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Senate Bill 12

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1985 Wisconsin Act 60

AN ACT to renumber and amend 30.18 (3) (a) to (d); to amend 30.18 (4) (a), 30.18 (7), 30.21 (1), 88.93, 144.025 (2) (e), 144.04, 144.836 (3) (a) and 196.49 (2); to repeal and recreate 30.18 (1) and (2) and 30.18 (5) and (6); and to create 20.370 (3) (mg), 30.18 (3) (a) (title), 30.18 (3) (b), 30.18 (6m), 30.21 (3), 144.026, 144.976, 144.977 and 196.98 of the statutes, relating to regulating major withdrawals from waters of the state, providing for a study, granting rule-making authority and making appropriations.

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

SECTION 1. Legislative findings; purpose. (1) The legislature finds that:

(a) The waters of the state are valuable public natural resources held in trust by this state and that this state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(b) The interbasin diversion and consumptive use of the waters of the state may have a significant adverse impact on the environment, economy and welfare of this state.

(c) Increased attention to conservation measures is necessary to ensure the protection of the waters of the state.

(d) The waters of the Great Lakes basin and the upper Mississippi river basin are valuable public natural resources and that the states and provinces of the Great Lakes region and the states of the upper Mississippi river region share a common interest in the preservation of those resources.

(e) The waters of the Great Lakes basin are interconnected and are part of a single hydrologic system, and that the waters of the upper Mississippi river basin are interconnected and are part of a separate single hydrologic system.

(f) The continued availability of water for domestic, municipal, industrial and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region and the states of the upper Mississippi river region.

(g) Without careful and prudent management, future interbasin diversions and consumptive uses of water may have significant adverse impacts on the environment, economy and welfare of the Great Lakes region and the upper Mississippi river region.

(h) All of the states and provinces of the Great Lakes region and the states of the upper Mississippi river region have a duty to protect, conserve and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The states and provinces of the Great Lakes region and the states of the upper Mississippi river region must act both individually and cooperatively to protect their waters.

(j) Each state and province of the Great Lakes region and each state of the upper Mississippi river region has the right to represent and protect its rights and interests in the water and other natural resources of the region in which the state or province is located.

(2) The purposes of this act are to:

(a) Protect and promote the conservation of the waters of the state and to provide for their management through the development of a state water quantity resources plan.

(b) Require registration of major withdrawals from the waters of the state and require the approval of the department of natural resources for major interbasin diversions and consumptive uses of water.

(c) Authorize cooperative and coordinated action with other states and provinces to conserve and protect the water resources of the Great Lakes basin and the upper Mississippi river basin.

(d) Authorize this state to act to protect its rights when an existing or proposed interbasin diversion or consumptive use of the water resources of the Great Lakes basin or the upper Mississippi river basin, whether inside or outside of this state, threatens to affect the level, flow, use or quality of the waters of the state.

SECTION 2. 20.370 (3) (mg) of the statutes is created to read:

20.370 (3) (mg) *Water resources management — withdrawal permit fees.* All moneys received by the department as fees under s. 144.026 (3) (d), (5) (f) and (6) (g) on and after July 1, 1987, for the costs of administering ss. 144.026 (3) to (8) and (10) to (12) and 144.976.

SECTION 3. 30.18 (1) and (2) of the statutes are repealed and recreated to read:

30.18 (1) **DEFINITIONS.** In this section:

(a) "Authorized base level of water loss" has the meaning given under s. 144.026 (1) (b).

(b) "Surplus water" means any water of a stream that is not being beneficially used, as determined by the department.

(c) "Water loss" has the meaning given under s. 144.026 (1) (L).

(d) "Withdrawal" has the meaning given under s. 144.026 (1) (m).

(2) PERMIT REQUIRED. (a) *Streams*. No person may divert water from a stream in this state without a permit under this section if the diversion meets either of the following conditions:

1. The diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream, regardless of whether the navigable lake or navigable stream is located within the watershed of the stream from which the water is diverted.

2. The diversion is for the purpose of agriculture or irrigation.

(b) *Streams or lakes*. No person, except a person required to obtain an approval under s. 144.04, may divert water from any lake or stream in this state without a permit under this section if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss.

