

Status Report of the Special Committee on Great Lakes Water Resources Compact

Submitted to the Joint Legislative Council

by

State Senator Neal Kedzie - Chair

June 12, 2007





State Senator

Neal J. Kedzie

11th Senate District

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State Senator Fred Risser, Co-Chair

Joint Legislative Council
Madison, WI

State Representative Steve Wieckert, Co-Chair

Joint Legislative Council
Madison, WI

Co-Chairs Risser and Wieckert, and Members of the Council,

Thank you for this opportunity to provide the Council with a status report on the work and progress of the Special Committee on the Great Lakes Water Resources Compact.

First and foremost, I would like to personally thank the Council for granting me this opportunity to serve as Chair of this very important legislative study committee. To be certain, the Great Lakes-St. Lawrence River Basin Water Resources Compact (hereafter referred to as 'the Compact') may be the most significant, and yet difficult, issue I have ever dealt with in my ten years in the Wisconsin State Legislature.

Fortunately, through the wisdom of this committee, eighteen public and private members were appointed to serve with me on the study committee, and I must commend each and every one of those individuals for the dedication and service they have provided in our efforts to date.

The Compact, in its simplest of terms, is a procedural mechanism for limited diversions and withdrawals of Great Lakes water for communities in and out of the basin. Each state legislature, then, must devise a comprehensive plan to create legislation in order to implement the Compact in each respective state. The Compact is a directive to all eight states that Great Lakes water is a valuable resource and that each state has a vested interest in protecting the use of the resource.

As the committee has the charge of studying the feasibility of Wisconsin entering the Compact, it is imperative the committee have an understanding of precisely how such legislation would work in the State of Wisconsin. Crafting the implementing legislation has assisted the committee in that effort and I am pleased to report that a significant majority of that work has been completed. But, we all know there is still work that needs to be done.

Our work is vital in determining if the State of Wisconsin should or should not enter into the Great Lakes Water Resources Compact. As Chair, it my intent to bring this study committee process to a finality, whatever that finality may be, and hope the Joint Legislative Council grant us the latitude and flexibility to carry out our charge.

At your request, I am providing this status report of the study committee as well as a strategy for achieving that goal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neal Kedzie". The signature is written in a cursive, flowing style.

Neal Kedzie
Chair, Great Lakes Water Resources Compact committee
State Senator
11th Senate District

CC: Members, Joint Legislative Council

NJK: dj

Status Report

I. Where It Began

Interstate compacts do not follow a process similar to state legislation. It is a process which requires the collaboration of other state governments working towards a common intent and goal. In order for ratification of this Compact to occur, it must be done so in all eight Great Lakes basin states and in a manner that is consistent with each other. If that task is achieved, the Compact must also receive the approval of the United States Congress before ratification can occur.

It is the understanding of the committee that there can be no substantive changes to the terms of the Compact. Those terms were agreed upon by the Governors of the Great Lakes states and any alterations to the Compact by any state Legislature may nullify the Compact. It is also the understanding of the committee the Governors of the Great Lakes states may not be inclined, at this point, to renegotiate the Compact. It is with that understanding of both the procedure and practicality of the Compact by which the study committee entered this process.

In September of 2006, the study committee began a deliberate path of studying the Compact and coming to terms with potential legislation to implement the Compact if ratified. This has been a long and arduous process which has required a very cautious and careful speed towards potential ratification. But through the understanding and patience of the Joint Legislative Council, the Special Committee on the Great Lakes Water Resources Compact has made significant strides to date.

Many of the committee members – both legislative and private members – did not have a clear understanding of the Compact and the numerous ancillary issues relating to the Compact. In fact, a great deal of committee time was allocated to simply educating each and every member of the many facets of the Compact, as well as the chronology of how agreements were reached by the Governor of the Great Lakes states and what still needs to be done within the confines of the Compact.

The Council of Great Lakes Governors and their staff were most helpful in educating the committee on the Compact. In addition, officials with the Department of Natural Resources presented their testimony to the Committee in a comprehensive effort to provide as much detail regarding the Compact itself, as well as, the nearly five years of time dedicated to the process of creating, crafting and eventually signing the Compact.

