extends outside the basin as it conveys
9 water from one point to another within the basin if no water is used outside the basin.

NOTE: The provision in subd. 2. is from proposed s. 281.343 (4t) (h) in
LRB-0058/P1.

10 (hm) "Divert" means to transfer water from the basin into a watershed outside the basin,
11 or from the watershed of one of the Great Lakes into that of another, by any means of transfer,
12 including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water
13 course, tanker ship, tanker truck, or rail tanker, except that "divert" does not include any of
14 the following:

15 1. The transfer of a product produced in the basin or in the watershed of one of the Great
16 Lakes, using waters of the basin, out of the basin or out of that watershed.

17 2. The transmission of water within a line that extends outside the basin as it conveys
18 water from one point to another within the basin if no water is used outside the basin.

19 (i) "Environmentally sound and economically feasible water conservation measures"
20 mean those measures, methods, or technologies for efficient water use and for reducing water
21 loss and waste or for reducing a withdrawal, consumptive use, or diversion that are, taking into

1 account environmental impact, the age and nature of equipment and facilities involved, the
2 processes employed, the energy impacts, and other appropriate factors, all of the following:

- 3 1. Environmentally sound.
- 4 2. Reflective of best practices applicable to the water use sector.
- 5 3. Technically feasible and available.
- 6 4. Economically feasible and cost effective based on an analysis that considers direct
7 and avoided economic and environmental costs.

NOTE: The items in par. (i) have been reordered to clarify the definition,
but the definition is substantively the same as the definition in proposed
s. 281.343 (1e) (i) in LRB-0058/P1.

8 (jm) “Intrabasin transfer” means the transfer of water from the watershed of one of the
9 Great Lakes into the watershed of another of the Great Lakes.

10 (n) “Party” means a state that is a party to the compact.

11 (nm) Notwithstanding s. 281.01 (9), “person” means an individual or other entity,
12 including a government or a nongovernmental organization, including any scientific,
13 professional, business, nonprofit, or public interest organization or association that is neither
14 affiliated with, nor under the direction of a government.

15 (o) “Product” means something produced in the basin by human or mechanical effort
16 or through agricultural processes and used in manufacturing, commercial, or other processes
17 or intended for intermediate or ultimate consumers, subject to all of the following:

- 18 1. Water used as part of the packaging of a product is part of the product.
- 19 2. Other than water used as part of the packaging of a product, water that is used
20 primarily to transport materials in or out of the basin is not a product or part of a product.
- 21 3. Except as provided in subd. 1., water that is transferred as part of a public or private
22 supply is not a product or part of a product.

1 4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins,
2 is not a product.

3 (pm) “Public water supply” means water distributed to the public through a physically
4 connected system of treatment, storage, and distribution facilities that serve a group of largely
5 residential customers and that may also serve industrial, commercial, and other institutional
6 customers.

NOTE: The last word in the definition in proposed s. 281.343 (1e) (pm)
 in LRB-0058/P1 is “operators”. “Customers” is used in this draft
 because it seems more clear and consistent.

7 (q) “Regional body” means the body consisting of the governors of the parties and the
8 premiers of Ontario and Quebec or their designees as established by the Great Lakes–St.
9 Lawrence River Basin Sustainable Water Resources Agreement.

10 (qd) “Regional declaration of finding” means a declaration of finding issued by the
11 regional body under s. 281.343 (4h) (e).

12 (qm) “Regional review” means review by the regional body as described in s. 281.343
13 (4h).

14 (r) “Source watershed” means the watershed from which a withdrawal originates. If
15 water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source
16 watershed shall be considered to be the watershed of that Great Lake or the watershed of the
17 St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that
18 is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the
19 source watershed shall be considered to be the watershed of that Great Lake or the watershed
20 of the St. Lawrence River, respectively, with a preference to the direct tributary stream
21 watershed from which it was withdrawn.

NOTE: In the context of this definition, it is unclear how this “preference” would operate. One approach to clarifying this definition would be to delete in the third sentence in this definition “watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the”.

- 1 (t) “Straddling community” means any city, village, or town that is partly within the
2 basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any
3 county that lies partly or completely within the basin.

NOTE: See the note following the definition of “community within a straddling county”.

- 4 (u) “Technical review” means a thorough analysis and evaluation conducted to
5 determine whether a proposal that is subject to regional review under this section meets the
6 criteria for approval under sub. (4), (5), or (6).

NOTE: This provision implements and combines proposed s. 281.343 (1e) (u) and (4h) (d) 2. in LRB-0058/P1 The cross-references are to the subsections on diversions, withdrawals, and the decision-making standard.

- 7 (w) “Water dependent natural resources” means the interacting components of land,
8 water, and living organisms affected by the waters of the basin.

- 9 (wr) “Water utility” means a public utility, as defined in s. 196.01 (5), that furnishes
10 water.

- 11 (x) “Waters of the basin” means the Great Lakes and all streams, rivers, lakes,
12 connecting channels, and other bodies of water, including tributary groundwater, within the
13 basin.

NOTE: It is LRB drafting practice not to define 2 terms to mean the same thing, so “basin water” is not included in this definition.

- 14 (y) “Withdraw” means to take water from surface water or groundwater.

- 15 (z) “Withdrawal” means the taking of water from surface water or groundwater.

1 (2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface*
2 *water divide.* For the purposes of this section, the surface water divide is used to determine
3 whether a new or increased withdrawal, consumptive use, or diversion of surface water or
4 groundwater is from the basin.

NOTE: This provision implements proposed s. 281.343 (4t) (e) in
 LRB-0058/P1.

5 (b) *Diversions and withdrawals from more than one source.* For the purposes of this
6 section, the diversion or withdrawal of water from more than one source within the basin to
7 supply a common distribution system is considered one diversion or withdrawal.

NOTE: This provision implements proposed s. 281.343 (4t) (f) in
 LRB-0058/P1.

8 (c) *Timing of additional applications.* In determining the applicability of a requirement
9 in this section to a proposed new or increased diversion, withdrawal, or consumptive use, the
10 amount of the new or increased diversion, withdrawal, or consumptive use shall be the sum
11 of the proposed amount and the amounts of all new or increased diversions, withdrawals, or
12 consumptive uses supplying or used by the same common distribution system made after the
13 later of the following:

- 14 1. The date that the baseline is established under par. (d).
15 2. The date that is 10 years before the date on which the proposed new or increased
16 diversion, withdrawal, or consumptive use is planned to begin.

NOTE: This section implements proposed s. 281.343 (4t) (c) in
 LRB-0058/P1.

17 (d) *Baseline.* 1. The department shall [. . .]

NOTE: This provision implements proposed s. 281.343 (4t) (b) in
 LRB-0058/P1. The subcommittee on regulation of withdrawals,
 consumptive uses, and diversions did not decide upon the criteria for
 establishing the baseline, but did develop the following options
 regarding these criteria:

- a. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the most restrictive component in the system.
- b. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the largest component in the system.
- c. Determine baseline by evaluating the maximum capacities of “brick and mortar” components at intake point of a system.
- d. Determine baseline by evaluating the capacities of individual components (peak daily flows) of a system, taking the maximum capacity of the most restrictive component, and establishing this as the “biggest average day”. Then, if at least one other component in the system has a capacity above the biggest average day, the baseline would be the lessor of double the biggest average day capacity or the capacity of the largest system component. This baseline would reflect the “biggest peak day”.
- e. Determine baseline by evaluating the capacities of all components in a system, taking the component that has the maximum capacity, and assigning it as the “biggest peak day”. Then, take one-half of the biggest peak day to be the baseline. This baseline would reflect the “biggest average day”.
- f. Use option a. and specify that: “The capacity of existing systems shall be presented in terms of annual capacity of the existing system”.