SECTION 4. 30.18 (3) (a) (title) of the statutes is created to read:

30.18 (3) (a) (title) *Application; streams*.

SECTION 5. 30.18 (3) (a) to (d) of the statutes are renumbered 30.18 (3) (a) 1 to 4, and 30.18 (3) (a) 1, as renumbered, is amended to read:

30.18 (3) (a) 1. ~~It is unlawful for any person to divert water for the purposes set forth in sub. (1) without a permit. The~~ Except as provided in par. (b), an applicant for a permit required under sub. (2) (a) shall file an the application with the department setting forth the name and post-office address of the applicant, the name of the stream from which the water will be diverted, the point in the stream from which it is proposed to divert the surplus water, the name of the navigable lake or navigable stream or lands the location of the land to which such the water is to be diverted, the location and description of the canal, tunnel or pipes and other works through which the water is to be diverted, the amount of water to be diverted, the periods of time when it is proposed to divert such water, and the time required for the completion of the canal and other structures necessary for the completed project, which shall not be greater than 2 years from the filing of the application.

SECTION 6. 30.18 (3) (b) of the statutes is created to read:

30.18 (3) (b) *Application; streams or lakes*. An application for a permit required under sub. (2) (b) shall be submitted in the form required under s. 144.026 (5) (a). If the diversion also meets either condition specified under sub. (2) (a), the application shall also comply with par. (a).

SECTION 7. 30.18 (4) (a) of the statutes is amended to read:

30.18 (4) (a) ~~On the~~ Upon receipt of the a complete application, the department shall set the application for a public hearing, notice of which shall be given by publication and by mailing follow the notice and hearing procedures under s. 31.06. In addition to the notice requirements under that section, the department shall mail a copy of the notice, as provided in s. 31.06 to the applicant, to every person upon whose land any part of the canal or any other structures structure will be located, to the clerk of the town, village or city and county in which the diversion will take place, to the clerk of the next town next downstream, and to the clerk of any village or city through in which the lake or stream runs is located and which is adjacent to said municipalities any municipality in which the diversion takes will take place and to each person specified in s. 144.026 (5) (b) or (6) (f), if applicable.

SECTION 8. 30.18 (5) and (6) of the statutes are repealed and recreated to read:

30.18 (5) APPROVAL OF APPLICATION. (a) *Streams*. The department shall approve an application for a permit required under sub. (2) (a) if the department determines both of the following:

1. That the proposed diversion will not injure any public rights in navigable waters.

2. That the water to be diverted is surplus water, or if it is not surplus water, that all riparians who may be adversely affected by the diversion have consented to the proposed diversion.

(b) *Streams or lakes*. The department shall approve an application for a permit required under sub. (2) (b) if the grounds for approval specified under s. 144.026 (5) (d) are met and, if the permit is also required under sub. (2) (a), if the department makes the determinations specified under par. (a).

(6) PERMITS; USE OF WATER; REPORTING; REVIEW. (a) *Contents of permit*. The department shall specify on each permit issued under this section the quantity of water that may be diverted and the times during which water may be diverted. In addition, if the permit is one which is required under sub. (2) (b), the permit shall comply with s. 144.026 (6).

(b) *Use of water*. A person issued a permit for the purpose of irrigation or agriculture may use the water on any land contiguous to the permittee's riparian land, but may not withdraw more water than it did before August 1, 1957, without applying to the department for a modification of the permit.

(c) *Reporting required*. The department shall require each permittee under this section to report its volume and rate of withdrawal and its volume and rate of water loss, if any, in the form and at the times specified by the department.

(d) *Review of permits*. If the permit is one that is required under sub. (2) (a), but not under sub. (2) (b), and the permit was issued on or after August 1, 1957, the department shall review the permit each year. If the permit is one that is required under sub. (2) (b), the

department shall review the permit as required under s. 144.026 (6) (b).

SECTION 9. 30.18 (6m) of the statutes is created to read:

30.18 (6m) REVOCATION. (a) The department shall revoke a permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds any of the following:

1. That the water being diverted is no longer surplus water, except that the department may allow the diversion to continue if all riparians adversely affected by the diversion continue to consent to it.

