



WISCONSIN LEGISLATIVE COUNCIL

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April 2008 Special Session Senate Bill 1

Relating to the Ratification and Implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact and Other Water Use Programs

April 2008 Special Session Senate Bill 1 ratifies the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”), and implements the compact in the portion of the Great Lakes basin in Wisconsin and other water use programs.

For purposes of the compact, the Great Lakes basin is composed of the surface water and groundwater of individual basins of each of the Great Lakes and the St. Lawrence River basin upstream from Trois-Rivières, Quebec. The surface water boundaries of these basins are depicted in the accompanying map.

The compact relates to the withdrawal and use of water from the Great Lakes basin. The bill also includes provisions that apply statewide relating to the registration and reporting of water withdrawals, water conservation, and water supply planning for public water supply systems (water utilities).

This report is composed of an executive summary of the bill followed by a detailed description, starting on page 5.



Executive Summary

April 2008 Special Session Senate Bill 1 (referred to in this report as “the bill”): (1) contain Wisconsin’s ratification of the proposed Great Lakes-St. Lawrence River Basin Water Resources Compact; (2) regulates water use in the Wisconsin portion of the Great Lakes basin prior to Congressional consent to the compact; and (3) implements the compact in Wisconsin when the compact takes effect; and (4) establishes other state water use programs.

This executive summary provides background information and identifies key provisions of the compact and the implementing legislation.

BACKGROUND

In Wisconsin, approximately the eastern third of the state is in the Lake Michigan part of the Great Lakes basin, and a smaller amount of land in the north is in the Lake Superior part of the basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the compact.

The compact must be ratified in Wisconsin and by the other seven Great Lakes states through legislation and consented to by Congress. Thus far, the compact has been ratified by Illinois, Indiana, Minnesota, and New York. The compact will then establish the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) for regulating large withdrawals and consumptive uses of water within the basin. Throughout the bill, “water” includes groundwater and surface water.

The use of Great Lakes basin waters was prior to the compact addressed in the following two programs:

- The Great Lakes Charter of 1985, which is a voluntary agreement among states for cooperative management of waters of the Great Lakes. (Wisconsin adopted legislation implementing this agreement. See, for example, s. 281.35, Stats.)
- The U.S. Water Resources Development Act (WRDA) of 1986, which requires the unanimous approval of the governors of the eight Great Lakes states for any proposed out-of-basin diversion of water from the Great Lakes basin. (Presumably, Congress will amend or repeal this law when it acts on the compact.)

In 2001, the eight Great Lakes governors and the premiers of Ontario and Quebec agreed to prepare basin-wide binding agreements, such as an interstate compact, to protect and improve the quantity and quality of water in the Great Lakes.

In December 2005, the governors signed the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (the “agreement”) and called for legislative enactment of the draft compact, which was endorsed by the governors in that month.

The Joint Legislative Council created a Special Committee on Great Lakes Water Resources Compact, chaired by Senator Kedzie, to consider implementation of the compact. After many meetings between September 2006 and September 2007, the committee was adjourned without reaching a consensus on legislation. The Governor then convened a group of individuals to prepare legislation to ratify the compact. The Senate Committee on Environment and Natural Resources introduced the draft legislation as Senate Bill 523 on February 21, 2008. The Senate Committee took executive action on March 4, 2008, introducing Senate Substitute Amendment 1 and recommending it for adoption. Senator Miller introduced Senate Amendment 1 to the substitute amendment during Senate floor debate on the bill. The bill, as amended, was passed by the Senate on March 6, 2008, by a vote of Ayes, 26; Noes, 6.

For additional background information, consult the Joint Legislative Council's web site for the Special Committee on Great Lakes Water Resources Compact (2006 study committees) at <http://legis.state.wi.us/lc> and, from the September 7, 2006 meeting of the study committee, *The Great Lakes-St. Lawrence River Basin Water Resources Compact Resource Kit*.

KEY PROVISIONS OF THE BILL

Regulation and Review of Proposals to Withdraw or Divert Water From the Basin

The Great Lakes-St. Lawrence River Basin Water Resources Council (the "council"), created by the compact, consists of the governors of the eight Great Lakes states. Under the compact, the council's review and approval authority relates primarily to reviewing exceptions to the prohibition on diversions of water from within the basin to places outside the basin. The compact contains a standard of review for the council and states to use in making these decisions, the "exception standard," which the council may modify to make more or less restrictive. The council also oversees implementation of the compact, including identifying water conservation and efficiency objectives.

The compact also assigns tasks to a "regional body," created by the agreement, that consists of the members of the council and the premiers of Ontario and Quebec. The regional body provides advisory opinions on certain diversions and withdrawals but has no decision-making authority.

Any person who takes water from the basin, i.e., "withdraws" the water, that exceeds the specified amounts or diverts any amount of basin water outside of the basin or between basins of the Great Lakes must, under the compact, register with the state and provide information about the withdrawal or diversion.

With a few exceptions, new or increased diversions of water from the basin are prohibited under the compact. A diversion occurs when water is removed from the Great Lakes basin. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin. In particular, the compact authorizes the following exceptions to its general ban on new or increased diversions:

- One exception is for diversions to areas outside the basin that are within communities that are partly outside of (i.e., straddle) the boundary of the basin.
- A second exception is for transfers of water within the basin, but from the watershed of one Great Lake into another, referred to as an "intrabasin transfer."
- An additional exception from the prohibition is provided for diversions to communities that are outside the basin, but that are entirely within a county that straddles the basin limits.

The compact provides that council approval is required for the last of the three exceptions above and for large intrabasin transfers, and allows a single council member to veto the proposal.

The compact requires each of the eight Great Lakes states to regulate new and increased withdrawals and consumptive uses of water from the basin. "Consumptive use" means that water is removed and not returned to the basin, such as by evaporation. Each state sets the volume of water

withdrawn or consumed that triggers regulatory review by that state. Any proposal that exceeds the volume of water to trigger review under the compact must obtain approval from the state based on the “decision-making standard” established in the compact. The council may also modify this standard.

Implementation of the Compact

The bill implements the compact for Wisconsin in two stages. The first stage of state regulation applies prior to the ratification of the compact by the Great Lakes states and consent to the compact by Congress. These regulations are specific to Wisconsin and consist of the modification of current statutes and the enactment of new statutes. Many of these provisions are similar or identical to provisions in the compact. For example, they include that the regulation of interbasin transfers in this period is generally based on the regulation of diversions under the compact.

The second stage of state regulation establishes statutory provisions that apply commencing on the effective date of the compact and that replace the pre-compact regulations. The bill creates regulatory provisions to implement the standards imposed directly by the compact, and to adopt state policies within state discretion as authorized by the compact. Interbasin transfer approvals issued before the compact takes effect continue to be valid diversions after the compact’s effective date. The threshold for regulating a new or increased withdrawal under the compact (i.e., subjecting it to the compact decision-making standard) is essentially whether the withdrawal is at least 10,000,000 gallons per day (GPD) in any 30 consecutive days and the water loss resulting from the withdrawal is at least 5,000,000 GPD in any 90-day period.

Water Conservation

The bill establishes a statewide water conservation and efficiency program, to be administered by the DNR, the PSC, and the Commerce. Elements of this program are used as part of the regulation of interbasin transfers, diversions, and withdrawals from the waters of the Great Lakes basin under the bill. Use of water from the Upper Mississippi River basin is subject only to voluntary water conservation and efficiency measures.

Water Supply Plans

The bill establishes a new statewide requirement for water supply plans. This planning requirement applies to a public water supply system serving a population of 10,000 or more that withdraws waters from any location in the state after 2025. The bill also requires a public water supply system to prepare a water supply plan as a condition of receiving approval of a proposal for a new or increased withdrawal after the compact’s effective date, if the system serves more than 10,000 people, or for an interbasin transfer or diversion, for any size of system.

Summary of the Bill

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BACKGROUND

The governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin (the states) endorsed the final draft of the compact on December 13, 2005. The compact will take effect if and when it is ratified in substantively the same form by the legislature of each state and is consented to by the U.S. Congress. Any modification to the compact's text after the compact takes effect would also have to be ratified by each state's legislature and consented to by Congress. The compact may be terminated by a majority vote of the states.

A compact is basically an agreement among states to address a subject of common concern. Unlike some other compacts, a number of the provisions of this compact must be implemented by further law enacted by each of the member states. The compact sets the basic framework. Additional state laws or administrative rules are necessary to do the things that the compact requires. The compact gives the states broad choices in how to implement some of its provisions. For example, the compact allows states to determine the volume of water withdrawals from the Great Lakes basin that are the thresholds for state regulations. In other cases, the compact specifies regulatory requirements that a state may make more, but not less, restrictive.