The subcommittee did not resolve the methods for determining baseline, but by consensus agreed that the determination should be based on water intake and treatment up to the point of delivery or use and not on wastewater treatment or discharge facilities. The subcommittee further agreed that 2 methods be authorized for setting a facility’s baseline:

- a. If DNR has specified an amount of withdrawal or capacity of one or more components in the facility’s water system in a permit or plan approval, direct DNR to propose the baseline using information in the permit or approval based on the to-be-determined baseline criteria and allow the facility to request a review and modification of the proposed baseline.
- b. If item a. does not apply, direct the facility to propose its baseline to DNR and require DNR to review and accept or modify the proposed baseline.

[See items I. A. and B. in *Unresolved Issues for Consideration by the Full Committee*, in Memo No. 13.]

1 2. The department shall provide a list of the amount of each withdrawal, diversion, and
2 water loss determined under subd. 1. to the council and the regional body no later than 12
3 months after the compact's effective date.

NOTE: This provision implements proposed s. 281.343 (4t) (b) 3. in LRB-0058/P1.

4 (e) *Change of ownership.* Unless a new owner proposes a project that results in a
5 proposal for a new or increased diversion or consumptive use subject to regional review or
6 council approval, the change of ownership may not require regional review or council
7 approval.

NOTE: This provision implements proposed s. 281.343 (4t) (d) in LRB-0058/P1.

8 (f) *Hydrologic units.* The Lake Michigan and Lake Huron watershed shall be
9 considered to be a single hydrologic unit and watershed.

NOTE: This provision implements proposed s. 281.343 (4t) (i) in LRB-0058/P1.

10 (g) *Effect.* Nothing in this section implementing s. 281.343 may be interpreted to make
11 the public trust doctrine under article IX, section 1 of the Wisconsin Constitution applicable
12 to groundwater in this state.

NOTE: This provision implements the drafting instructions in item III. A. in Memo No. 15.

13 **(3) REGISTRATION AND REPORTING.** (a) 1. Except as provided in par. (d), any person who
14 on the effective date of this subdivision ... [revisor inserts date], is making a withdrawal
15 averaging 100,000 gallons per day or more in any 30-day period, including consumptive uses,
16 or is making any diversion, shall register the withdrawal or diversion with the department.

1 2. Any person who after the effective date of this subdivision ... [revisor inserts date]
2 proposes to begin a withdrawal that will average 100,000 gallons per day or more in any
3 30-day period, including consumptive uses, to increase a withdrawal that began on or before
4 the effective date of this subdivision ... [revisor inserts date] so that it will average 100,000
5 gallons per day or more in any 30-day period, including consumptive uses, or to begin a
6 diversion shall register the proposed withdrawal, consumptive use or diversion with the
7 department.

NOTE: These provisions implement proposed s. 281.343 (4) (c) in
LRB-0058/P1 based on the drafting instructions in items I. C. 1. and 2.
in Memo No. 13.

8 (b) A person to whom par. (a) applies shall register on a form prescribed by the
9 department and provide all of the following information:

- 10 1. The name and address of the registrant and the date of registration.
11 2. The locations and sources of the withdrawal or diversion.
12 3. The daily capacity of the withdrawal or diversion and the amount withdrawn or
13 diverted from each source.

COMMENT: The subcommittee on regulation of withdrawals,
consumptive uses, and diversions discussed defining “capacity” under
par. (b) 3. as “projected service life of a facility”, or “projected total
quantity of water use in a one-time period”. The subcommittee decided
to reconcile this capacity determination with the baseline capacity once
that is determined. [See item I. B. 3. Comment in Memo No. 13.]

- 14 4. An estimate of the volume of the withdrawal or diversion in terms of gallons per day
15 average in any 30-day period.
16 5. The uses made of the water.
17 6. The places at which the water is used.
18 7. The places at which any of the water is discharged.

1 8. Whether the water use is continuous or intermittent.

2 9. Whether the person holds a permit under s. 283.31.

3 10. Other information required by the department by rule if the information is related
4 to the purposes of the compact under s. 281.343.

NOTE: These provisions implement proposed s. 281.343 (4) (c) in
LRB-0058/P1 based on the drafting instructions in items I. B. 2. and 3.
in Memo No. 13.

5 (c) The department may consider homeland security concerns when determining
6 whether information regarding locations of withdrawals and diversions contained in the
7 registry under par (b) may be released to the public.

NOTE: This provision implements proposed s. 281.343 (4) (c) in
LRB-0058/P1 based on the drafting instructions in item I. B. 3. Memo
No. 13 .

8 (d) Paragraph (a) 1. does not apply to a person who registered a withdrawal under ss.
9 30.18, 281.17, 2001 stats., 281.34, 281.35 (3), or 281.41 before the effective date of this
10 subdivision ... [revisor inserts date] until 3 years after the date of this subdivision ... [revisor
11 inserts date].

NOTE: This provision implements proposed s. 281.343 (4) (c) in
LRB-0058/P1 based on the drafting instructions in item I. D. in Memo
No. 13.

12 (e) 1. Each person who registers a withdrawal or diversion under par. (a) and is required
13 to report to the department under ss. 30.18, s 281.17, 2001 stats., 281.34, 281.35, or 281.41,
14 stats., shall annually report to the department the monthly volumes of withdrawal, including
15 consumptive uses or diversion.

16 2. Each person who registers a withdrawal or diversion under par. (a) and is not required
17 to report to the department under ss. 30.18, s 281.17, 2001 stats., 281.34, 281.35, or 281.41,
18 stats., shall annually report to the department the monthly volumes of withdrawal, including

1 consumptive uses if the withdrawal is 100,000 gallons per day or more in any 30-day period
2 in the basin or of any diversion.

3 3. Each person who registers a withdrawal under par. (a) and is not required to report
4 to the department under ss. 30.18, 281.17, 2001 stats., or 281.34, 281.35, or 281.41 is not
5 required to annually report to the department the monthly volumes of withdrawal, including
6 consumptive uses if the withdrawal occurs outside of the basin.

NOTE: These provisions implement proposed s. 281.343 (4) (d) in
LRB-0058/P1 based on the drafting instructions in item II. A. 1. and
items II. B. 1., 2., and 3. in Memo No. 13.

7 4. In addition to the information required under subd. 1. and 2., the department may, by
8 rule, create different reporting frequencies or require additional information from each person
9 who registers a withdrawal, consumptive use, or diversion under par. (a) based upon the type
10 or category of water use. The department may require additional information under this
11 subdivision only if the information is related to the person's withdrawal, consumptive use or
12 diversion.

NOTE: This provision implements proposed s. 281.343 (4) (d) in
LRB-0058/P1 based on the drafting instructions in items II. A. 2. and 3.
in Memo No. 13.

