



**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

Memo No. 14

**TO:** MEMBERS OF THE SUBCOMMITTEE ON PUBLIC PARTICIPATION AND DISPUTE RESOLUTION OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT

**FROM:** Rachel Letzing, Senior Staff Attorney, and John Stolzenberg, Chief of Research Services

**RE:** Drafting Instructions from the Subcommittee on Public Participation and Dispute Resolution

**DATE:** February 14, 2007

This Memo lists the drafting instructions provided by your subcommittee at its January 17, 2007 meeting. These instructions are for a portion of the legislation being developed by the Special Committee to implement the Great Lakes-St. Lawrence River Basin Water Resources compact (the “compact”).

The last page in the Memo contains the provisions in the compact assigned to your subcommittee.

***DRAFTING INSTRUCTIONS***

**I. Consultation with Tribes**

- A. Direct the Department of Natural Resources (DNR) to have appropriate consultations with tribes for all proposals subject to council or regional review under the compact. [Proposed s. 281.343 (5) in LRB-0058/P1.]

**Comment:** This consultation would occur for a diversion proposal for a straddling community or an intra-basin transfer that results in a new or increased consumptive use of 5 million gallons per day or greater average over a 90 day period, or a diversion proposal of any amount for a community in a straddling county.

## II. Public Participation

- A. Direct DNR to create administrative rules regarding distribution and content of a public notice of each proposal DNR receives that is subject to the compact, opportunity and a timeframe for a public comment period, public access to information regarding the proposal, and a public hearing process, using the water pollutant discharge elimination (WPDES) program under ch. 283, Stats., as guidance. Include a directive in statute consistent with other environmental statutes that DNR must complete its review of a proposal within a fixed timeframe. [Proposed s. 281.343 (6) (b) in LRB-0058/P1.]

## III. Dispute Resolution and Enforcement - Alternative Dispute Resolution

- A. Define “aggrieved” in implementing legislation to mean “substantial interests that are adversely affected.” [Proposed s. 281.343 (7r) (a) in LRB 0058/P1.]

**Comment:** This definition is provided in current law under s. 227.01 (9), Stats. In order to be considered a “person aggrieved” for standing purposes under the compact, a person, as defined in proposed s. 281.343 (1e) (nm) in LRB-0058/P1, must, pursuant to Wisconsin court decisions, have an interest in the subject matter that is injured by a state action or inaction. *Wisconsin’s Environmental Decade, Inc. v. PSC*, 69 Wis. 2d 1, 230 N.W.2d 243 (1975); *Waste Management of Wisconsin v. DNR*, 144 Wis. 2d 499 (1988).

The administrative review and hearing procedures under ch. 227 Stats., would apply to actions under proposed s. 281.343 (7r) (a) in LRB-0058/P1.

- B. Clarify in the implementing legislation that the available remedies specified under sub. (7r) (d) only apply to the actions specified under sub. (7r) (c). [Proposed s. 281.343 (7r) (c) and (d) in LRB-0058/P1.]
- C. Specify in the implementing legislation that the civil penalties under s. 281.98, Stats., also apply to violations of the compact, but increase the range of monetary penalties to no less than \$10 or more than \$10,000 for each violation of the compact. [Proposed s. 281.343 (7r) (e) in LRB-0058/P1.]

**Comment:** The subcommittee determined that citation authority may also be needed, but agreed to revisit this issue once the regulatory and water conservation portions of legislation implementing the compact are determined.

**Assignment of Subcommittee on Public Participation and Dispute Resolution**

**Citations to applicable provisions in LRB-0058/P1 in brackets**

- (5) Consultation with tribes. [Proposed s. 281.343 (5).]
- (6) Public participation. [Proposed s. 281.343 (6).]
- (7) Dispute resolution and enforcement; good faith implementation. [Proposed s. 281.343 (7).]
- (7g) Dispute resolution and enforcement; alternative dispute resolution. [Proposed s. 281.343 (7g).]
- (7r) Dispute resolution and enforcement; enforcement. [Proposed s. 281.343 (7r).]