Relevant Federal Law

Currently, a federal law created by the Water Resources Development Act of 1986, commonly known as WRDA, provides that no water may be diverted or exported from the Great Lakes, or any tributary of any of the Great Lakes, for use outside the Great Lakes basin unless the diversion or exporting is approved by the governor of each of the Great Lakes states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. WRDA does not contain standards or procedures that governors must use in deciding whether to approve a proposal to divert or export water.

THE GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

Legislative Determination and Ratification

The bill includes a legislative determination that it is in the interest of the state to ratify the compact. This determination also states that nothing in the section of the statutes containing the text of and ratifying the compact may be interpreted to change the application of the public trust doctrine under Wis. Const. art. IX, s. 1., or to create any new public trust rights. This determination is not part of the text of the compact, itself, ratified in this legislation.

The bill states that the compact, as codified in the statutes, is ratified and approved, as implemented and interpreted in other statutory provisions summarized below. The version of the compact in the bill is substantively the same as the version endorsed by the governors of the Great Lakes states on December 13, 2005.

Findings and Purposes

The compact sets forth a number of findings and purposes. These findings include that the “waters of the basin are precious public natural water resources shared and held in trust by the states;” and that the “parties have a shared duty to protect, conserve, restore, improve, and manage the renewable but finite waters of the basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come.” As used in the compact and this report, a “party” is one of the eight Great Lakes states that is a party to the compact.

The stated purposes of the compact include that it is to facilitate consistent approaches to water management across the basin while retaining state management authority over water management decisions within the basin; to facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation of the potential effects of proposed withdrawals and water losses; and to promote an adaptive management approach to the conservation and management of basin water resources.

Science

The compact states that the parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision-making under the compact. The compact also identifies specific elements of this strategy.

Great Lakes-St. Lawrence River Basin Water Resources Council

The compact creates the Great Lakes-St. Lawrence River Basin Water Resources Council (the “council”) consisting of the governors of the Great Lakes states. A governor may designate an alternate to act in the governor’s absence and may appoint an advisor, who may attend all meetings of the council and its committees, but who does not have any voting power on the council. The compact also specifies how the council shall be organized and conduct its business, as well as establishing the council’s jurisdiction, status, immunities, and privileges. These privileges include that the council’s property,

income, and operations are “immune” from taxation by the parties and their subdivisions and that the council may make reasonable payments in lieu of property taxes.

The council oversees the implementation of the compact and has responsibilities that include identifying and reviewing water conservation and efficiency objectives, approving certain proposals that involve diverting water from the basin of one of the Great Lakes, and reviewing the parties’ water management and water conservation and efficiency programs established under the compact.

A key component of the water use regulations in the compact is that most diversions allowed under the compact must meet the “exception standard” and withdrawals and consumptive uses exceeding state specified thresholds must meet the “decision-making standard.” The compact specifies these standards and authorizes the council to revise them and other “reviews” outlined in the compact’s water management and regulation provisions, after consultation with the provinces and upon unanimous vote of all council members, by regulation adopted after public notice and hearing and in accordance “with each party’s respective statutory authorities and applicable procedures.” The compact refers to these standards and reviews collectively as the “standard of review and decision.”

The council may also promulgate and enforce other rules and regulations “as may be necessary for the implementation and enforcement of this compact.” Regulations that do not revise part of the standard of review and decision require a simple majority vote of the council to be adopted.

Party Powers and Duties

The compact specifies that each party, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions (i.e., a “proposal”), including exceptions, in accordance with the compact. No proposal subject to the compact may be undertaken by any person unless it is approved by the party within whose jurisdiction an application for the proposal is made. The compact calls this party the “originating party.” Furthermore, no party may approve a proposal if the party determines that the proposal is inconsistent with the compact, the standard review and decision, or any implementing regulations.

If a proposal is subject to council or regional review, as described in the next section, the party may not approve the proposal unless it has first been submitted to and reviewed by either the council or regional body, or both, and approved by the council, as applicable.

Regional Review, Prior Notice, and Council Review of Proposals

The compact provides for review of some proposals by the “regional body.” This body consists of the members of the council and the premiers of Ontario and Quebec, Canada. The compact sets forth the process for the conduct of a regional review, starting with notice from the originating party to the originating body to public participation procedures, a technical review of the proposal by the originating party, and preparation of a declaration of finding by the regional body regarding the proposal. The declaration of finding is advisory to the originating party and, if applicable, the council. However, both the originating party and the council must consider it before making a decision on the proposal. The compact specifies that it shall be the goal of the regional body to conclude a regional review no later than 90 days after it receives the notice initiating the review from the originating party, unless the applicant or the originating party request a different review period.

These regional reviews apply to specific types of proposals for diversions, as described below under “Regulation of Diversions.” The compact also authorizes a majority of the members of the regional body to request regional review of a “regionally significant or potentially precedent setting proposal.”

Separate from the regional review process, the compact establishes that, beginning no later than five years after the compact’s effective date, the originating party must provide all parties and provinces and Quebec and Ontario with notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use averaging at least 5,000,000 GPD in any 90-day period. Comments under this process must address whether or not the proposal was consistent with the standard of review and decision, and the originating party must provide a response to any such comment received from another party under this provision.

In addition to the above reviews, the compact makes two types of proposals for diversions subject to council review and approval. The diversions subject to council approval are new or increased large intrabasin transfers that result in a new or increased consumptive use averaging at least 5,000,000 GPD over any 90-day period and any size new or increased diversion providing public water supply in a “community within a straddling county,” as described below. For these types of proposals, council approval must be given “unless one or more council members vote to disapprove.”

Registration, Reporting, and Water Resources Inventory

The compact requires any person who makes a withdrawal of water from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period, or who diverts any amount of basin water, to register with the state and provide information about the withdrawal or diversion. Persons who are required to register must annually report information about the monthly amounts of water withdrawn, diverted, or lost through consumptive use to the state.

Each state must also develop and maintain a water resources inventory for the collection, exchange, and dissemination of information about the water resources of the state, including their location, type, and quantity, and the use of the resources.

The compact requires the states to submit an annual report to a Great Lakes-St. Lawrence River water use database. The annual report is to contain the information gathered through registration, reporting, and the inventory.

Regulation of Diversions

A diversion is either the transfer of water out of the Great Lakes basin or the transfer of water out of the watershed of one of the Great Lakes into the watershed of another of the Great Lakes, other than the transfer of a product produced in the basin or watershed using waters of the basin. The compact generally prohibits new diversions and prohibits increases in the amount of diversions that exist when the compact takes effect. There are three exceptions to the prohibition on diversions, described below.

The compact also requires states to treat the removal of water from the Great Lakes basin in containers larger than 5.7 gallons as a diversion. The compact gives the states discretion to determine

how to regulate proposals to remove water from the basin in containers of 5.7 gallons or less (i.e., bottled water).

Straddling Communities

The first exception to the prohibition on diversions allows the transfer of water to the part of a “straddling community” that is outside of the Great Lakes basin or outside of the source Great Lakes watershed. A “straddling community” is an incorporated city, town, or the equivalent thereof, that is partly within the Great Lakes basin and partly outside of the basin when the compact takes effect, and that is wholly within a county that is partly or completely within the basin.

The accompanying map shows the Great Lakes basins in Wisconsin. Straddling communities in Wisconsin are those communities that are partly within either the Lake Superior or Lake Michigan basin, and partly within the Upper Mississippi River basin. Kenosha, Portage, and New Berlin are examples of these communities.¹

The exception for straddling communities only applies if all of the diverted water is used to supply water to the public and if an amount of water equal to the amount diverted, less an allowance for consumptive use, will be returned to the Great Lakes basin (such as through a sewage system). A consumptive use is a use of water that results in less of the water being returned to surface water or groundwater than was withdrawn (due to evaporation, for example).

The proposal must maximize the amount of water that originated in the Great Lakes basin that is returned to the basin and minimize the amount of water that originated outside of the basin that is returned to the basin. Water from outside the basin used to meet the above requirement must come from a water supply or wastewater treatment system that combines water from inside and outside of the basin and must be treated to meet water quality standards and to prevent the introduction of invasive species into the basin.

If the proposed new diversion or increase in an existing diversion to a straddling community would result from a new or increased withdrawal that averages 100,000 GPD or more in any 90-day period, the diversion must also meet the exception standard, described below. A proposal for a diversion to a straddling community that results in a very large new or increased water loss to the Great Lakes basin (5,000,000 GPD or greater average over 90 days) must also be reviewed by the regional



¹ More detailed maps showing the locations of straddling communities and communities within straddling counties in Wisconsin are presented in Legislative Council Staff Memo No. 3 to Members of the Special Committee on Great Lakes Water Resources Compact, *Maps of the Great Lakes Basin*, Revised October 4, 2007. This Memo is posted on the website for this study committee at the Legislative Council’s website at: www.legis.state.wi.us/lc.

body in the regional review process described above before the state decides whether to approve the diversion.

Intrabasin Transfers

The second exception to the prohibition on diversions is an “intrabasin transfer.” This is the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes. In Wisconsin, that would mean a transfer from the Lake Superior watershed to the Lake Michigan watershed or vice versa.