13 **(4) DIVERSIONS.** (a) *Prohibition.* Beginning on the compact's effective date, no person
14 may begin a diversion or increase the amount of a diversion, except as authorized under par.
15 (c), (d), or (e).

16 (b) *Application.* A person who proposes to begin a diversion or to increase the amount
17 of a diversion under par. (c), (d), or (e) shall apply to the department for approval. The person
18 shall provide information about the potential impacts of the diversion on the waters of the
19 basin and water dependent natural resources of the applicable source watershed.

NOTE: [Is approval a good word to use? Should this be tied-in with the approvals under ss. 30.18, 281.17 (1), 2001 stats., 281.34, and 281.41? (See s. 281.35 (4) (a), but note that this subsection will cover some situations that are not covered by those statutes as they currently exist.)] The information requirements in par. (b) are based on proposed s. 281.343 (4d) (b) and (4z) (c) in LRB-0058/P1. Should there be more or different requirements about the information that must be provided? For example, s. 281.35 (5) (a) requires an application to have a statement of and documentation for all of the following:

1. The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system.
2. The total new or increased operating capacity of the withdrawal system.
3. The place and source of the proposed withdrawal.
4. The place of the proposed discharge or return flow.
5. The place and nature of the proposed water use.
6. The estimated average annual and monthly volumes and rates of withdrawal.
7. The estimated average annual and monthly volumes and rates of water loss.
8. The anticipated effects, if any, that the withdrawal will have on existing uses of water resources and related land uses both within and outside of the Great Lakes basin or the upper Mississippi River basin.
9. Any land acquisition, equipment, energy consumption, or the relocation or resiting of any existing community, facility, right-of-way or structure that will be required.
10. The total anticipated costs of any proposed construction.
11. A list of all federal, state, provincial and local approvals, permits, licenses, and other authorizations required for any proposed construction.
13. A statement as to whether the proposed withdrawal complies with all applicable plans for the use, management, and protection of the waters of the state and related land resources, including plans developed under ss. 281.12 (1) and 283.83 and the requirements specified in any water quantity resources plan under sub. (8).
14. A description of other ways the applicant's need for water may be satisfied if the application is denied or modified.

15. A description of the conservation practices the applicant intends to follow.

16. Any other information required by the department by rule.

1 (c) *Straddling communities*. The department may approve a proposal to begin a
2 diversion, or to increase the amount of a diversion, to an area within a straddling community
3 but outside the basin or outside the source watershed if the water diverted will be used solely
4 for public water supply purposes in the straddling community and all of the following apply:

5 1. Water withdrawn from the basin shall be returned as close as practicable to the point
6 of the initial withdrawal from the source watershed, unless it is shown that it is not feasible,
7 cost effective, environmentally sound, or in the interest of public health to do so.

NOTE: This provision replaces the phrase “all water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use” in proposed s. 281.343 (4n) (a) 1. in LRB-0058/P1 based on the drafting instruction in item IV. B. in Memo No. 13.

8 2. No water from outside the basin will be returned to the basin unless all of the
9 following apply:

10 a. The returned water will be from a water supply or wastewater treatment system that
11 combines water from inside and outside the basin.

12 b. The returned water will be treated to meet applicable permit requirements under s.
13 283.31 and to prevent the introduction of invasive species into the basin.

14 c. The proposal maximizes the amount of water withdrawn from the basin that will be
15 returned to the basin and minimizes the amount of water from outside the basin that will be
16 returned to the basin.

17 3. If the proposal would result in a new diversion or an increase in a diversion that would
18 average 100,000 gallons or more per day in any 90-day period, the proposal meets the
19 exception standard under par. (f).

NOTE: Subdivision 3. refers to a “new diversion” or an “increase in a diversion” rather than the terms used in the corresponding provision in the compact in proposed s. 281.343 (4n) (a) 2. in LRB–0058/P1, “new withdrawal” and “increase in a withdrawal,” as these terms relate more closely to the subject of the provision.

1 4. If the proposal would result in a new consumptive use or an increase in a consumptive
2 use that would average 5,000,000 gallons or more per day in any 90–day period, all of the
3 following apply:

- 4 a. The department conducts a technical review.
5 b. The proposal undergoes regional review.
6 c. The department considers the regional declaration of finding in determining whether
7 to approve the proposal.

NOTE: The requirements in this provision are from the regional review requirements in proposed s. 281.343 (4h) (d) and (e) 9., and (4n) (a) 3. in LRB–0058/P1.

8 (d) *Intrabasin transfer*. 1. The department may approve a proposal for a new intrabasin
9 transfer, or for an increase in an intrabasin transfer, to which par. (c) does not apply that would
10 average less than 100,000 gallons per day in every 90–day period, if the proposal meets [....].

NOTE: The compact affords an originating party discretion in how the party manages and regulates these transfers under proposed s. 281.343 (4n) (b) 1. in LRB–0058/P1. The committee has not provided guidance on this provision. Alternative standards include:

1. The exception standard in par. (f).
2. The decision–making standard in sub. (6).
3. The applicable requirements in s. 30.18, 281.34, or 281.41.
4. Other criteria enumerated by the committee.

In addition, this provision and a subsequent provision on intrabasin transfers refer to a “new intrabasin transfer” or an “increase in an intrabasin transfer” rather than the terms used in the corresponding provision in the compact in proposed s. 281.343 (4n) (b) 1. and 2. (intro.) in LRB–0058/P1, “new withdrawal” and “increase in a withdrawal”, as these terms relate more closely to the subject of the provision.

1 2. The department may approve a proposal for a new intrabasin transfer or an increase
2 in an intrabasin transfer to which par. (c) does not apply that would average more than 100,000
3 gallons per day in any 90-day period with a new water loss or an increase in water loss that
4 would average less than 5,000,000 gallons per day in every 90-day period, if all of the
5 following apply:

6 a. The proposal meets the exception standard under par. (f), except that the water may
7 be returned to a watershed within the basin other than the source watershed.

8 b. The applicant demonstrates that there is no feasible, cost effective, and
9 environmentally sound water supply alternative within the watershed to which the water will
10 be transferred, including conservation of existing water supplies under par. (g).

11 c. The department provides notice of the proposal to the other parties.

12 3. The department may approve a proposal for a new intrabasin transfer or an increase
13 in an intrabasin transfer to which par. (c) does not apply with a new water loss or an increase
14 in water loss that would average 5,000,000 gallons per day or more in any 90-day period, if
15 all of the following apply:

16 a. The proposal meets the exception standard under par. (f).

17 b. The applicant demonstrates that there is no feasible, cost effective, and
18 environmentally sound water supply alternative within the watershed to which the water will
19 be transferred, including conservation of existing water supplies under par. (g).

20 c. The department conducts a technical review.

21 d. The proposal undergoes regional review.

22 e. The department considers the regional declaration of finding in determining whether
23 to approve the proposal.

24 f. The proposal is approved by the council.

NOTE: The requirements in subpars. c. to e. are from the regional review requirements in proposed s. 281.343 (4h) (d) and (e) 9. and (4n) (b) 3. c. in LRB–0058/P1.