2. If the diversion is from a stream designated by the department as a trout stream, that the revocation is desirable for conservation purposes.

(b) The department may revoke any permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds that the diversion is detrimental to the stream from which the water is diverted.

(c) The department may revoke a permit issued under sub. (5) (b) only as provided under s. 144.026 (6).

SECTION 10. 30.18 (7) of the statutes is amended to read:

30.18 (7) PREREQUISITES TO PROJECT CONSTRUCTION. After an application under this section has been filed with the department, the applicant may enter any land through which it is proposed to divert the water for the purposes of making any surveys required for drafting the plans for the project, but no work shall be commenced on the canal, headworks or other structures necessary for the project until the plans for the same have been approved by the department. Any person having received a permit ~~to divert water under this section~~ required under sub. (2) (a) may construct upon the land of another the canal and other works authorized by the permit after the damage which will be sustained by the owner or owners of such land has been satisfied, or has been determined as provided for in ch. 32, and after the final sum so determined and all costs have been paid to the persons entitled thereto or to the clerk of the circuit court on their account.

SECTION 11. 30.21 (1) of the statutes is amended to read:

30.21 (1) WATER INTAKE FACILITIES. Upon compliance with such applicable regulations as may be imposed by the government of the United States and subject to chs. 196 and 197 and rules and orders of the public service commission issued pursuant thereto, any public utility may, pursuant to permit granted by resolution of the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior or in the Great Lakes basin, construct, maintain and operate, upon and under the bed thereof adjoining such city, village or town, all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility, provided only, that concurrently with the construction of facilities for the withdrawal of water from the lakes, the city, town or

village must construct sewage treatment and disposal works adequate to treat completely all sewage of the municipality ~~and to return the purified effluent to the Great Lakes basin.~~ Any city, village or town, the limits of which are within 50 miles of any such waters and any public utility serving the same shall be deemed to be situated on such waters within the meaning of this section and such municipality or public utility serving the same shall, subject to this section, have authority to acquire and own or lease sufficient real estate, not to exceed 50 miles beyond the corporate limits of such municipality, for the purpose of constructing, maintaining and operating thereon or thereunder, transmission facilities and structures, including cribs, intakes, basins, pipes and tunnels, necessary or convenient for securing an adequate supply of water suitable for the purposes of such municipality or utility. Such facilities shall be so constructed, maintained and operated as to avoid material obstruction to existing navigation or the use of private property not owned by such utility.

SECTION 12. 30.21 (3) of the statutes is created to read:

30.21 (3) COMPLIANCE WITH OTHER PERMIT REQUIREMENTS. (a) Each public utility operating under a permit under this section on the effective date of this paragraph [revisor inserts date], shall comply with s. 144.026 (2), if applicable.

(b) On and after the effective date of this paragraph [revisor inserts date], no city, village or town may issue a permit under sub. (1) unless the public utility applying for the permit complies with s. 30.18 (2) (b), if applicable.

SECTION 13. 88.93 of the statutes is amended to read:

88.93 Right to take water from drainage ditch. Any owner of lands which are located in or which adjoin a drainage district and which border on a drainage ditch may take water from such ditch for use in flooding lands for cranberry culture or for irrigation, if such water is taken from the ditch in such a manner as not to injure the ditch and the taking thereof does not materially defeat the purposes of such drainage and, in case the water is to be used for irrigation, a the permit required under s. 30.18 (2) (a) 2 has been obtained ~~under s. 30.18 (3) to (10).~~

SECTION 14. 144.025 (2) (e) of the statutes is amended to read:

144.025 (2) (e) No wells shall be constructed, installed or operated to withdraw water from underground sources for any purpose where the capacity and rate of withdrawal of all wells on one property is in excess of 100,000 gallons a day without first obtaining the approval of the department. If s. 144.026 applies to the proposed construction, the application shall comply with s. 144.026 (5) (a). If the department finds that the proposed withdrawal will adversely affect or reduce the availability of water to any public utility in furnishing water to or for the pub-

lic or does not meet the grounds for approval specified under s. 144.026 (5) (d), if applicable, it shall either withhold its approval or grant a limited approval under which it imposes such conditions as to location, depth, pumping capacity, rate of flow and ultimate use so that the water supply of any public utility engaged in furnishing water to or for the public will not be impaired and the withdrawal will conform to the requirements of s. 144.026, if applicable. The department shall require each person issued an approval under this paragraph to report that person's volume and rate of withdrawal, as defined under s. 144.026 (1) (m), and that person's volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, in the form and at the times specified by the department. The department may issue such general or special orders as it ~~deems~~ considers necessary to ~~insure~~ ensure prompt and effective administration of this paragraph.