The compact allows a state to decide whether and how to regulate an intrabasin transfer that averages less than 100,000 GPD in any 90-day period.

For a larger intrabasin transfer, the exception standard applies, except that the diverted water is not required to be returned to the watershed from which it was withdrawn, unless there is a very large new or increased water loss, and it must be shown that there is no feasible, cost-effective, and environmentally sound alternative for obtaining water in the watershed to which the water will be transferred. In addition, the state must notify the other states before it decides whether to approve the intrabasin transfer. An intrabasin transfer that results in a very large new or increased water loss averaging over 5,000,000 GPD in any 90-day period, must also be reviewed by the regional body in a regional review and be approved by the council with no disapproving votes. An intrabasin transfer may be for a purpose other than supplying water to the public.

Communities Within Straddling Counties

The third exception to the prohibition on new or increased diversions is to provide water to a “community within a straddling county.” A “community within a straddling county” is an incorporated city, town, or the equivalent thereof, that is located outside the Great Lakes basin, but that is wholly within a county that is partly in the Great Lakes basin and that is not a straddling community.

The map on page 9 of Great Lakes basins in Wisconsin also depicts the counties that straddle the divides between either Lake Superior or Lake Michigan and the Upper Mississippi River basin. Communities within straddling counties are communities within those counties that neither straddle the basin divide nor are entirely within the Great Lakes basin. Examples of these communities are Wausau, Beaver Dam, and Waukesha.²

A proposal for a diversion to a community in a straddling county is only allowed under the compact if all of the following apply:

- All of the water is used solely for public water supply purposes.
- The community is otherwise without an adequate supply of potable water.

² More detailed maps showing the locations of straddling communities and communities within straddling counties in Wisconsin are presented in Legislative Council Staff Memo No. 3 to Members of the Special Committee on Great Lakes Water Resources Compact, *Maps of the Great Lakes Basin*, Revised October 4, 2007. This Memo is posted on the website for this study committee at the Legislative Council’s website at: www.legis.state.wi.us/lc.

- The diversion meets the exception standard.
- The proposal maximizes the amount of water that originated in the basin that is returned to the basin and minimizes the amount of water that originated outside of the basin that is returned to the basin.
- There is no reasonable water supply alternative in the basin in which the community is located (in Wisconsin, that would be the upper Mississippi River basin), including conservation of existing water supplies.
- The proposal is subject to management and regulation by the state that is the originating party regardless of the size of the proposal.
- The proposal is reviewed by the regional body in a regional review.
- The proposal is approved by the council with no disapproving votes.

Exception Standard

As noted above, some diversions that are approvable under the compact are subject to what the compact calls the “exception standard.” A proposal for a diversion meets the exception standard if it satisfies several criteria, including the following:

- The need for the diversion cannot be reasonably avoided through the efficient use and conservation of existing water supplies.
- The amount of water diverted will be limited to quantities that are considered reasonable for the purposes for which it is proposed.
- An amount of water equal to the amount diverted, less an allowance for consumptive use, will be returned to the watershed from which it was withdrawn. No water from outside of the Great Lakes basin may be used to satisfy this criterion, unless it:
 - Comes from a water supply or wastewater treatment system that combines water from inside and outside of that watershed.
 - Is treated to satisfy water quality standards and to prevent the introduction of invasive species in the basin.
- The diversion will result in no significant individual or cumulative adverse impacts to the quantity or quality of the water of the Great Lakes basin or related natural resources.
- “Environmentally sound and economically feasible water conservation measures” will be used to minimize the amount of water withdrawn from, and the amount of water lost to, the Great Lakes basin.

Regulation of Withdrawals and Consumptive Uses

The compact requires each state to regulate new and increased withdrawals and consumptive uses of water from the Great Lakes basin. Each state is required to set thresholds for these regulations and, subject to some guidance, is given considerable discretion in determining the scope of its regulations and the values of its thresholds. If a state fails to set threshold levels that comply with the compact's guidance by 10 years after the compact's effective date, then the compact requires that the state apply a threshold level for the management and regulation of new and increased withdrawals that average 100,000 GPD or more in any 90-day period.

Decision-Making Standard

A withdrawal that exceeds the threshold set by a state is subject to what the compact calls the "decision-making standard." The decision-making standard consists of several requirements, including the following:

- All water withdrawn will be returned to the source watershed less an allowance for consumptive use.
- The withdrawal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters of the Great Lakes basin or to related natural resources.
- Environmentally sound and economically feasible water conservation measures will be used in implementing the withdrawal or consumptive use.
- The proposed use of the water is reasonable, based on a consideration of factors specified in the compact.

Exemptions

The compact exempts from its requirements withdrawals from the Great Lakes basin for the following purposes:

- To supply water to vehicles, including boats and aircraft, for needs such as ballast water or for the needs of persons or animals being transported.
- To use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response services.

Baselines and Other Applicability Provisions

Baselines

The compact requires states to establish baselines for existing withdrawals, consumptive uses, and diversions. The effect of a baseline is to "grandfather" (i.e., allow to continue) the volume of each use that exists when the compact takes effect. For example, the decision-making standard applies when the increase in an existing withdrawal over its baseline, during a 10-year period, exceeds the threshold

amount set by the state. If a withdrawal never exceeds the baseline by the threshold amount, the decision-making standard is never applied to that withdrawal.

Under the compact, baselines may be set in only one of two ways: (1) on the basis of the actual capacity of the water withdrawal system when the compact takes effect, based on its most restrictive component; or (2) on the basis of existing withdrawal approvals (such as permits) issued by the state before the compact takes effect. (Note: the bill requires the DNR to issue water use permits before the compact's effective date in order to use the second method of setting baselines.)

Each state must furnish its list of baselines to the regional body and the council within one year after the compact's effective date.

Minimum Standards

The compact establishes that the standard of review and decision (i.e., the exception standard, decision-making standard, and reviews under the compact's water management and regulation provisions) must be used as a minimum standard and that states may impose more restrictive standards for withdrawals under their authority.

Timing of Additional Applications

The compact specifies that in an application for a new or increased withdrawal, consumptive use, or diversion whether the amount of the withdrawal, consumptive use, or diversion exceeds a regulatory threshold must be based on the cumulative amount within 10 years prior to any application for the proposal.

Change of Ownership

The compact specifies that the change in ownership of a project in and of itself does not require regional review or council approval unless the new owner proposes a project that results in a proposal for a new or increased diversion or consumptive use that is subject to regional review or council approval.

Hydrologic Considerations

The compact specifies that the basin surface water divide shall be used for managing or regulating new or increased diversions, consumptive use, or withdrawals of surface water and groundwater under the compact; the watershed of each Great Lake shall include its upstream and downstream connecting channels; and the Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

Withdrawal Systems

The compact specifies that, if multiple inputs of surface water or groundwater supply a common water distribution system, the total volume of these inputs shall be used to determine the volume of a withdrawal, consumptive use, or diversion.

Water Conservation and Efficiency

The compact specifies water conservation and efficiency goals for the Great Lakes basin and directs the council to identify water conservation and efficiency objectives for the basin based on these goals. The compact also requires each state: (1) to develop its own water conservation and efficiency goals and objectives, consistent with the goals and objectives for the Great Lakes basin; and (2) to develop and implement a water conservation and efficiency program based on its own goals and objectives. This program may be voluntary or mandatory. The compact also requires states to promote environmentally sound and economically efficient water conservation measures, such as demand-side and supply-side incentives for water conservation.

Assessment of Cumulative Impacts

The compact establishes that the parties, in cooperation with Quebec and Ontario, will collectively conduct a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from waters of the Great Lakes basin. This assessment is to be done on the basis of the watersheds of the individual Great Lakes and the St. Lawrence River basins every five years or each time that the incremental basin water loss reaches an average of 50,000,000 GPD in any 90-day period over the quantity of water loss at the time of the most recent assessment, whichever comes first, or at the request of one or more of the states. This assessment forms the basis for a review of the standard of review and decision, council and state regulations, and their application. The review must be based upon the guidance provided in the compact.

The compact specifies that the states have the responsibility for conducting this cumulative impact assessment. Applicants for proposals are not required to participate in this assessment and, unless required by other statutes, are not required to conduct a separate cumulative impact assessment in connection with their application. Applicants are required to submit information about the potential impact of their proposals to the quantity or quality of the waters and related natural resources of the source watershed.

U.S. Supreme Court Decree in *Wisconsin et al. v. Illinois et al.*

The compact specifies that, in general, withdrawals, consumptive uses, and diversions of Great Lakes water within Illinois are governed by the terms of the U.S. Supreme Court decree in *Wisconsin et al. v. Illinois et al.* and are not subject to regulation under the compact.

Illinois is subject to the compact's provisions on registration, reporting and water resource inventory, and on water conservation and efficiency programs. In addition, decisions by the State of Illinois regarding a proposal for a diversion of Great Lakes basin water for use outside of the State of Illinois are subject to the water management and regulations in the compact.