1 (e) *Straddling counties.* 1. The department may approve a proposal for a new diversion
2 or an increase in a diversion if the water diverted will be used solely for public water supply
3 purposes in a community within a straddling county and all of the following apply:

4 a. The community does not have a water supply that is economically and
5 environmentally sustainable in the long term to meet reasonable demands for a water supply
6 in the quantity and quality that complies with applicable drinking water standards, is
7 protective of public health, is economically feasible at a reasonable cost, and has no adverse
8 environmental impacts greater than those likely to result from the new or increased diversion.

NOTE: This section replaces the phrase “is without adequate supplies of potable water” in proposed s. 281.343 (4n) (c) 1. in LRB–0058/P1 based on the drafting instruction in item III. C. in Memo No. 13.

9 b. The proposal meets the exception standard under par. (f).

10 c. The proposal maximizes the amount of water withdrawn from the basin that will be
11 returned to the basin and minimizes the amount of water from outside the basin that will be
12 returned to the basin.

NOTE: Subparagraphs b. and c. are combined in the corresponding provision in the compact in proposed s. 283.343 (4n) c. 1. b.

13 d. There is no reasonable water supply alternative within the basin in which the
14 community is located, including conservation of existing water supplies under par. (g).

QUESTION: Should this provision be based on there being no reasonable water supply alternative within the “watershed in which the community is located”? “Basin” is defined in this draft in s. 281.344 (1) (c) to be the watershed of the Great Lakes–St. Lawrence River upstream from Trois–Rivieres, Quebec within the jurisdiction of the parties, i.e., the entire Great Lakes basin.

15 e. The proposal will have no significant adverse impact to the basin ecosystem.

- 1 f. The department conducts a technical review.
- 2 g. The proposal undergoes regional review.
- 3 h. The department considers the regional declaration of finding in determining whether
- 4 to approve the proposal.
- 5 i. The proposal is approved by the council.

NOTE: Subparagraph e. replaces the phrase “will not endanger the integrity of the basin ecosystem” used in proposed s. 281.343 (4n) (c) 1. e. in LRB-0058/P1 based on the drafting instructions in item IV. A. in Memo No. 13.

The requirements in subpars. f. to h. are from the regional review requirements in proposed s. 281.343 (4h) (d) and (e) 9. and (4n) (c) f. in LRB-0058/P1.

6 2. The department may consider whether the proposal under this paragraph provides

7 sufficient scientifically based evidence that the applicant’s existing water supply is derived

8 from groundwater that is hydrologically interconnected to waters of the basin only if the

9 proposal includes this information and requests that the department consider it.

10 3. A proposal for a new diversion or an increase in a diversion may include information

11 regarding restoration of hydrologic conditions and function of the source watershed. The

12 department may consider information regarding restoration of hydrologic conditions and

13 function of the source watershed if the proposal includes this information.

NOTE: The material in subds. 2. and 3. replaces the term “substantive consideration” in proposed s. 281.343 (4n) (c) 2. in LRB-0058/P1 based on the drafting instructions in item IV. D. in Memo No. 13.

COMMENT: The subcommittee on regulation of withdrawals, consumptive uses and diversions did not reach consensus on the definition of “hydrologically interconnected”. [See item IV. A. 1. under *Unresolved Issues for Consideration by the Full Committee* in Memo No. 13 and bullet point 3. on page 2 in memorandum *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes–St. Lawrence River Basin Water Resources Compact* (February 6, 2007). In item IV. A. 1. Comment, Public Member Dan Duchniak proposed the

following language: “hydrologically interconnected” means surface or groundwater that is physically connected to other surface or groundwater so as to affect is level, flow, or recharge. This includes but is not limited to, circumstances in which the historic use of groundwater by municipalities within the Great Lakes surface divide has contributed to the drawdown of the groundwater supply of a municipality outside the surface water divide that is making the proposal.”.

1 (f) *Exception standard.* A proposal meets the exception standard if all of the following
2 apply:

3 1. The need for the proposed diversion cannot reasonably be reduced or eliminated
4 through the efficient use and conservation of existing water supplies under par. (g).

5 2. The diversion is limited to the amount needed for the anticipated use of the service
6 life of the project.

NOTE: Subdivision (f) 2. replaces the phrase “quantities that are considered reasonable for purposes of the proposal” in proposed s. 281.343 (4n) (d) 2. in LRB–0058/P1 based on the drafting instruction in item V. A. in Memo No. 13.

Subdivision (f) 1. says the “exception” will be limited to reasonable quantities, but “diversion” seemed to be a better word choice.

7 3. Water withdrawn from the basin shall be returned as close as practicable to the point
8 of the initial withdrawal from the source watershed, unless it is shown that it is not feasible,
9 cost effective, environmentally sound, or in the best interest of public health to do so.

NOTE: Subdivision (4) (f) 3. replaces the phrase “all water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less and allowance for consumptive use” in proposed s. 281.343 (4n) (d) 3. in LRB–0058/P1 based on the drafting instructions in item IV. B. in Memo No. 13.

10 4. No water from outside the basin will be returned to the basin to satisfy subd. 3. unless
11 all of the following apply:

12 a. The returned water is from a water supply or wastewater treatment system that
13 combines water from inside and outside the basin.

1 b. The returned water will be treated to meet applicable permit requirements under s.
2 283.31 and to prevent the introduction of invasive species into the basin.

3 5. The diversion will result in no significant adverse individual impacts or cumulative
4 impacts to the quantity or quality of the waters of the basin or to water dependent natural
5 resources, including potential cumulative impacts that might result due to any positive or
6 negative impacts on the sustainable management of the waters of the basin from the proposed
7 diversion.

NOTE: Subdivision (f) 5. replaces the phrase “precedent–setting consequences associated with the proposal” in proposed s. 281.343 (4n) (d) 4. in LRB–0058/P1 with the phrase that begins “that might result due to any positive or negative impacts...” based on the drafting instructions in item V. B. in Memo No. 13. The definition of “water dependent natural resources” in this draft and the compact is limited to resources affected by the waters of the basin.

The interpretation and application of subd. 5 will be affected by how the committee interprets proposed s. 281.343 (4z) (c) in LRB–0058/P1, which reads as follows:

“(c) Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant’s proposal meets the no significant adverse cumulative impact provision of the standard of review and decision [this standard includes the exception standard and the decision–making standard].”.

Also, see the “significant cumulative impact” provision in the decision–making standard in s. 281.344 (6) (b).

8 6. The applicant commits to implementing the water conservation measures in tier 3
9 under sub. (8) (c) that are environmentally sound and economically feasible for the applicant.

NOTE: This provision implements proposed s. 281.343 (4n) (d) 5. in LRB–0058/P1 based on the drafting instructions in item III. A. 3. in Memo No. 12.

1 7. The diversion will be in compliance with all applicable local, state, and federal laws
2 and interstate and international agreements, including the Boundary Waters Treaty of 1909.

3 (g) *Conservation and efficient use of existing water supplies.* An applicant for an
4 approval subject to par. (f) shall demonstrate the efficient use and conservation of existing
5 water supplies under pars. (d) 2. b. and 3. b., (e) 4., and (f) 1. by doing all of the following prior
6 to submitting the application:

7 1. Engaging in water conservation planning that included all of the following:

8 a. Evaluation of the applicant’s present and future water uses.

9 b. Setting of a baseline amount of the applicant’s water use.

10 c. Determination of the water conservation and efficiency measures in tier 2 and
11 measures 2 and 3 in tier 3 under sub. (8) (c) that are environmentally sound and economically
12 feasible for the applicant.