SECTION 15. 144.026 of the statutes is created to read:

144.026 Water resources conservation and management.

(1) DEFINITIONS. In this section:

(a) "Approval" means a permit issued under s. 30.18 or an approval under s. 144.025 (2) (e) or 144.04 (1).

(b) "Authorized base level of water loss" means any of the following:

1. The maximum 30-day average water loss authorized as a condition of an approval.

2. If subd. 1 does not apply, the highest average daily water loss over any 30-day period that is reported to the department or the public service commission under sub. (3) (c) or s. 30.18 (6) (c), 144.025 (2) (e), 144.04 (2) or 196.98.

3. If there is no water loss from an existing withdrawal, zero gallons per day.

(c) "Consumptive use" means a use of waters of the state, other than an interbasin diversion, that results in a failure to return any or all of the water to the basin from which it is withdrawn. "Consumptive uses" include, but are not limited to, evaporation and incorporation of water into a product or agricultural crop.

(d) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river upstream from Trois Rivieres, Quebec.

(e) "Great Lakes charter" means the document establishing the principles for the cooperative management of Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(f) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, the commonwealth of Pennsylvania and the provinces of Ontario and Quebec, Canada.

(g) "Interbasin diversion" means a transfer of the waters of the state from either the Great Lakes basin or the upper Mississippi river basin to any other basin.

(h) "International joint commission" means the commission established by the boundary water agreement of 1909 between the United States and Canada.

(i) "Person" has the meaning given in s. 144.01 (9m) and also includes special purpose districts established under s. 66.072, other states and provinces and political subdivisions of other states and provinces.

(j) "Upper Mississippi river basin" means the watershed of the Mississippi river upstream from Cairo, Illinois.

(k) "Upper Mississippi river region" means the geographic region composed of the states of Illinois, Iowa, Minnesota, Missouri and Wisconsin.

(L) "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both.

(m) "Withdrawal" means the removal or taking of water from the waters of the state.

(2) AGGREGATION OF MULTIPLE WITHDRAWALS. (a) In calculating the total amount of an existing or proposed withdrawal for purposes of determining the applicability of sub. (3), a person shall include all separate withdrawals which the person makes or proposes to make for a single use or for related uses.

(b) In calculating the total amount of an existing or proposed water loss for purposes of determining the applicability of sub. (4), a person shall include all separate interbasin diversions and consumptive uses, or combinations thereof, which the person makes or proposes to make for a single use or for related uses.

(3) REGISTRATION REQUIRED. (a) 1. Except as provided in par. (b), any person who, on the effective date of this paragraph [revisor inserts date], is making a withdrawal averaging more than 100,000 gallons per day in any 30-day period shall register the withdrawal with the department before July 1, 1987.

2. Except as provided in par. (b), any person who, on or after the effective date of this paragraph [revisor inserts date], proposes to begin a withdrawal that will average more than 100,000 gallons per day in any 30-day period shall register the proposed withdrawal with the department.

(am) A registration under par. (a) shall contain a statement of and supporting documentation for all of the following:

1. The source of the proposed or existing withdrawal.

2. The location of any discharge or return flow.

3. The location and nature of the proposed or existing water use.

4. The actual or estimated average annual and monthly volumes and rates of withdrawal.

5. The actual or estimated average annual and monthly volumes and rates of water loss from the withdrawal.

(b) Paragraph (a) does not apply to any of the following:

1. A person making a withdrawal who has been issued an approval and, as a condition of the approval, is reporting the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department or, if the person is a public utility, to the public service commission.