Public Participation

The compact requires the states and the council to have specified procedures that facilitate public participation in the review of proposals for diversions, consumptive uses, and withdrawals that are regulated under the compact. The compact also requires states, the regional body, and the council to consult with federally recognized American Indian tribes concerning proposals for which council

approval or regional review is required. The council must also seek to establish mutually agreed upon processes to facilitate dialogue with, and input from the tribes.

Dispute Resolution

The compact includes procedures for appealing decisions made by the council and by the states under the compact, including alternative dispute resolution for disputes among the parties, and procedures to compel compliance with the compact regulation of new or increased withdrawals, consumptive uses, and diversions.

Relation to Other Rights, Laws, and Agreements

The compact lists the relationship of the compact and approvals under it to other rights, laws, treaties, and international agreements. These provisions include that nothing in the compact shall be construed to impair any rights validly established before the compact's effective date under state or federal law governing the withdrawal of waters of the Great Lakes basin or to affect or interfere with a party's law relating to common law water rights. Also, an approval by a state or the council under the compact does not give any property rights or exclusive privileges.

In addition, the compact states that nothing in it shall be construed to repeal, modify, or qualify the authority of a state to enact any legislation or enforce additional conditions or restrictions regarding the management and regulation of waters within its jurisdiction.

Amendments and Duration

The compact states that its provisions remain in full force and effect until amended by full action by the governing bodies of the parties who consented and approved by any other necessary authority (i.e., the U.S. Congress) in the same manner as the compact is required to be ratified to become effective.

Once effective the compact continues in force and remains binding upon each party unless terminated. The compact may be terminated by a majority vote of the parties. If it is terminated, all rights established under it continue unimpaired.

Effectuation and Effective Date

The governor is authorized to take such action as may be necessary and proper to effectuate the compact and the initial organization and operation of it, consistent with the post-compact implementation statute, described below, created by the bill.

The compact becomes effective when ratified through concurring legislation by the Great Lakes states and consented to by the U.S. Congress.

PRE-COMPACT STATE REGULATIONS

Some provisions of the bill take effect before the compact is ratified by the states and approved by Congress. These provisions stay in effect if the compact never goes into effect. They are "sunset"

when the compact goes into effect. The bill places these provisions in one section of the statutes, s. 281.344, that is referred to in this report as the pre-compact implementation statute.

Determinations Concerning Applicability of Requirements

The bill specifies a number of determinations concerning the applicability of requirements in the pre-compact implementation statute, including the following:

- The surface water divide shall be used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.
- The interbasin transfer or withdrawal of water from one or more sources within the Great Lakes basin to supply a single “facility” or “public water supply” system shall be considered one interbasin transfer or withdrawal.
- Nothing in this statute may be interpreted to change the application of the public trust doctrine under Wis. Const. art. IX, s. 1, or to create any new public trust rights.
- The DNR may not change its historic interpretation or application of the federal law created by WRDA, that prohibits a diversion of water from the Great Lakes for use outside of the Great Lakes basin unless such diversion is approved by the governor of each of the Great Lakes states, until that provision is amended. The DNR must evaluate all applications for interbasin transfers using the requirements in the pre-compact implementation statute applicable to interbasin transfers and shall apply those requirements uniformly. In this provision, “historic” means made before the provision’s effective date.

Statewide Registration and Reporting of Withdrawals and Interbasin Transfers

The bill requires any person in this state who, three years after the bill becomes law, has a water supply system with the capacity to make a withdrawal of water that averages 100,000 GPD or more in any 30-day period (such as a high capacity well) to register the withdrawal with DNR and provide the specified information about the system and the withdrawal. A person may register an existing withdrawal before this deadline. Any person who proposes to start a withdrawal with that capacity more than three years after this bill becomes law must also register with DNR.

If a person who is required to register a withdrawal actually withdraws an average of 100,000 GPD or more in any 30-day period, the person must annually report to DNR information about the withdrawal, including the monthly volume of water withdrawn.

In addition, the bill requires any person who transfers water out of the Great Lakes basin or transfers water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes to register with DNR. The bill calls such a transfer an “interbasin transfer” in the portions of the bill that apply before the compact takes effect and a “diversion” in the parts of the bill that apply once the compact takes effect. A person who makes an interbasin transfer must also annually report information about the transfer to DNR.

Regulation of Interbasin Transfers

Approval Required

Beginning on enactment, the bill generally prohibits new interbasin transfers, other than those for which DNR is required to issue automatic approvals, and also generally prohibits increases in existing interbasin transfers. There are three exceptions to the prohibition, which generally apply in the same situations as the exceptions to the prohibition on diversions in the compact, described above. The bill requires an approval from DNR for any of these exceptions.

Each interbasin transfer approval must specify an interbasin transfer amount. Any increase in the amount of an interbasin transfer over the interbasin transfer amount is subject to the restrictions described below on increases in interbasin transfers.

Automatic Approval for Existing Interbasin Transfers

The bill requires DNR to automatically issue an approval to a person who operates a public water supply system receiving water from an interbasin transfer that begins before the compact takes effect if the public water supply system delivers the water to customers in an area that is outside of the Great Lakes basin and that is in a sewer service area that provides for return of wastewater to the Great Lakes basin, as authorized in the sewer service area provisions of an areawide water quality management plan approved by DNR before December 31, 2007.

The DNR must determine the initial interbasin transfer amount for a public water supply system entitled to an automatic permit to be the amount of water necessary to provide water for public water supply services in the area described above.

The bill also directs DNR to automatically issue before the compact's effective date an approval for a person making an interbasin transfer that begins before the bill's effective date and that is not for a public water supply. An example of such a transfer is an irrigation system that withdraws water in the Lake Michigan basin and sprays the water on a field in the Upper Mississippi River basin. The DNR must specify an initial interbasin transfer amount in these approvals using the process and standards to determine an initial withdrawal amount, described below.

New and Increased Interbasin Transfers, Generally Applicable Provisions

Some public water supply systems buy water from other entities, which actually withdraw the water. For an interbasin transfer made for the purpose of supplying water to the public, the bill requires the person operating the public water supply system that receives the water from the transfer to obtain the approval from DNR.

If an applicant for approval of a new or increased interbasin transfer will not be the person who withdraws the water from the Great Lakes basin, the bill requires the applicant to identify any entities that may withdraw the water and provide evidence of support from each of these entities. Similarly, if an applicant for a new or increased interbasin transfer will not directly return the water to the Great Lakes basin, the applicant must identify any entities that may return the water and provide evidence of

support from these entities. In both of these situations, the evidence of support maybe in the form of a letter or resolution.

If DNR receives an application for a permit or approval for a structure on the bed of a navigable water, a water supply or wastewater facility plan, or a discharge to the waters of the state that relates to the return of water transferred from the Great Lakes basin under an interbasin transfer and if this return flow is to the source watershed through a stream tributary to one of the Great Lakes, then DNR must provide notice of the application to the governing body of each city, village, and town through or by which the stream flows downstream from the point at which the return flow would enter the stream. (The provisions implementing this requirement also apply to return waters returned from a diversion after the compact's effective date and are not part of the pre-compact implementation statute.)

If a proposal for a new or increased interbasin transfer is used to provide water to a public water supply system, the proposal must be consistent with an approved water supply plan, described below, that covers the system.

The interbasin transfer amount for a new or increased interbasin transfer is the quantity of water that DNR determines is reasonable for the purposes for which the interbasin transfer is made.

The bill also provides procedures for public participation in the review of proposals for new and increased interbasin transfers.

Straddling Communities

The first exception to the prohibition on new or increased interbasin transfers allows the transfer of water to the part of a straddling community that is outside of the Great Lakes basin.

In the pre-compact implementation statute, a "straddling community" is a city, village, or town that is partly within the Great Lakes basin and partly outside of the basin, but that is wholly within a county that is partly within the basin.³

The exception only applies if the specified requirements are met, which are the same as the requirements in the compact for a diversion to a straddling community, including that all of the transferred water is used to supply water to the public. If the proposed new or increased interbasin transfer would result from a new or increased withdrawal that averages 100,000 GPD or more in any 90-day period, the interbasin transfer must also meet the exception standard, described below.

The bill specifies that DNR must determine whether a proposal meets these requirements through the water supply planning process for public water supplies described below. The application of the exception standard in this process to a proposal for transferring water to a straddling community is described below under "Exception Standard."

³ The definition of a straddling community in this statute also includes a city, village, or town partially within the watersheds of two of the Great Lakes based on the compact's definition of "straddling community," but that situation would require a physically split community to occur in Wisconsin because the Lake Superior and Lake Michigan basins do not share a common divide in Wisconsin.