13 2. Implementing the environmentally sound and economically feasible water
14 conservation measures identified under subd. 1. c.

NOTE: Paragraph (g) implements the drafting instructions in items III. A. 1. a. to c. and 2. in Memo No. 12. These instructions combined consideration of the “conservation” of existing water supplies and the “efficient use” of existing water supplies. Paragraph (g) is referenced in sub. (4) (d) 2. b. and 3. b., (e) 4., and (f) 1.

The specific requirements for new or increased intrabasin transfers over 100,000 gallons per day in sub. (4) (d) 2. b. and 3. b. and for new or increased diversions to cities in straddling counties in sub. (4) (e) 4. all require the “conservation of existing water supplies”. All of these transfers and diversions are also subject to the exception standard which requires the “efficient use and conservation of existing water supplies” in sub. (4) (f) 1.

Also, see the note following the provision in the decision-making standard in sub. (6) (e) 2. that refers to the “efficient use” of existing water supplies” by an applicant for a new or increased withdrawal or consumptive use.

1 (5) WITHDRAWALS AND CONSUMPTIVE USES. (a) *Approval required.* 1. Beginning on the
2 compact's effective date, no person may begin a withdrawal or consumptive use from the basin
3 that is not a diversion and that will average more than [insert amount] gallons per day in any
4 [insert averaging period] day period without an approval from the department under this
5 subsection.

6 2. Beginning on the compact's effective date, no person may increase an existing
7 withdrawal or consumptive use from the basin so that it will average more than [insert amount]
8 gallons per day in any [insert averaging period] day period without an approval from the
9 department under this subsection.

NOTE: Paragraph (a) is based on proposed s. 281.343 (4p) in LRB-0058/P1. The specification of the threshold levels for new or increased withdrawals and consumptive uses being subject to the compact is an unresolved issue before the committee. See Item V. A. 1. in Memo No. 13 under *Unresolved Issues for Consideration by the Full Committee*. See also bullet point 4. on page 2 in the memorandum, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact* (February 6, 2007). The effective date and averaging period for these regulations also needs to be specified by the committee.

Whether an application for a new or increased surface water withdrawal must include an analysis of whether the withdrawal will result in 95% or greater consumption use (similar to requirement in proposed new groundwater rule regarding new groundwater withdrawals via high capacity wells with high water loss) is also an unresolved issue before the committee. See bullet point 8. on page 2 of the memorandum, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact* (February 6, 2007).

10 (b) *Application.* A person who proposes a withdrawal or an increase in a withdrawal
11 for which approval is required under par. (a) shall apply to the department for approval. The
12 person shall provide information about the potential impacts of the withdrawal on the waters
13 of the basin and water dependent natural resources of the source watershed.

NOTE: The information requirements are based on proposed s. 281.343 (4d) (b) and (4z) (c) in LRB–0058/P1.

QUESTION: Should there be more or different requirements about the information that must be provided? See the note following s. 281.344 (4) (b) for examples of potential elements of an application.

1 (c) *Standard for approval.* The department may grant an approval for a proposal for
2 a new or increased withdrawal or consumptive use if the proposal meets the decision–making
3 standard under sub. (6).

4 (d) *Prior notice.* If a proposal for which approval is required under this subsection will
5 result in a new consumptive use or an increase in a consumptive use that will average more
6 than 5,000,000 gallons per day in any 90–day period, the department shall provide the other
7 parties and the provinces of Ontario and Quebec, Canada, with detailed notice of the proposal
8 and an opportunity to comment on the proposal. The department shall provide a response to
9 any comment received under this paragraph. The department may not grant an approval under
10 this subsection until at least 90 days after the day on which it provided notice under this
11 paragraph.

NOTE: This provision is based on proposed s. 281.343 (4j) in LRB–0058/P1. This requirement may be implemented no later than 5 years after the compact’s effective date.

12 (e) *Regional review.* If a majority of the members of the regional body request regional
13 review of a proposal for which approval is required under this subsection, the department shall
14 conduct a technical review of the proposal and submit the proposal for regional review. The
15 department may not act on the proposal until the proposal has undergone regional review and
16 the department has considered the regional declaration of finding in determining whether to
17 approve the proposal.

NOTE: This provision is intended to implement proposed s. 281.343 (4h) in LRB–0058/P1. That provision requires regional review of “a regionally significant or potentially precedent setting proposal” at the

request of a majority of the members of the regional body. It is difficult to know which proposed withdrawals are subject to this kind of request because of the compact definition of “proposal” as a withdrawal, diversion, or consumptive use that is subject to the compact. This provision is drafted on the basis that only those withdrawals or consumptive uses for which the originating state requires approval are subject to the compact.

1 **(6) DECISION-MAKING STANDARD.** A proposal under sub. (5) meets the decision-making
2 standard if all of the following apply:

3 (a) All of the water withdrawn from the basin will be returned to the source watershed,
4 less an allowance for consumptive use.

5 (b) The withdrawal or consumptive use will result in no significant adverse individual
6 impacts or cumulative impacts to the quantity or quality of the waters of the basin, to water
7 dependent natural resources, or to the source watershed.

NOTE: Paragraphs (a) and (b) are based on proposed s. 281.343 (4r) (a) and (b) in LRB-0058/P1. The interpretation and application of these tests, especially the “no significant individual impacts or cumulative impacts” test are unresolved issues before the committee. See item VI. A. 1. in Memo No. 13 under *Unresolved Issues for Consideration by the Full Committee*. See also bullet point 6. on page 2 in the memorandum, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes–St. Lawrence River Basin Water Resources Compact* (February 6, 2007).

The interpretation and application of par. (b) will be affected by how the committee interprets proposed s. 281.343 (4z) (c) in LRB-0058/P1, which reads as follows:

“(c) Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant’s proposal meets the no significant adverse cumulative impact provision of the standard of review and decision [this standard includes the exception standard and the decision-making standard].”.

Also, see the “significant cumulative impact” provision in the exception standard in s. 281.344 (4) (f) 5.

1 (c) For a proposal for a new or increased withdrawal, the applicant commits to
2 implementing the following water conservation measures that are environmentally sound and
3 economically feasible for the applicant:

4 1. If the applicant is a water utility, water conservation measures in tier 1 under sub. (8)
5 (c), as determined in a water conservation planning process that includes the elements in sub.
6 (4) (g) 1. a. and b.

7 2. If the applicant is not a water utility, water conservation measures in tier 1 under sub.
8 (8) (c).

9 (cm) Subject to par. (cr), for a proposal for a new or increased consumptive use that is
10 more than 1 million gallons per day and exceeds a percentage of the applicant’s annual
11 withdrawal specified by the department by rule, the applicant commits to implementing the
12 following water conservation measures that are environmentally sound and economically
13 feasible for the applicant:

14 1. If the applicant is a water utility, water conservation measures in tier 1 under sub. (8)
15 (c), as determined in a water conservation planning process that includes the elements in sub.
16 (4) (g) 1. a. and b.

17 2. If the applicant is not a water utility, water conservation measures in tier 1 under sub.
18 (8) (c).

19 (cr) Paragraph (cm) applies only if the department determines all of the following:

20 1. There is a need for additional water conservation under the basin water conservation
21 and efficiency program to meet the basin water conservation and efficiency goals and
22 objectives specified by the department under sub. (8) (a).