2. A person who is required to comply with sub. (4) before beginning the proposed withdrawal.

3. A person holding a permit under s. 147.02 or the federal water pollution control act, as amended, 33 USC 1251 to 1376, for whom the department has established a water loss coefficient, based on flow diagrams and other water use information provided by the permittee, that the department uses to calculate the permittee's water loss.

(c) Each person who registers a withdrawal under par. (a) shall report the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department in the form and at the times required by the department.

(d) The department shall periodically collect from each person who registers a withdrawal under par. (a) the fee established under sub. (10) (a) 5. All moneys collected under this paragraph before July 1, 1987, shall be credited to the general fund. All moneys collected under this paragraph on and after July 1, 1987, shall be credited to the appropriation under s. 20.370 (3) (mg).

(4) WATER LOSS APPROVAL REQUIRED. (a) This subsection applies to all of the following:

1. A person to whom a permit has been issued under s. 30.18 or who is required to obtain a permit under that section before beginning or increasing a withdrawal.

2. A person who is operating a well under an approval issued under s. 144.025 (2) (e) or who is required to obtain an approval under that paragraph before constructing or installing a well.

3. An owner who is operating a system or plant under plans approved under s. 144.04 or who is required to submit plans and obtain an approval under that section before construction or extension of a proposed system or plant.

(b) Before any person specified in par. (a) may begin a new withdrawal or increase the amount of an existing withdrawal, the person shall apply to the department under s. 30.18, 144.025 (2) (e) or 144.04 for a new approval or a modification of its existing approval if either of the following conditions applies:

1. The person proposes to begin a new withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

2. The person proposes to increase an existing withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss.

(5) APPLICATION; APPROVAL; DENIAL. (a) *Application*. An application under sub. (4) (b) shall contain a

statement of and documentation for all of the following:

1. The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system.

2. The total new or increased operating capacity of the withdrawal system.

3. The place and source of the proposed withdrawal.

4. The place of the proposed discharge or return flow.

5. The place and nature of the proposed water use.

6. The estimated average annual and monthly volumes and rates of withdrawal.

7. The estimated average annual and monthly volumes and rates of water loss.

8. The anticipated effects, if any, that the withdrawal will have on existing uses of water resources and related land uses both within and outside of the Great Lakes basin or the upper Mississippi river basin.

9. Any land acquisition, equipment, energy consumption or the relocation or resiting of any existing community, facility, right-of-way or structure that will be required.

10. The total anticipated costs of any proposed construction.

11. A list of all federal, state, provincial and local approvals, permits, licenses and other authorizations required for any proposed construction.

13. A statement as to whether the proposed withdrawal complies with all applicable plans for the use, management and protection of the waters of the state and related land resources, including plans developed under ss. 144.025 (2) (a) and 147.25 and the requirements specified in any water quantity resources plan under sub. (8).

14. A description of other ways the applicant's need for water may be satisfied if the application is denied or modified.

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

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

(b) *Great Lakes basin; consultation required*. If the department receives an application that, if approved, will result in a new water loss to the Great Lakes basin averaging more than 5,000,000 gallons per day in any 30-day period, or an increase in an existing withdrawal that will result in a water loss averaging 5,000,000 gallons per day in any 30-day period above the applicant's authorized base level of water loss, the department shall notify the office of the governor or premier and the agency responsible for management of water resources in each state and province of the Great Lakes region and, if required under the boundary water agreement of 1909, the international joint commission. The department shall also request each

state and province that has cooperated in establishing the regional consultation procedure under sub. (11) (f) to comment on the application. In making its determination on an application, the department shall consider any comments that are received within the time limit established under par. (c).

(c) *Department response.* Within the time limit established by the department by rule, which shall be consistent with the time limit, if any, established by the governors and premiers of the Great Lakes states and provinces, the department shall do one of the following in writing:

1. Notify the applicant that the application is approved or denied, and if it is denied, the reason for the denial.

2. Notify the applicant of any modifications necessary to qualify the application for approval.

(d) *Grounds for approval.* Before approving an application, the department shall determine all of the following:

1. That no public water rights in navigable waters will be adversely affected.

2. That the proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under ss. 144.025 (2) (a) and 147.25 and any water quantity resources plan prepared under sub. (8).