Intrabasin Transfers

The second exception to new or increased interbasin transfers authorizes DNR to approve an intrabasin transfer from the Lake Superior watershed to the Lake Michigan watershed or vice versa. The DNR may approve such a transfer that will average less than 100,000 GPD over 90 days if the proposal satisfies the requirements under laws related to high capacity wells, the withdrawal of water from streams, or the approval of plans for public water supply systems or, if none of those laws apply, if the proposal satisfies the requirements set by DNR by rule. In addition, if the water will be used for public water supply purposes, the proposal must be consistent with an approved water supply plan.

For a larger intrabasin transfer, the exception standard applies, except that the transferred water is not required to be returned to the watershed from which it was withdrawn (unless there is a new or increased water loss averaging at least 5,000,000 GPD in any 90-day period), and it must be shown that there is no feasible, cost-effective, and environmentally sound alternative for obtaining water in the watershed to which the water will be transferred including conservation of existing water supplies. If the water will be used for public water supply purposes, the proposal must be consistent with an approved water supply plan.

Communities Within Straddling Counties

The third exception to the prohibition on new or increased interbasin transfers is to provide water for a public water supply to a community within a straddling county or to the portion of a community that is in a straddling county if the community is located partly within a straddling county and partly outside the Great Lakes basin. A “community within a straddling county” is a city, village, or town, no part of which is in the Great Lakes basin, but that is wholly within a county that is partly in the Great Lakes basin. A “straddling county” is a county that lies partly within the Great Lakes basin. Examples of the second types of communities for which the portion in a straddling county could receive water under this exception include Watertown, Mukwonago, and Burlington.

An interbasin transfer to one of these types of communities is only allowed under the bill if all of the following apply:

- All of the water is used to supply water to the public.
- The community is “without an adequate supply of potable water,” as defined in the pre-compact implement statute.
- The interbasin transfer meets the exception standard.
- The proposal maximizes the amount of water that originated in the basin that is returned to the basin and minimizes the amount of water that originated outside of the basin that is returned to the basin.
- There is no “reasonable water supply alternative,” as defined in the pre-compact implementation statute, in the basin in which the community is located, including conservation of existing water supplies.
- The proposal is consistent with an approved water supply plan.

The bill specifies that DNR must determine whether a proposal meets these requirements through the water supply planning process for public water supplies described below. The application of the exception standard in this process to a proposal for transferring water to one of these communities is described in the next section.

Exception Standard

As explained above, many of the interbasin transfers that may be approved under the above exceptions must meet the exception standard as a condition of the approval. The exception standard in the pre-compact implementation statute contains requirements identical or similar to those in the exception standard in the compact, described above, and two additional requirements. First, the place at which the water is returned to the Great Lakes basin must be as close as practicable to the place at which the water is withdrawn, unless that would not be cost-effective, environmentally sound, or in the interest of public health. Second, if the water is returned through a stream tributary to Lake Michigan or Lake Superior, the physical, chemical, and biological integrity of the stream must be protected and sustained, as required under laws relating to the placement of structures on the beds of navigable waters, water quality standards, and discharges to waters of the state (ss. 30.12, 281.15, and 283.31, Stats.), considering the state of the receiving water before the proposal is implemented, and both high and low flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings caused by this return flow.

The bill establishes two approaches for DNR to determine whether a proposal meets the exception standard. For a proposal to transfer water to a straddling community; a community within a straddling county; or a portion of a community partly in a straddling county, where another part of the community is outside of the Great Lakes basin; DNR must consider the items in the exception standard as factors in the cost-effectiveness analysis in the water supply planning process for public water supplies applicable to the proposal. For a proposal for an intrabasin transfer, DNR must apply the items in the exception standard individually to the proposal.

Regulation of Withdrawals in the Great Lakes Basin

Permit Requirement

The bill prohibits a person from making a withdrawal of water from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period unless the withdrawal is covered by a general water use permit (i.e., for a class of withdrawals) or an individual water use permit (i.e., for that particular withdrawal). This requirement takes effect seven years after the bill becomes law. The bill authorizes DNR to begin issuing permits before the date on which permits are required for existing withdrawals.

Withdrawal Amounts – Purpose and Initial Amounts

Each withdrawal that is covered by a permit must have a withdrawal amount. The withdrawal amount on the compact's effective date is the baseline for the withdrawal. Withdrawal amounts are used to determine when a withdrawal has increased by the threshold amount that triggers certain requirements, as described below, and are not regulatory limits that specify the maximum amount of water that a withdrawal may withdraw. In particular, the bill specifies that it is not a violation of the

water withdrawal provisions in the pre-compact implementation statute to withdraw an amount of water that exceeds the withdrawal amount for a withdrawal.

The bill requires DNR to determine initial withdrawal amounts for existing withdrawals. Generally, the department estimates an initial withdrawal amount based on the maximum capacity of the most restrictive part of an existing water supply system. If DNR has issued an approval for the water supply system under another statute and that approval contains a limit on the amount of water that may be withdrawn, DNR provides an estimate equal to that limit. If a facility is supplied by water from more than one source, then DNR must add their respective capacities or limits together in developing its estimate of the initial withdrawal amount.

After a person making a withdrawal receives an estimate from DNR, the person may provide information to DNR relating to matters such as plans for expanding the capacity of the water supply system and successful water conservation efforts by persons using the water that is withdrawn. The DNR then determines an initial withdrawal amount for a withdrawal based on the estimate and its evaluation of any relevant information provided by the person making the withdrawal.

For a public water supply system that has approval under current law to transfer water from the Great Lakes basin to supply water to the public in an area outside of the basin and that has approval to return the wastewater that results from the use of that water to the Great Lakes basin through its sewage system, the initial withdrawal amount is the amount of water necessary to provide water for public water supply purposes in the sewer service area for that sewage system specified in the areawide water quality management plan approved by DNR before December 31, 2007.

General Permits

The bill requires DNR to issue one or more general water use permits to cover withdrawals from the Great Lakes basin that average 100,000 GPD or more in any 30-day period, but that do not equal 1,000,000 GPD for any 30 consecutive days. The DNR may waive the requirement to obtain coverage under a general water use permit for a person making a withdrawal that is covered by a permit issued under s. 30.18 (2) (a), Stats., for diversion of water from a stream in the state for the purposes of agriculture, irrigation, or to maintain and restore the normal level of a navigable lake or the normal flow of a navigable stream.

A general permit covers numerous withdrawals with similar characteristics, as specified by DNR. A general permit has a 25-year term. The DNR is required to include in each general permit:

- A reference to its database of withdrawal amounts for withdrawals covered by the permit.
- Requirements, as provided in rules promulgated by DNR, for:
 - Estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring.
 - Water conservation.

The bill requires DNR to automatically issue a notice of coverage under a general permit to every person who makes a withdrawal from the Great Lakes basin that averages 100,000 GPD or more

in any 30-day period, but that does not equal 1,000,000 GPD for any 30 consecutive days and who complies with the registration and reporting requirements in the bill before the date on which the permit requirement applies. In the automatic notice of coverage, DNR specifies a withdrawal amount equal to the initial withdrawal amount determined under the procedures described above.

A person who proposes to begin a withdrawal, after the date on which the permit requirement applies, but before the compact takes effect, that averages 100,000 GPD or more in any 30-day period, but that does not equal 1,000,000 GPD for any 30 consecutive days must apply to DNR for coverage under a general permit. Generally, if DNR determines that the withdrawal qualifies for coverage under a general permit and DNR has issued any approvals that are required under other laws for the withdrawal, such as high capacity well approvals or approvals for any structures on the bed of a navigable water that are needed for the withdrawal, DNR must issue a notice of coverage under the general permit. In the notice, DNR specifies a withdrawal amount equal to the lesser of the capacity of the most restrictive component that will be used in the water supply system or any limit on the amount of water that may be withdrawn specified in other approvals needed for the withdrawal. If a facility is served by withdrawals from more than one source, the withdrawal amounts for each source are added together to establish the withdrawal amount for the facility.

If the withdrawal is for the purpose of providing water to a public water supply system that is covered by an approved water supply plan⁴, the requirement for previous issuance of other approvals that are needed for the withdrawal does not apply, but DNR may not issue a notice of coverage unless the withdrawal is consistent with that plan. For such a withdrawal, DNR specifies a withdrawal amount equal to the withdrawal amount in the water supply plan. The withdrawal amount in a water supply plan is generally the amount that DNR determines is needed to provide a public water supply in accordance with the plan during the period covered by the plan.

The bill authorizes DNR to require a person who would otherwise qualify for coverage under a general permit to obtain an individual permit if the withdrawal is located in a groundwater protection area or a groundwater management area, as identified in the groundwater withdrawal statute, s. 281.34, Stats.

If a person making a withdrawal that is covered by a general permit proposes to increase the amount of the withdraw over the withdrawal amount specified by DNR, but does not propose to withdraw at least 1,000,000 GPD for any 30 consecutive days, the person must apply to DNR for modification of the withdrawal amount. The conditions for increasing the withdrawal amount are the same as the conditions for granting coverage under a general permit.