1 2. There is an available methodology for determining the consumptive use of water by
2 the applicant.

NOTE: Paragraphs (c), (cm), and (cr) implement proposed s. 281.343
(4r) (c) in LRB–0058/P1 based on the drafting instructions in items IV.
to VII. in Memo No. 12.

3 (d) The withdrawal or consumptive use will be in compliance with all applicable local,
4 state, and federal laws and interstate and international agreements, including the Boundary
5 Waters Treaty of 1909.

6 (e) The proposed use of the water is reasonable, based on a consideration of all of the
7 following:

8 1. Whether the proposed withdrawal or consumptive use is planned in a way that
9 provides for efficient use of the water and will avoid or minimize the waste of water.

10 2. If the proposal is for an increased withdrawal or consumptive use, whether efficient
11 use is made of existing water supplies.

NOTE: The drafting instructions in Memo No. 12 did not address how an
applicant would demonstrate “whether efficient use is made of existing
water supplies” under this provision. The committee could choose to use
the same approach as for the conservation and efficient use of existing
water supplies as part of a diversion application under sub. (4) (g). If the
committee adopts this approach, it would then need to specify the water
conservation and efficiency measures in the water conservation and
efficiency tiers in sub. (8) that an applicant would have to evaluate to
determine which of these measures are environmentally sound and
economically feasible for the applicant. An additional consideration is
whether the committee wishes to distinguish between the “efficient use”
and “water conservation” of existing water supplies in implementing this
provision.

12 3. The balance between the effects of the proposed withdrawal or consumptive use use
13 on economic development, social development, and environmental protection and the effects
14 of other existing or planned withdrawals and water uses sharing the water source.

1 4. The supply potential of the water source, considering quantity, quality, reliability, and
2 safe yield of hydrologically interconnected water sources.

3 5. The probable degree and duration of any adverse impacts caused or expected to be
4 caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful
5 consumptive uses or nonconsumptive uses of water or to the quantity or quality of the waters
6 of the basin and water dependent natural resources, and the proposed plans and arrangements
7 for avoidance or mitigation of those impacts.

8 6. Any provisions for restoration of hydrologic conditions and functions of the source
9 watershed.

NOTE: This section is based on proposed s. 281.343 (4r) in LRB–0058/P1.

Proposed s. 281.343 (4p) (a) in LRB–0058/P1 requires the state regulation of withdrawals and consumptive uses under the compact to be “consistent with the decision–making standard” in sub. (6). The committee has not yet interpreted this consistency requirement and determined if the content or application of any of the elements in the decision–making standard should be modified accordingly. See Item V. A. 2. under *Unresolved Issues for Consideration by the Full Committee* in Memo No. 13. See also bullet point 5. on page 2 of the memorandum, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes–St. Lawrence River Basin Water Resources Compact* (February 6, 2007).

10 **(7) EXEMPTIONS.** Subsections (3) to (6) do not apply to withdrawals from the basin for
11 any of the following purposes:

12 (a) To supply vehicles, including vessels and aircraft, for the needs of the persons or
13 animals being transported or for ballast or other needs related to the operation of the vehicles.

14 (b) To use in a noncommercial project on a short–term basis for fire fighting,
15 humanitarian, or emergency response purposes.

NOTE: This section is based on proposed s. 281.343 (4v) in LRB–0058/P1. The exempted subsections are registration and reporting,

diversions, withdrawals and consumptive uses, and the decision-making standard.

1 (8) WATER CONSERVATION AND EFFICIENCY. (a) *Goals and program.* 1. The department
2 shall specify water conservation and efficiency goals and objectives for the waters of the basin
3 that are consistent with the goals under s. 281.343 (4b) (a) and the objectives identified by the
4 council under s. 281343 (4b) (a) and (c). In specifying these goals and objectives, the
5 department shall consult with the department of commerce and public service commission and
6 consider the water conservation and efficiency goals and objectives developed in the pilot
7 program conducted by the department in cooperation with the regional body.

NOTE: In implementing their state water conservation and efficiency programs, the compact directs the parties to “have regard” for any modifications in the basin-wide water conservation and efficiency objectives made by the council in its 5-year reviews of the basin-wide objectives. See proposed s. 281.343 (4b) (c) in LRB-0058/P1. “Have regard” is not a standard verb used in the statutes. This provision interprets this requirement to direct the DNR to make the state water conservation and efficiency objectives consistent with the modified basin-wide objectives.

The consultations called for in this provision and the cooperation called for in the next provision are based on the drafting instructions in item I. B. in Memo No. 12, which reflect that both the department of commerce and the public service commission (PSC) administer water conservation programs under their current statutory authorities.

8 2. In cooperation with the department of commerce and public service commission, the
9 department shall develop and, no later than the first day of the 24th month after the compact’s
10 effective date, implement a basin water conservation and efficiency program for all users of
11 waters of the basin that is designed to achieve the goals and objective specified under subd.
12 1. The basin water conservation and efficiency program shall include all of the following:
13 a. Promotion of environmentally sound and economically feasible water conservation
14 measures under par. (b) in the basin by the department.

1 b. Application of the water conservation and efficiency tiers specified in par. (c) under
2 subs. (4) (g) and (6) (c) by the department.

3 c. Water conservation and efficiency measures that the public service commission
4 requires or authorizes a public utility furnishing water to implement in the basin under ch. 196.

5 d. Water conservation measures that the department of commerce requires or
6 authorizes to be implemented in the basin under chs. 101 and 145.

QUESTION: Should the draft list other elements of the basin water conservation and efficiency programs, such as the conduct of related research and development initiatives, development of measurement protocol and standards, and evaluation of specific initiatives undertaken by state agencies, water utilities, or individual water users?

7 (b) *Promotion.* Beginning no later than the first day of the 24th month after the
8 compact's effective date, the department shall provide education programs and technical
9 assistance statewide on environmentally sound and economically feasible water conservation
10 measures.

NOTE: This provision implements proposed s. 281.343 (4b) (d) in LRB-0058/P1, which calls for the parties to "commit to promote" environmentally sound and economically feasible water conservation measures. These educational programs and technical assistance are part of the statewide water conservation programs identified in the drafting instructions in items II. A. and VIII. in Memo No. 12. Other statewide water conservation and efficiency programs are administered by the department of commerce and the PSC.

11 (c) Water conservation and efficiency tiers.

NOTE: These tiers implement the drafting instructions in items II. B., C., and D. in Memo No. 12. The water conservation measures in these tiers are based on the U.S. Environmental Protection Agency's (EPA) *Water Conservation Plan Guidelines, Appendix A, Water Conservation Measures* referenced in the instructions.

12 1. Tier 1 water conservation and efficiency measures shall consist of all of the
13 following:

1 a. Metering or comparable measure of water use and related testing, calibration, maintenance,
2 and replacement of water meters.

3 b. Costing and pricing of water, including related accounting and cost analysis. This
4 measure applies only to water utilities.

NOTE: The exception for self-supply systems is in the drafting instructions in item II. B. 2. in Memo No. 12, which specified an exception to this measure for self-supply systems. The draft expresses this by stating which persons the measure applies to, water utilities, rather than which persons the measure does not apply to.