3. That both the applicant's current water use, if any, and the applicant's proposed plans for withdrawal, transportation, development and use of water resources incorporate reasonable conservation practices.

4. That the proposed withdrawal and uses will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the upper Mississippi river basin.

5. That the proposed withdrawal and uses are consistent with the protection of public health, safety and welfare and will not be detrimental to the public interest.

6. That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.

7. If the proposed withdrawal will result in an interbasin diversion, all of the following:

a. That each state or province to which the water will be diverted has developed and is implementing a plan to manage and conserve its own water quantity resources, and that further development of its water resources is impracticable or would have a substantial adverse economic, social or environmental impact.

b. That granting the application will not impair the ability of the Great Lakes basin or upper Mississippi river basin to meet its own water needs.

c. That the interbasin diversion alone, or in combination with other water losses, will not have a significant adverse impact on lake levels, water use, the

environment or the ecosystem of the Great Lakes basin or upper Mississippi river basin.

d. That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

(e) *Right to hearing.* Except as provided in s. 227.064 (4), any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

(f) The department shall charge each applicant for an approval under this subsection the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the appropriation under s. 20.370 (3) (mg).

(6) **APPROVAL.** (a) *Issuance; contents.* If an application is approved under sub. (5), the department shall modify the applicant's existing approval or shall issue a new approval that specifies all of the following:

1. The location of the withdrawal.

2. The authorized base level of water loss from the withdrawal.

3. The dates on which or seasons during which water may be withdrawn.

4. The uses for which water may be withdrawn.

5. The amount and quality of return flow required and the place of discharge.

6. The requirements for reporting volumes and rates of withdrawal and any other date specified by the department.

7. Any other conditions, limitations and restrictions that the department determines are necessary to protect the environment and the public health, safety and welfare and to ensure the conservation and proper management of the waters of the state.

8. Any requirements for metering, surveillance and reporting that the department determines are necessary to ensure compliance with other conditions, limitations or restrictions of the approval.

9. If the department determines that a time limit is necessary, the date on which approval for the withdrawal expires.

(b) *Review.* The department shall review each approval prior to the expiration date specified under par. (a) 9, if any, or within 5 years from the date of issuance and at least every 5 years thereafter.

(c) *Modification by department.* The department may at any time propose modifications of the approval or additional conditions, limitations or restrictions determined to be necessary to ensure continued compliance with this section or with any other applicable statute or rule.

(d) *Revocation.* If the department determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this section or another applicable statute or rule, it shall revoke the approval.

(e) *Request for modification.* A person to whom an approval has been issued or any person adversely affected by a condition, limitation or restriction of an approval may request that the department modify a condition, limitation or restriction of an approval.

(f) *Notice; right to hearing.* The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227 before a modification takes effect.

(g) The department shall periodically collect from each person whose application under this subsection is approved the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the appropriation under s. 20.370 (3) (mg).

(7) **EMERGENCY ORDER.** The department may, without a prior hearing, order a person to whom an approval is issued to immediately stop a 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 this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(8) **PREPARATION OF WATER QUANTITY RESOURCES PLAN.** The natural resources board shall, before August 1, 1988, adopt and submit to the chief clerk of each house of the legislature, for distribution to the members under s. 13.172 (2), a long-term state water quantity resources plan for the protection, conservation and management of the waters of the state. The plan shall include, but need not be limited to, the following:

(a) The description of a system for allocating this state's water resources during a water shortage or other emergency.

(b) Identification of the existing uses of the waters of the state.

(c) An estimate of future trends in water use.

(d) Recommendations for the use, management and protection of the waters of the state and related land resources that will affect persons subject to sub. (4).

(9) **AMENDMENT OF COASTAL MANAGEMENT PROGRAM.** (a) The Wisconsin coastal management council, established under executive order number 62, dated August 2, 1984, shall amend this state's coastal

management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section and the findings and purposes specified in 1985 Wisconsin Act ... (this act), section 1, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal management council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(10) **RULE MAKING; FEES.** (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).