Coverage under a general permit ends on the date that the term of the general permit ends. A person who intends to continue a withdrawal covered by a general permit must apply for redetermination of coverage under a new general permit at least 180 days before the end of the term of the current general permit. If the person is in substantial compliance with the current general permit and

⁴ This situation could arise, for example, if the public water supply system voluntarily prepared a plan and the plan is approved by DNR before the compact's effective date or if the system is covered by a regional water supply plan approved before the compact's effective date.

the withdrawal qualifies for coverage under the new general permit, DNR must issue a notice of coverage under the new general permit.

Individual Permits

The bill requires a person who makes a withdrawal from the Great Lakes basin that equals at least 1,000,000 GPD for any 30 consecutive days to have an individual water use permit. DNR must include in an individual permit a withdrawal amount, and, in accordance with rules promulgated by DNR, requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, reporting the results of the estimating and monitoring, water conservation, and limits on the locations, dates, and seasons of the withdrawal and on the allowable uses of the water.

The bill requires DNR to automatically issue an individual permit to every person who makes a withdrawal from the Great Lakes basin that equals 1,000,000 GPD for any 30 consecutive days and who complies with the registration and reporting requirements in the pre-compact implementation statute before the date on which the permit requirement applies. In the permit, DNR specifies a withdrawal amount equal to the initial withdrawal amount determined as described above.

A person who proposes to begin a withdrawal, after the date on which the permit requirement applies, that equals 1,000,000 GPD for any 30 consecutive days, must apply to DNR for an individual permit. Generally, if DNR has issued any approvals that are required under other laws for the withdrawal, such as high capacity well approvals or approvals for any structures on the bed of a navigable water that are needed for the withdrawal, DNR must issue an individual permit. In the permit, DNR specifies a withdrawal amount that is determined in the same manner as for general permits, as described above.

If the withdrawal is for the purpose of providing water to a public water supply system that is covered by an approved water supply plan, the requirement for previous issuance of other approvals that are needed for the withdrawal does not apply, but DNR may not issue a permit unless the withdrawal is consistent with the water supply plan. For such a withdrawal, DNR specifies a withdrawal amount equal to the withdrawal amount in the water supply plan.

If a person with an individual permit proposes to increase the amount of the withdrawal over the withdrawal amount in the permit, the person must apply to DNR for modification of the permit to increase the withdrawal amount. The conditions for increasing the withdrawal amount are the same as the conditions for issuing the individual permit.

An individual permit has a 10-year term. A person who intends to continue a withdrawal covered by an individual permit must apply for reissuance of the permit at least 180 days before the end of the current permit term. If DNR determines that the person is in substantial compliance with the individual permit and that the withdrawal continues to qualify for an individual permit, DNR must reissue the permit.

An individual permit is not transferable except after notice to DNR and after the person who proposes to assume control over a permitted withdrawal files with DNR a permit application and a statement of acceptance of the permit. The DNR may require modification or revocation and reissuance of the permit to change the name of the permittee.

Interim Approvals

The bill specifies that, if a person making a withdrawal subject to the water use permitting requirements in the pre-compact implementation statute registers the withdrawal and files the required reports and DNR does not automatically issue a notice of coverage under a general water use permit or an individual water use permit for the withdrawal before the compact's effective date, the registration of the withdrawal constitutes an approval for the purposes of the compact's requirement that a baseline for an existing withdrawal be established as of the effective date of the compact. The withdrawal amount under this approval is the sum for each water supply system used for the withdrawal of the lower of the estimated maximum hydraulic capacity of the most restrictive component in the system, as reported in the registration, or any limit on the amount of the withdrawal by the system in an approval under other state water regulations.

Emergency Orders

The bill authorizes DNR to issue an emergency order to a person who has been issued an individual water use permit or notice of coverage under a general water use permit to immediately stop the withdrawal if the department determines that there is a danger of imminent harm to the public health, safety, or welfare, to the environment, or to the water resources or related land resources of the state.

Statewide Water Conservation and Efficiency

The bill requires DNR to specify water conservation and efficiency goals for all of the waters of this state. The bill also requires DNR to develop and implement a statewide water conservation and efficiency program that includes:

- The promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.
- Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement interbasin transfer approvals and general and individual water use permits under the pre-compact implementation statute and the water supply planning process described below.
- Water conservation and efficiency measures required or authorized by the Commerce in the state plumbing code and other regulations and by the PSC for water utilities.

The DNR must consult with Commerce and the PSC in specifying the goals and objectives and in developing and implementing the program.

The bill also requires DNR to promulgate rules specifying water conservation and efficiency measures for the purposes of implementing the programs described above. In the rules, DNR may not require retrofitting of existing fixtures, appliances, or equipment.

Water Use Report

The bill directs DNR beginning no later than eight years after the effective date of the provision and every five years thereafter, using water data reported under the provisions described above and under other water regulatory laws to publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use.

Penalties

The bill establishes that any person who violates the pre-compact implementation statute described above, or any rule promulgated or approval issued under these provisions, shall forfeit not less than \$10 nor more than \$10,000 for each violation. Each day of continued violation is a separate offense.

In addition to the above forfeitures, the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

POST-COMPACT STATE REGULATIONS

The bill contains a number of provisions that only apply after the compact's effective date. If the compact is never ratified by all of the Great Lakes states and approved by the U.S. Congress, these provisions will not go into effect. The bill places these provisions in one section of the statutes, s. 281.346, that is referred to in this report as the post-compact implementation statute.

Baselines and Other Determinations Concerning Applicability of Requirements

The bill repeats in the post-compact implementation statute most of the determinations concerning the applicability of requirements that are in the pre-compact implementation statute, including the determination regarding the public trust doctrine. The post-compact implementation statute does not contain the determination relating to the historic interpretation or application of WRDA.

In addition, the post-compact implementation statute establishes that regional review or council approval is not required when there is a change of ownership of a water supply system that withdraws, diverts, or consumptively uses waters of the Great Lakes basin unless the new owner proposes a change that is otherwise subject to this review or approval.

The post-compact implementation statute also specifies the following baselines:

- For a withdrawal covered by a general permit issued under the pre-compact implementation statute, the withdrawal amount specified for the withdrawal in DNR's database of withdrawals under general permits on the compact's effective date.
- For a withdrawal subject to an individual permit issued under the pre-compact implementation statute, the withdrawal amount specified in the permit on the compact's effective date.

- For a withdrawal subject to an interim approval under the pre-compact implementation statute, the withdrawal amount specified in that approval.
- For a consumptive use for which DNR has specified an authorized base level of water loss under the statute regulating water losses, the amount of that authorized base level on the compact's effective date.
- For a diversion for which DNR has issued an interbasin transfer approval under the pre-compact implementation statute, the interbasin transfer amount specified in the approval on the compact's effective date.

The bill directs DNR to provide a list of the baseline volumes determined under the above specifications to the council and regional body no later one year after the compact's effective date.

Statewide Registration and Reporting of Withdrawals and Diversions

The statewide requirements for registration and reporting of withdrawals and interbasin transfers created by the pre-compact implementation statute continue after the compact takes effect for withdrawals and diversions.

Regulation of Diversions

Under the bill, the general prohibition on new interbasin transfers and on increases in existing interbasin transfers and the three exceptions to the prohibition in the pre-compact implementation statute continue to apply to new and increased diversions after the compact takes effect. The pre-compact standards for approval by DNR for new or increasing interbasin transfers apply to new or increased diversions, but for some diversions, different review procedures and new requirements also apply, as described below. In addition, the post-compact implementation statute does not contain the water supply planning process based procedures or the consideration of items in the exception standard in the cost-effectiveness analysis in this process for diversions supplying water to straddling communities, communities within straddling counties, and parts of communities in straddling counties, as set forth in the pre-compact implementation statute for comparable interbasin transfers.

The bill does not treat a proposal to remove water from the basin in containers of 5.7 gallons or less (bottled water) as a diversion. The provisions relating to withdrawals, described below, apply to such a proposal.

Straddling Communities

In addition to the requirements that apply before the compact takes effect, a proposal for a diversion to a straddling community that results in a very large new or increased water loss to the Great Lakes basin must be reviewed by the regional body before DNR decides whether to approve the proposal.

Intrabasin Transfers

In addition to the requirements that apply before the compact takes effect, a proposal for an intrabasin transfer that results in a new or increased water loss to the Great Lakes basin averaging at least 5,000,000 GPD in any 90-day period must be reviewed by the regional body and DNR may not approve the proposal unless the council approves the proposal with no disapproving votes.

Communities Within Straddling Counties

In addition to the requirements that apply before the compact takes effect, a proposal for a diversion to a community within a straddling county or to the portion of a community in a straddling county, where another part of the community is in a county not in the Great Lakes basin, must be reviewed by the regional body and DNR may not approve the proposal unless the council approves the proposal with no disapproving votes.