Once the committee was apprised of the Compact, a question was posed to the members by the Chair: Should the committee go forward and simply ratify the Compact as is and deal with the implementing legislation at a later date, or attempt crafting the implementing legislation in tandem with the ratification of the Compact? The committee's overwhelming answer was to attempt crafting the implementing legislation and not put it off for an uncertain amount of time. And while it has added to the complexity of the issue, the committee is better served for choosing that approach.

While some committee members had a wider grasp of this issue, others remained uncertain of its breadth and scope, and voiced concerns regarding its implementation in Wisconsin. In addition, some expressed a concern of its relation to the federal Water Resources Development Act (WRDA) and how it may differ from the Compact. The basic question was essentially: are we better served by WRDA or the Compact? This is a fundamental question that needed to be answered and committee time was dedicated to a discussion of the two as a side by side comparison.

In tandem with the education process of the committee, some members posed questions of flexibility under the terms of the Compact, such as where does the Compact allow or require revisions or additional interpretations and where does it not allow for such changes. The Compact does grant the states an ability to create its own implementing legislation, but as previously stated, there is an understanding the Compact itself may not be altered. Thus, a great deal of time was allocated to providing the committee with that information as to how the Compact should be treated and how the implementing legislation may be crafted.

II. The Progress Made

During the later months of 2006, it became quite clear that each member had a different perspective and opinion of the Compact. Thus, in order to facilitate those varying opinions, members were directed to submit written comments, which would then be shared with and discussed among the committee as a whole. It was important that each member be as open and honest of their concerns, and that each member have full knowledge of where others stood on the value and efficacy of adopting the Compact.

Those comments and concerns were received and the committee had an opportunity to debate the many issues relating to the Compact. In addition, other individuals and organizations submitted comments to the committee either directly or through a point person serving on the committee. There was no shortage of comment from members and non-members. That led to a general discussion among the committee of how to resolve those issues and where the committee might be able to find common ground, or not.

In an effort to find resolution to some of those issues, Legislative Council staff was instructed to prepare summary documents and option papers for the committee to consider. At the time, it was thought that effort would generate expedited compromise and decisions by the committee. But, it soon became apparent that the full committee could not reach such consensus in a timely fashion. In fact, the committee only agreed to a couple of minor provisions within the Compact. It should be noted that it required several hours of committee time to reach those relatively simple agreements.

Recognizing that immediate impasse, a new strategy was implemented in the hopes that issues could be fully discussed and decisions could be made in a more conducive atmosphere. That strategy was to create three sub-committees to address major components of the Compact. The three sub-committees were divided into the issues areas listed below. The corresponding Legislative Council memos have been provided to the Co-Chairs of the Council of the progress made:

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

The sub-committees were equally represented by diverging interest groups and had the charge of working on those specific areas and finding a compromise position on each specific item of concern. This strategy was most productive and generated healthy debate and movement on a number of issues. It should be noted that even though the sub-committees did reach consensus on numerous issues, the full committee must adopt the recommendations of the sub-committees. To date, that has not been done, as the full committee has yet to meet to discuss those recommendations.

It is possible that most if not all of the recommendations by the sub-committees will be accepted by the full committee at a later date. An additional Legislative Council memo was also prepared, which details miscellaneous items where consensus was reached:

- Memo No. 15, Drafting Instructions on Miscellaneous Topics - (February 14, 2007).

Still, some major issues were left unresolved, as sub-committee members simply could not reach a common ground in the available time. Those items that remain unresolved by the sub-committees are delineated in the February 6, 2007 Legislative Council Memo, *Remaining Issues Relating to the Ratification and Implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact*. It is that memo which is at the crux of the debate for any future meeting or meetings of the study committee. The full committee has had time to review all the aforementioned documents, as well as consider any and all options for reaching consensus on those unresolved items. As to whether or not the committee reaches an agreement on all those outstanding issues remains to be determined.