5 c. Accounting and assessment of water flows and losses in a water supply system.

NOTE: Based on the drafting instructions in item II. B. 3. in Memo No. 12, this measure does not include repair of water leakage or loss-prevention programs, even though these activities are identified as part of this measure in the EPA's *Water Conservation Plan Guidelines, Appendix A, Water Conservation Measures*, cited above.

6 d. Information and education on water consumption and conservation, and, as
7 appropriate, water utility bills.

8 2. Tier 2 water conservation and efficiency measures shall consist of all of the
9 following:

10 a. All tier 1 measures.

11 b. Audits of water use by large-volume and other classes of users.

12 c. Retrofitting existing fixtures, appliances, and equipment to increase the efficiency of
13 their water use.

14 d. Management of the pressure in a water supply distribution system.

15 e. Efficient use of water for landscaping, irrigation, and other outdoor water usage.

16 3. Tier 3 water conservation and efficiency measures shall consist of all of the
17 following:

18 a. All tier 1 and 2 measures.

1 b. Replacement of inefficient fixtures, appliances, and equipment and promotion of new
2 water conserving fixtures, appliances, and equipment.

3 c. Reuse and recycling of wastewater.

4 d. Regulations and standards to manage water use during droughts or other
5 water–supply emergencies and at new developments.

6 e. Water conservation and efficiency measures planned and implemented jointly with
7 the conservation or efficient use of other resources, considering the interrelationships between
8 the water and other resources.

NOTE: Subparagraph e. sets forth the “integrated resource management”
measure in item II. D. 5. in the drafting instructions in Memo No. 12.

9 **(9) TRIBAL CONSULTATION AND PUBLIC PARTICIPATION.** (a) *Tribal consultation.* The
10 department shall consult with the governing body of each federally recognized American
11 Indian tribe or band in this state concerning each proposal that is subject to regional review
12 or council approval under sub. (4) or (5).

NOTE: This provision is based on the drafting instructions from item I.
A. in Memo No. 14.

13 (b) *Public Notice.* 1. The department shall, by rule, create procedures for circulating
14 to interested and potentially interested members of the public notices of each complete
15 application under sub. (4) or (5) the department receives. Procedures for the circulation of
16 public notices shall include at least the following:

17 a. Publication of the notice as a class I notice under ch. 985;

18 b. Mailing of the notice to any person, group, or local governmental unit, or state agency
19 upon request.

20 2. The department shall establish the form and content of a public notice by rule. Every
21 public notice issued by the department shall include at least the following information:

- 1 a. The name and address of each applicant.
- 2 b. A brief description of the proposal for which the application is made under sub. (4)
3 or (5), including the amount of the proposed withdrawal or diversion.
- 4 c. A brief description of the procedures for the formulation of final determinations on
5 applications, including the 30–day comment period required under par. (b) 1.
- 6 (c) *Public comment.* The department shall receive public comments on a proposal for
7 which it receives an application under sub. (4) or (5) for a 30–day period beginning when the
8 department gives notice under par. (b) 1. All written comments submitted during the period
9 for comment shall be retained by the department and considered in the formulation of the final
10 determinations for the application.
- 11 (d) *Public hearing.* 1. The department shall provide an opportunity for any interested
12 person or group of persons, any affected local governmental unit or state agency to request a
13 public hearing with respect to a proposal for which the department receives an application
14 under sub. (4) or (5). A request for a public hearing shall be filed with the department within
15 30 days after the department gives notice under par. (b). A request for a public hearing shall
16 indicate the interest of the party filing the request and the reasons why a hearing is warranted.
17 The department shall hold a public hearing on a proposal for which the department receives
18 an application under sub. (4) or (5) if the department determines that there is a significant
19 public interest in holding a hearing.
- 20 2. The department shall promulgate, by rule, procedures for the conduct of public
21 hearings held under this section. A hearing held under this paragraph is not a contested case
22 hearing under ch. 227.
- 23 3. Public notice of any hearing held under this section shall be circulated in accordance
24 with the requirements of par. (b) 1.

1 (e) *Public access to information.* Any records or other information provided to or
2 obtained by the department regarding a proposal for which an application under sub. (4) or
3 (5) is received shall be a public record as provided in subch. II of ch. 19. The department shall
4 make available to and provide facilities for the public to inspect and copy any records or other
5 information provided to or obtained by the department regarding a proposal for which an
6 application under sub. (4) or (5) is received. Any records or other information provided to the
7 department may be treated as confidential upon a showing to the secretary that said records
8 or information is entitled to protection as a trade secret as defined in s. 134.90 (1) (c). Nothing
9 in this subsection shall prevent the use of any confidential records or information obtained by
10 the department in the administration of this section in compiling or publishing general
11 analyses or summaries, if the analyses or summaries do not identify a specific owner or
12 operator.

NOTE: Paragraphs (b), (c), (d), and (e) are based on drafting instructions in item II. A. in Memo No. 14. According to these instructions, these paragraphs are based on the public notice, public comment, public hearing, and public access to information sections under the Wisconsin Pollution Discharge Elimination System (WPDES) program, ss. 283.39, 283.43, 283.49, and 283.55 (2) (c), stats. The confidentiality provision under par. (e) is based on s. 283.55 (2) (c), stats.

13 (f) 1. Within 60 days after receipt of an application under sub. (4) or (5), the department
14 shall either determine the application is complete or shall notify the applicant in writing that
15 the application is not complete and shall specify the information which is required to make
16 the application complete.

17 2. Within 90 days after receipt of a complete application, the department shall notify
18 the applicant in writing of the approval, conditional approval, or denial of the application. If
19 the application is denied, the reason for denial shall be included in the notification.

NOTE: Paragraphs (f) 1. and 2. are based on drafting instructions it item II. A. in Memo No. 14. The timeframes and deadlines are based on s. NR 142 (5).

1 **(10) INFORMATION, REPORTS, AND ASSESSMENTS.** (a) *Inventory.* 1. The department shall
2 develop and maintain a water resources inventory consisting of information about the waters
3 of the basin in this state, including information about the location, type, quantity, and uses of
4 water resources and the location, type, and quantity of withdrawals, diversions, and
5 consumptive uses. The department shall develop the inventory in cooperation with federal
6 and local governmental entities, agencies of this state and of the other parties, tribal agencies,
7 and private entities. The department shall use information from the registry under sub. (3) to
8 create the inventory.

NOTE: This provision implements proposed s. 281.343 (4) (a) in LRB–0058/P1 based on the drafting instructions in items III. A. 1. and B. 1. in Memo No. 13.

9 2. The department shall create the water resources inventory for the waters of the basin
10 within 5 years of the compact’s effective date. The department shall create the water resources
11 inventory for the waters outside of the basin within 3 years of the effective date of this
12 subdivision ... [revisor inserts date].

NOTE: This provision implements proposed s. 281.343 (4) (a) in LRB–0058/P1 based on the drafting instructions in item III. C. in Memo No. 13.

13 (b) *Annual report on water resources.* The department shall annually report to the
14 council the information under sub. (3) from registrants who register withdrawals that average
15 100,000 gallons per day or more over a 30–day period and consumptive uses in the basin and
16 any diversion and the amounts of diversions, withdrawals, and consumptive uses reported
17 under sub. (3) (d).