Regulation of Withdrawals in the Great Lakes Basin

Permit Requirement

The permitting requirement for a withdrawal of water from the Great Lakes basin that averages 100,000 GPD or more in any 30-day period continues after the compact takes effect. A notice of coverage under a general permit or an individual permit issued under the pre-compact implementation statute continues to be valid, but post-compact decision-making standards apply to withdrawals that are proposed to be increased by one of the threshold amounts, as described below.

General Permits

The provisions relating to coverage under a general permit generally do not change after the compact takes effect. However, after the compact takes effect, DNR may not issue a notice of coverage under a general permit for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the withdrawal is covered by an approved water supply plan.

Individual Permits

The process for issuing, modifying, or reissuing individual water supply permits does not generally change when the compact takes effect. For a new or increased withdrawal after the compact's effective date of at least 1,000,000 GPD for 30 consecutive days for a public water supply system, the DNR reviews the withdrawal as part of its review and approval of a water supply service plan that provides for the withdrawal using the same standards as described below that apply to individual permits.

After the compact takes effect, the bill conditions the issuance of an individual permit for a new withdrawal that equals at least 1,000,000 GPD, but less than 10,000,000 GPD, for any 30 consecutive days on compliance with the state decision-making standard, described below. In general, the bill conditions the issuance of an individual permit for a new withdrawal that equals at least 10,000,000 GPD for any 30 consecutive days on compliance with the compact decision-making standard. However,

if the applicant demonstrates, using procedures specified by DNR by rule, that the water loss associated with the new withdrawal will average less than 5,000,000 GPD in every 90-day period, then the state decision-making standard rather than the compact decision-making standard applies to the withdrawal.

If a person proposes to increase the amount of a withdrawal that is covered by a water supply permit so that it equals at least 1,000,000 GPD, but not 10,000,000 GPD, for any 30 consecutive days over the withdrawal amount for the withdrawal as of the beginning of the current permit term, the compact's effective date, or the last date on which the state or compact decision-making standard was applied to an increase in the withdrawal, whichever is latest, approval of the increase is conditioned on compliance with the state decision-making standard. In general, if a person proposes to increase the amount of a withdrawal that is covered by a water supply permit so that it equals at least 10,000,000 GPD for any 30 consecutive days over the withdrawal amount for the withdrawal as of the beginning of the current permit term, the compact's effective date, or the last date on which the compact decision-making standard was applied to an increase in the withdrawal, whichever is latest, approval of the increase is conditioned on compliance with the compact decision-making standard. However, as for a new withdrawal, if the applicant demonstrates that the water loss associated with the increased withdrawal will average less than 5,000,000 GPD in every 90-day period, then the state decision-making standard applies.

Prior Notice; Regional Review

If a proposal will result in a new water loss or an increase in water loss that averages 5,000,000 GPD or more in any 90-day period, DNR is required to provide notice of the proposal to the other states and to Ontario and Quebec.

Also, if a majority of the members of the regional body request regional review of a regionally significant or potentially precedent setting proposal for a withdrawal and DNR determines the proposal is subject to regional review, DNR must conduct a technical review of the proposal and submit it for regional review. The DNR may not determine that the proposal is subject to regional review unless it will result in a water loss averaging more than 5,000,000 GPD in any 90-day period. If DNR submits the proposal for regional review, DNR cannot act on the proposal until it has been reviewed by the regional body and the DNR has considered the regional declaration of finding from that review, or until 90 days after the department submits the proposal for regional review, whichever is sooner.

State Decision-Making Standard

A proposal meets the state decision-making standard if it satisfies several criteria, including the following:

- The amount of the withdrawal is needed to meet the projected needs of the persons who will use the water.
- Cost-effective conservation practices will be implemented to ensure efficient use of the water.
- One of the following applies:

- The withdrawal will cause no significant adverse environmental impacts to the waters of the state.
- If the withdrawal is from a surface water body, the withdrawal will not result in the violation of water quality standards or impair fish populations.
- DNR has issued an approval for the withdrawal under laws related to high capacity wells, the withdrawal of water from streams, or the placement of structures in navigable waters.

Compact Decision-Making Standard

What the bill calls the compact decision-making standard is similar to the decision-making standard in the compact itself. A proposal meets the compact decision-making standard if it satisfies several criteria, including the following:

- The withdrawal will not result in significant adverse individual or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin, to related natural resources, or, if the withdrawal is from a stream tributary to one of the Great Lakes, to the watershed of that stream.
- Environmentally sound and economically feasible water conservation measures will be used in implementing the withdrawal.
- The proposed use of the water is reasonable, based on a consideration of specified factors.

Interim Approvals

Before DNR issues an automatic notice of coverage under a general permit or an automatic individual permit for a withdrawal in the Great Lakes basin that is covered under an interim approval under the pre-compact implementation statute, the bill directs DNR to determine the withdrawal amount for the withdrawal. The procedure for DNR to determine a withdrawal amount under this provision is comparable to the procedure used by the department to determine withdrawal amounts for existing withdrawals subject to automatic coverage under a general permit or an automatic individual permit under the pre-compact implementation statute. The bill specifies that for purposes of water withdrawal regulations under the post-compact implementation statute, a withdrawal amount determined under these provisions is considered to be the withdrawal amount for the withdrawal as of the compact's effective date, i.e., the baseline for the withdrawal.

The bill also directs DNR to automatically issue a notice of coverage under a general permit to a person who makes a withdrawal that is covered by an interim approval under the pre-compact implementation statute if the withdrawal averages 100,000 GPD or more in any 30-day period but is less than 1,000,000 GPD for any 30 consecutive days. This notice must include the withdrawal amount determined under the above procedures. Similarly, DNR must automatically issue an individual permit to a person who makes a withdrawal that is covered by an interim approval under the pre-compact implementation statute if the withdrawal equals at least 1,000,000 GPD for any 30 consecutive days. In this permit, DNR must specify the withdrawal amount determined under the above procedures.

Exceedances

The bill specifies that it is not a violation of the water withdrawal provisions in the post-compact implementation statute to withdraw an amount of water that exceeds that withdrawal amount specified in an individual permit or the database of withdrawal amounts for withdrawals covered by a general permit, unless the amount by which the withdrawal exceeds the withdrawal amount would result in the application of the state or compact decision-making standard.

Statewide Water Conservation and Efficiency

The requirements for a statewide water conservation and efficiency program and related program elements specified in the pre-compact implementation statute continue to apply after the compact takes effect. The bill also requires DNR to specify water conservation and efficiency goals and objectives for the waters of the Great Lakes basin in the state that are consistent with the goals in the compact and the objectives specified by the council. Within two years after the compact's effective date, DNR must implement a water conservation and efficiency program for all users of waters of the Great Lakes basin that is designed to achieve those goals and objectives.

Public Participation

The bill includes procedures that facilitate public participation in the review of proposals for diversions, proposals for withdrawals for which individual permits are required if the state or compact decision-making standard applies to the withdrawal, proposed general permits, and proposed water supply plans. The bill also requires consultation with a federally recognized American Indian tribe concerning a proposal that may affect the tribe for which council approval or regional review is required.

Information, Reports, and Assessments

The bill directs DNR to develop and maintain a water resources inventory of the waters of the state no later than six years after the provision's effective date or five years after the compact's effective date, whichever is later. Beginning within five years after the compact's effective date, DNR must annually report to the council the information from this inventory regarding withdrawals that average 100,000 GPD or more over a 30-day period, including consumptive uses, in the Great Lakes basin and any diversions, as well as the amounts of withdrawals, water losses from consumptive uses, and diversions in the Great Lakes basin reported to DNR under the reporting requirements described above.

Beginning no later than one year after the compact's effective date and every five years thereafter, DNR must submit a report to the council and the regional body describing the implementation of the water management programs and regulations under the post-compact implementation statute, including the manner in which withdrawals from the Great Lakes basin are managed, how criteria for permits and approvals are applied, and how conservation and efficiency measures are implemented. The DNR must also annually assess the effectiveness of the water conservation and efficiency program described above in meeting the Great Lakes basin water conservation and efficiency goals established by the compact. In each assessment, DNR must consider whether there is a need to adjust the Great Lakes basin water conservation and efficiency program in response to new demands for water from the basin, and the potential impacts of the cumulative effects of diversions, withdrawals, and consumptive uses,

and of climate. The DNR must provide this assessment to the council and regional body and make it available to the public.

No later than five years after the compact's effective date, DNR must submit to the Legislature a report analyzing the impact of the threshold for an individual water use permit (at least 1,000,000 GPD for any 30 consecutive days) and providing any recommendations to change the threshold.

Beginning no later than eight years after the effective date of this provision, or five years after the last report published under the pre-compact implementation statute, whichever is earlier, and every five years thereafter DNR must continue to publish the water use report first required under the pre-compact implementation statute.

Penalties

The bill creates the same penalty provisions in the post-compact implementation statute as those in the pre-compact implementation statute.