Earlier this year, an attempt to convene a full committee meeting was made to do just that, however across-the-board scheduling conflicts in the months of March, April and May prohibited such a meeting. Approximately fifteen dates were proposed for the committee to consider, however each date was problematic for several public and private members. Due to the gravity of this next full committee meeting, it is imperative that all nineteen members be present and is able to fully commit themselves to the work of the study committee. But as explained, it has become most difficult to achieve that goal. It is the intent of the committee to re-engage the process either during the months of August or September, depending on the availability of all committee members, and if the Council grants the committee additional meetings.

III. Action in Other Basin States

Before discussing ideas for reaching an end-point with this process, it would be worthwhile to briefly reflect on what other states in the basin are doing or have done in regards to the Compact. All states are engaged in the process to one degree or another, but some have moved faster than others. The following provides comment on those actions and where Wisconsin may fit into that legislative process.

First, it should be noted that about one-third (32%) of the state of Wisconsin – with the greatest concentration of housing and economic development – lies within the Great Lakes basin. Thus, the Compact will affect as much as 60 percent of the population of Wisconsin. Further, the sub-continental divide splits many of Wisconsin's more populated areas, which may create additional difficulty for those municipalities.

Minnesota recently became the first Great Lakes state to ratify the Compact. However, because only 7% of the state lies within the basin, and because Minnesota already has a water use plan and appropriate regulations in place, it will not be greatly affected by the provisions of the Compact. In short, Minnesota simply does not have as much to gain or lose under the terms of the Compact. Thus, ratification for that state was relatively non-controversial.

In Illinois, a bill to ratify the Compact is on Governor's desk for review and potential signature. However, the state of Illinois only has about 0.2% of its land mass within the basin. In addition, Illinois is specifically exempt from most of the provisions of the Compact and any withdrawals or diversions of Great Lakes water are regulated by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al* (June 12, 1967). So like Minnesota, Illinois has little to gain or lose by ratifying the Compact.

In Ohio – which is relatively similar in basin land mass (29%) and political landscape as Wisconsin – the Legislature attempted to expedite a bill through the Legislature to ratify the Compact without detailed implementing legislation. However, that attempt was derailed in one House. Ohio, now, is going back to square one and effectively creating a study committee similar to the study committee here in Wisconsin. Thus, Ohio has now served as a testing ground for expediting ratification of the Compact, and how such expediency has led to failure, so far.

Indiana – which only has 3% of its land mass in the basin – currently has an active bill, as does the state of Michigan. But it should be noted that 99.9% of the land mass of Michigan lies within the basin, making Michigan the proverbial “king of the hill”, or in this case, king of the water. Thus, Michigan is in a most dominating position, as they will not have to deal with the complexities of the diversion process under the Compact. Thus, Michigan's ratification of the Compact should be uncontroversial. Pennsylvania has yet to act this year and the New York State Assembly has passed a bill to only ratify the Compact, but has offered no detailed implementing legislation.

But again, because more people will be affected by the terms of the Compact in Wisconsin than in most other states, it would be unwise to rush through the implementing legislation and quickly ratify the Compact. In fact, the diligence of the study committee and careful attention to detail will eventually be looked at by other states as a model for their own implementing legislation, if the Compact is ratified in Wisconsin.

So while Wisconsin may be one of the last states to ratify the Compact, Wisconsin would be one of the first – if not the first – to have done all the arduous work of crafting the bill to implement the many terms of the Compact.

IV. Reaching Finality

Working towards a final determination on the fate of the Compact in Wisconsin has been very trying for all committee members. The public, as a whole, is not well served if the committee moved at a rapid pace or made decisions based on what might be politically popular for some, but from a policy standpoint, unpopular for others.

The Compact is landmark regional legislation with potential national and international impacts. It should be treated as such and given all due consideration by legislators of both parties, interest groups, and the general public.

The Wisconsin State Legislature has shown its fortitude and dedication on a number of significant environmental issues over the last decade, including wetlands preservation, groundwater protection, air emissions regulation, and now focused on our greatest freshwater source, the Great Lakes basin. On each occasion, those successes were met by legislators who chose a more deliberate and thoughtful approach to crafting public policy, rather than adopt a policy that may be the most politically expedient.