NOTE: This provision implements proposed s. 281.343 (4) (e) in LRB–0058/P1 based on the drafting instructions in item III. A. 2. in Memo No. 13.

1 (c) *Program report.* Within one year after the compact’s effective date and every 5 years
2 thereafter, the department shall submit a report to the council and the regional body describing
3 the implementation of the program under this section, including the manner in which
4 withdrawals from the basin are managed, how the criteria for approval under subs. (4), (5),
5 and (6) are applied, and how water conservation and efficiency measures are implemented.

NOTE: This provision implements proposed s. 281.343 (3) (d) in LRB–0058/P1.

6 (d) *Assessment of water conservation and efficiency.* The department shall annually
7 assess the effectiveness of the basin water conservation and efficiency programs under sub.
8 (8) (a) 2. in meeting the water conservation and efficiency goals under sub. (8) (a) 1. In each
9 assessment, the department shall consider whether there is a need to adjust the basin water
10 conservation and efficiency program to new demands for water from the basin and the
11 potential impacts of the cumulative effects of diversions, withdrawals, and consumptive uses
12 and climate. The department shall provide the assessment to the council and the regional body
13 and make it available to the public.

NOTE: This provision is based on proposed s. 281.343 (4b) (b) in LRB–0058/P1. The second sentence in this provision implements the requirement in the compact that “conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate”. See s. 281.343 (4b) (e) in LRB–0058/P1.

14 (e) *Assessment of cumulative impacts.* The department shall participate in the periodic
15 assessment of the impacts of withdrawals, diversions, and consumptive uses under s. 281.343
16 (4z) (a).

NOTE: This section is based on proposed s. 281.343 (4z) (a) in LRB–0058/P1.

1 **(11) DISPUTE RESOLUTION AND PENALTIES.** (a) *Dispute Resolution.* 1. For purposes of
2 s. 281.343 (7r) (a) and (c), “aggrieved” means substantial interests are adversely affected by
3 a determination of an agency.

NOTE: Under this provision, a “person aggrieved” under proposed s.
281.343 (7r) (a) and (c) is defined to mean an individual or other entity,
including a government or a nongovernmental organization whose
substantial interests are adversely affected by a determination of an
agency. This provision is based on the drafting instructions provided in
item III. A. in Memo No. 14.

4 2. The available remedies provided under s. 281.343 (7r) (d) apply only to the actions
5 specified under s. 281.343 (7r) (c).

NOTE: This provision is based on the drafting instructions provided in
item III. B. in Memo No. 14. This provision clarifies that the available
remedies under proposed s. 281.343 (7r) (d) in LRB-0058/P1, [which
include equitable relief, and the prevailing or substantially prevailing
party ability to recover the costs of litigation, including reasonable
attorney and expert witness fees, whenever the court determines that
such an award is appropriate] are only available in actions commenced
under proposed s. 281.343 (7r) (c) in LRB-0058/P1. Under sub. (7r) (c),
any aggrieved person, party, or the council may commence a civil action
in the relevant party’s courts and administrative systems to compel any
person to comply with the compact should the person, without approval
having been given, begin a new or increased withdrawal, consumptive
use, or diversion that is prohibited or subject to approval under the
compact.

6 (b) *Penalties.* 1. Any person who violates this section or any rule promulgated or any
7 approval issued under this section shall forfeit not less than \$10 nor more than \$10,000 for
8 each violation. Each day of continued violation is a separate offense. While an order is
9 suspended, stayed, or enjoined, this penalty does not accrue.

10 2. In addition to the penalties provided under subd. 1., the court may award the
11 department of justice the reasonable and necessary expenses of the investigation and
12 prosecution of a violation of this chapter, including attorney fees. The department of justice

1 shall deposit in the state treasury for deposit into the general fund all moneys that the court
2 awards to the department or the state under this subsection. The costs of investigation and the
3 expenses of prosecution, including attorney fees, shall be credited to the appropriation account
4 under s. 20.455 (1) (gh).

5 3. In addition to the penalties under subd. 1., the court may order the defendant to abate
6 any nuisance, restore a natural resource or take, or refrain from taking, any other action as
7 necessary to eliminate or minimize any environmental damage caused by the defendant.

NOTE: Subsection (11) (b) 1. is based on drafting instructions in item III.
C. in Memo No. 14. Subsection (11) (b) 2. and 3. are based on s. 281.98
(2) and (3), stats.

This draft does not include an effective date because the draft will
become effective on the day after publication which is the default
effective date under s. 991.11, stats.

8 **SECTION 3.** 281.98 (1) of the statutes is amended to read:

9 281.98 (1) Except as provided in ss. 281.343 (11) (b) 1., 281.47 (1) (d), 281.75 (19),
10 and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan
11 approval, license, special order, or water quality certification issued under this chapter shall
12 forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued
13 violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty
14 does not accrue.

15 **SECTION 4. Nonstatutory provisions.**

16 (1) **WATER CONSERVATION ADVISORY COMMITTEE.** (a) There is created
17 a water conservation advisory committee consisting of the following members:

- 18 1. Five persons appointed by the governor.
- 19 2. Four persons appointed by the speaker of the assembly.
- 20 3. Four persons appointed by the majority leader of the senate.

1 4. One member appointed by the minority leader of the assembly.

2 5. One member appointed by the minority leader of the senate.

3 6. The secretary of natural resources or the secretary's designee.

4 (b) Each appointing authority under paragraph (a) 2. and 3. shall appoint one member
5 representing each of the following interests:

6 1. Industrial.

7 2. Agricultural.

8 3. Environmental.

9 4. Municipal.

10 (c) The governor shall appoint one member of the water conservation advisory
11 committee representing well drillers. The governor shall appoint two members of the water
12 conservation advisory committee from names submitted by the federally recognized
13 American Indian tribes or bands in this state. The governor, the minority leader of the
14 assembly, and the minority leader of the senate shall consult regarding the other 4 appointees
15 under paragraph (a) 1., 4., and 5. to ensure that one represents each of the interests under
16 paragraph (b) 1. to 4.

17 (d) The speaker of the assembly and the majority leader of the senate shall each
18 designate one appointee as cochairperson of the water conservation advisory committee.

19 (e) The water conservation advisory committee shall advise the department of natural
20 resources on the development of the initial set of water conservation and efficiency goals and
21 objectives under section 281.344 (8) (a) 1. of the statutes, as created by this act and the initial
22 rule-making implementing the basin water conservation and efficiency program under
23 section 281.344 (8) (a) 2. of the statutes, as created by this act.

1 (f) The department of natural resources shall staff and provide funding for the water
2 conservation advisory committee.

3 (g) The water conservation advisory committee terminates on [INSERT DATE].

NOTE: The creation and composition of the water conservation advisory committee is based on the drafting instructions in item I. C. in Memo No. 12. The water conservation advisory committee has 15 members; the groundwater advisory committee, 13 members. The 2 additional members on the water conservation advisory committee represent federally recognized American Indian tribes and bands pursuant to these instructions and provide for an odd number of members on this committee. The drafting instructions did not specify a termination date for the water conservation advisory committee.

4 **SECTION 5. Effective date.**

NOTE: The draft takes effect on the day after publication, pursuant to section 991.11 of the statutes, unless the committee specifies other effective dates for one or more provisions in the draft.

5 (END)