REGULATION OF WATER LOSS UNDER PRIOR STATEWIDE LAW

1985 Wisconsin Act 60 established statewide regulations that require DNR to approve a new withdrawal or an increase in the amount of an existing withdrawal that results in a water loss averaging more than 2,000,000 GPD in any 30-day period. These regulations apply to a person beginning the new or increased withdrawal who is subject to the permit requirement under s. 30.18 for specified diversions from lakes and streams, high capacity well approvals under s. 281.34 or 281.17 (1), 2001 Stats., or plan approvals under s. 281.41 for water supply and wastewater treatment systems. These regulations specify that the water loss approval is incorporated into one of these other permits or approvals. For purposes of these regulations, a water loss is a loss of water from a consumptive use or a diversion of water from the Great Lakes basin or the Upper Mississippi River basin.

The bill continues these water loss regulations and amends them to conform with the new regulation of withdrawals, interbasin transfers, and diversions created by the bill. These amendments expand the applicability of the water loss regulations to also apply to a person subject to individual water use permitting requirements in the pre- and post-compact implementation statutes. If a withdrawal is subject to an individual water use permit, the amendments also make that permit the vehicle for prescribing the terms of the water loss approval when the withdrawal is subject to one or more of the other approvals or permits identified above.

The water loss regulations specify that any person other than to whom a water loss approval has been issued and who may be adversely affected by a proposed modification of the water loss approval is entitled to a contested case hearing before the modification takes effect. The bill deletes the requirement in this provision that the contested case hearing must be before the modification takes effect.

WISCONSIN REPRESENTATIVE ON THE COUNCIL; LEGISLATIVE OVERSIGHT

The bill authorizes the Governor to take such actions as are necessary for the organization and operation of the Great Lakes-St. Lawrence River Basin Water Resources Council (the "council") and specifies that the Governor shall serve as the state's representative on the council. The bill authorizes

the Governor to designate the Secretary of Natural Resources and other individuals as his or her alternate on the council. An alternate may vote at the meeting of the council in the absence of the Governor. Any designee, other than the Secretary of Natural Resources, must be nominated by the Governor, and with the advice and consent of the Senate appointed, to serve at the pleasure of the Governor. The Governor may also appoint an advisor to attend meetings of the council who has knowledge of and experience with Great Lakes management issues; however, an advisor may not vote at meetings of the Council.

The bill directs the Governor and his or her alternates on the council to submit any proposed council regulation that modifies the standard of review and decision or that creates or amends a council rule or regulation, other than a rule or regulation that deals solely with the internal management of the council or its property, to the Joint Committee on Legislative Organization for approval in a 60-day passive review process. Under this process, if the cochairpersons of this committee schedule a meeting and the committee takes action on the report from the Governor on his or her alternate on the regulation or rule within 60 days after the submission of the report, the Governor or his or her alternate may only vote on the proposed rule or regulation in accordance with the position expressed by majority vote of the committee.

WATER SUPPLY PLANNING STATEWIDE FOR PUBLIC WATER SUPPLY SYSTEMS

The bill requires DNR to establish by rule and administer a water supply planning process for public water supply systems statewide. A plan may cover a period of not more than 20 years. The bill requires a public water supply system that serves a population of 10,000 or more and that withdraws water from the waters of the state to be covered by a plan approved by DNR no later than December 31, 2025, but public water supply systems may obtain approval of plans before that date. For example, as noted above, a proposal from a public water supply system for an interbasin transfer or a diversion of Great Lakes basin water must be consistent with an approved water supply plan. The bill authorizes regional planning commissions to prepare water supply plans for public water supply systems.

The DNR must include in the process for preparing water supply plans opportunities for public review and comment on a proposed plan and the requirement that the plan be approved by the governing body of each community whose public water supply is addressed by the plan before the plan is submitted to DNR.

Plan Content and Approval

The bill requires each water supply plan to delineate the proposed water service supply areas for each public water supply system making a withdrawal covered by the plan or, if applicable, use the water supply service areas delineated by an areawide water quality planning agency, as described below. A water supply plan must identify the sources and quantities of water supplies in the area for which the plan is prepared and to forecast during the planning period the expected population of the area, based on growth projections and municipally planned population densities, and the demand for water in the area. A plan must also identify alternatives for supplying water in the area and compare the costs and benefits of the alternatives.

A person preparing a water supply plan must consider existing regional water needs assessments and other regional water supply planning information.

The bill prohibits DNR from approving a water supply plan unless a number of conditions are met, including that the plan:

- Provides for the water supply system that will minimize monetary costs and environmental and other nonmonetary costs and maximize environmental benefits during the planning period while complying with all other applicable legal requirements.
- Will effectively utilize existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.
- Is consistent with any applicable local development plans or master plans and with areawide water quality management plans (which, among other provisions, specify service areas for sewage systems).
- Complies with any applicable water withdrawal requirements, if the plan covers a withdrawal from the Great Lakes basin by a public water supply system after the compact's effective date.

In approving a water supply plan, DNR must specify a water supply service area for each system making a withdrawal covered by the plan, but it may not limit these areas based upon jurisdictional boundaries, except to prevent the transfer or diversion of waters of the Great Lakes basin into a county that lies entirely outside of the Great Lakes basin.

In an approval of a plan that covers a public water supply system withdrawing water from the Great Lakes basin, DNR must specify a withdrawal amount for the system that is equal to the greater of the amount needed by the system to provide public water supply in its service area during the period covered by the plan or, if the withdrawal is covered by a general or individual permit, the withdrawal amount under that permit.

Once the compact takes effect, DNR may not approve a water supply plan that covers a water supply system serving a population of more than 10,000 if the plan provides for a new withdrawal from the basin, or for the increase in an existing withdrawal from the basin, that exceeds the threshold for application of the state or compact decision-making standards, as described above, unless DNR determines that the new withdrawal or increase in the existing withdrawal meets the applicable decision-making standard. In other words, for withdrawals by these public water supply systems, the decision-making standards are applied through the water supply planning process instead of through the water use permitting process for withdrawals.

A person applying for an approval of an interbasin transfer under the pre-compact implementation statute or a diversion under the post-compact implementation statute may use elements of an approved water supply plan to show compliance with the requirements for these approvals.

Regional Planning Activities

The bill specifies that for the purposes of the water supply plans described above, an areawide water quality planning agency designated by the Governor under DNR's areawide water quality management planning rule, ch. NR 121 (which guides the planning of sewage systems, etc.), shall

delineate the proposed water service supply areas for all of the public water supply systems in the planning area for which the agency is designated.

These areas must be consistent with the applicable approved areawide water quality management plan for the planning area. These agencies may also provide regional needs assessments and other regional water supply planning information to persons preparing public water supply system water supply plans. The process for conducting these regional activities may be the same as the process for regional water supply planning for a groundwater management area designated under state law governing groundwater withdrawals.

OTHER PROVISIONS

Hearings on Certain Water Use Regulatory Actions

The bill establishes that any permit or approval, part of a permit or approval, order, decision, or determination by DNR under the pre- or post-compact implementation statutes or the water loss regulatory statute shall become effective unless the permit or approval holder, applicant, or other recipient seeks an administrative hearing challenging the action using the prescribed procedures. A hearing held under this procedure is a contested case. If a permit or approval holder or applicant seeks a hearing challenging part of a permit or approval, the remainder of the permit or approval becomes effective and this person may, at the person's discretion, begin the activity for which the application was submitted or for which the permit or approval was issued.

In addition, the bill establishes that any person not identified in the preceding paragraph and who meets the general requirements to request a contested case hearing under the state administrative procedures law or has submitted comments in a public comment process under one of these three statutes may seek review of the permit or approval, or part of a permit or approval, order, decision, or determination. These persons may not seek a hearing under this provision for DNR's determination of an initial withdrawal amount for an existing withdrawal subject to automatic notice of coverage under a general permit or an automatic individual permit. In addition, none of these hearing provisions apply if a hearing on the matter is conducted as part of a master hearing on a metallic mining permit.

High Capacity Well and Infrastructure Plan Approvals; Consistency With Water Supply Plans

The bill amends the law governing high capacity wells, s. 281.34, Stats., to require that, if a proposed high capacity well is covered by an approved water supply plan required or authorized under the bill, DNR may not approve the well unless it is consistent with that plan. Similarly, DNR must disapprove a plan for specific water supply infrastructure under s. 281.41, Stats., that does not conform with any applicable approved water supply plan.

Terminology Reconciliation

The bill conforms the terminology in various water use regulations specified in previously enacted laws with the terminology in the compact and the post-compact implementation statute. In particular, these changes result in the term "diversion" being used consistently throughout the statutes to be a transfer of water from the Great Lakes basin to any other basin or between the Lake Superior and

Lake Michigan basins. In water use regulations not associated with the compact or its implementation, a diversion can also refer to a transfer of water from the Upper Mississippi River basin.

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