With the approval of the Joint Legislative Council, the Chair intend to implement the following strategies for any future meetings of the study committee in an effort to bring finality to this matter, whatever that finality may be. Throughout this process, the Chair has maintained a role as a facilitator of the committee discussion recognizing it would not be in the best interest of the committee to mandate a direction or dictate a specific course for implementing such public policy.

But, as the parent body of the study committee, the Council is seeking a conclusion to the work of this study committee, as well as the other various study committees. There is a shared desire by the study committee and the Chair to reach that endpoint. Thus, the following strategies should assist the committee in reaching that mutual goal.

A. Preliminary Bill Draft of Sub-Committee Work

First, Legislative Council staff and the Legislative Reference Bureau will be directed to begin crafting preliminary draft legislation to encompass all the work to date by the three sub-committees, which were formed earlier this year to assist on reaching compromise positions. Hopefully, that preliminary draft would be available and distributed to committee members well in advance of the next full committee meeting.

A bill draft would allow committee members and others an opportunity to see their work in statutory form rather than a memo. It would also meld all of the three sub-committees' work into one document, rather than three. As a caveat, the preliminary bill draft would not be an indication the full committee has formally agreed to the work of the sub-committees. It would merely serve as a document for discussion and hopefully achieve the full blessing of the committee.

B. Consultation

Second, over the summer months, the Chair will engage in individual consultations with committee members, the DNR, Governor's office, and any other key individuals in an effort to solicit input on how some of the major unresolved items may be resolved. It should be mentioned that committee members have been talking off-line during this down time, and the Chair may be informed of those discussions and potential movement on various contentious issues.

The discussions to date with various committees members have been most encouraging and the efforts put forth during this hiatus from formal meetings are commendable. Some of the best ideas may generated by those committee members working together in the spirit of compromise, and hopefully those discussions could be used as a significant step forward in moving the full committee to reaching consensus.

C. Package Compromise Positions

Third, from those consultations, omnibus compromise packages on those unresolved items will be prepared and submitted to the committee for review in an effort to expedite the development of consensus wherever possible. The omnibus motions would allow committee members to see where they may agree on certain issues, are willing to accept on other items, and perhaps revise other areas where disagreement may still exist. While the committee could take each unresolved issue one by one, it may be more productive to package those issues in order to move the process along.

D. Request for Additional Meetings

This committee process strategy outlined, hopefully, will assist in bringing the committee process to a final completion point. But, the committee does need more time to absorb all of the information to date and eventually come to a final decision as to whether Wisconsin should or should not enter into the Great Lakes Water Resources Compact, and if so, the components of the implementing legislation.

Therefore, a request of the Joint Legislative Council is made for up to four more committee meetings, if needed. While that is a substantial request, it may be needed in order to allow for an appropriate review of the preliminary draft, as well as the compromise packages of unresolved items. The committee would need time to review draft legislation of the unresolved issues, make revisions where needed, address any other ancillary issues, and eventually come to a final decision on all of that work. It is possible the committee work could be completed sooner than four meetings, however some latitude may be necessary.

If this request is approved by the Council, additional meetings after the initial reconvening of the committee would be scheduled if and only if the Chair believed that such meetings would be productive.

Conclusion

The success of the Great Lakes-St. Lawrence River Basin Water Resources Compact in Wisconsin is directly contingent on the success of the Special Committee. The work of the Special Committee has been most productive, as the significant portion of the policy work needed to implement the Compact, if ratified, has been completed. Still, more time is needed to address unresolved issues as well as review, revise, and eventually approve the work completed to date along with those other outstanding issues.

To that end, the Joint Legislative Council is requested to authorize up to four more meetings in 2007 of the Special Committee on the Great Lakes Water Resources Compact. By the end of this year, the Special Committee will submit to the Joint Legislative Council for its consideration a bill to ratify and implement the Compact, signaling that consensus has been reached, or a final report from the Chair stating consensus could not be reached.

Prepared by:

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Representative Karl Van Roy
90th Assembly District

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