2. Requirements for reporting volumes and rates of withdrawals.

3. The method for determining what portion of a withdrawal constitutes a consumptive use.

4. Procedures for implementing the plan adopted under sub. (8).

5. A graduated schedule for the fees required under subs. (3) (d), (5) (f) and (6) (g) and a schedule for collecting the fees under subs. (3) (d) and (6) (g) periodically. The fees established under this subdivision shall be sufficient to equal the department's full cost of administering this subsection and subs. (3) to (8), (11) and (12) and s. 144.976.

(b) The department may promulgate any other rule necessary to implement this section.

(11) **COOPERATION WITH OTHER STATES AND PROVINCES.** The department shall do all of the following:

(a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.

(b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.

(c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.

(d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

(e) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

(f) Participate in the development of an upper Mississippi river basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

(12) MISCELLANEOUS PROVISIONS. (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the Great Lakes basin or upper Mississippi river basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

SECTION 16. 144.04 of the statutes is amended to read:

144.04 Approval of plans. Every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the department requires, including the information specified under s. 144.026 (5) (a), if applicable. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn a statement concerning the improvement may be made to the department and the department shall, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall by return mail notify the owner of their acceptance. The notice shall include the date of receipt. Within 90 days from the time of their acceptance or within the time specified in s. 144.026 (5) (c), if applicable, the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of such plans and specifications shall not be contingent upon eligibility of such project for federal aid. The 90-day time period for review may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the 90-day specified time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of \$350,000 or more. The extension shall not exceed 6 months. Failure of the department or its authorized representative

to act within 90 days or during an extension of such before the expiration of the time period allowed for review shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice. Construction or material change shall be according to approved plans only. The department may disapprove plans which are not in conformance with any existing approved areawide waste treatment management plan prepared pursuant to the federal water pollution control act, P.L. 92-500, as amended, and shall disapprove plans that do not meet the grounds for approval specified under s. 144.026 (5) (d), if applicable. The department shall require each person whose plans are approved under this section to report that person's volume and rate of water withdrawal, as defined under s. 144.026 (1) (m), and that person's volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, in the form and at the times specified by the department.

SECTION 17. 144.836 (3) (a) of the statutes is amended to read:

144.836 (3) (a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not less than 60 days nor more than 90 days after the announcement of that determination, and the scheduling and providing of notice shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies, to all persons who have requested this notification and, if applicable, to all persons specified under par. (b) 3 and s. 144.026 (5) (b) and (6) (f). Written comments may be submitted to the department within 30 days of the date of notice.

SECTION 18. 144.976 of the statutes is created to read:

144.976 Investigation of alleged water withdrawal violations. (1) Any 6 or more residents of this state may petition for an investigation of a withdrawal, as defined under s. 144.026 (1) (m), alleged to be in violation of s. 144.026 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (3) (a) or (4) to (6) by submitting to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person in this state authorized to receive service of answer and other papers on behalf of the petitioners and the name and address of a person authorized to appear at a hearing on behalf of the petitioners.

(2) Upon receipt of a petition, the department shall do one of the following:

(a) If the department determines that the allegations are true, order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(b) Conduct a contested case hearing on the allegations of the petition. Within 60 days after the hearing, the department shall either dismiss the petition or notify the alleged violator of its finding that the allegations are true and order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(d) If the department determines that the allegations are untrue or that the petition was filed maliciously or in bad faith, dismiss the petition without holding a hearing.

(3) Any person who maliciously or in bad faith files a petition under sub. (1) is liable for attorney fees and damages or other appropriate relief to the person that is the subject of the petition.

SECTION 19. 144.977 of the statutes is created to read:

144.977 Remedies; water withdrawal violations.

Any person who makes a withdrawal, as defined under s. 144.026 (1) (m), in violation of s. 144.026 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (3) (a) or (4) to (6) is liable to any person who is adversely affected by the withdrawal for damages or other appropriate relief. Any person who is or may be adversely affected by an existing or proposed withdrawal, as defined under s. 144.026 (1) (m), which is in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (4) to (6) may bring an action in the circuit court to restrain or enjoin the withdrawal.

SECTION 20. 196.49 (2) of the statutes is amended to read:

196.49 (2) No public utility may begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the commission and with s. 144.026, if applicable. If a cooperative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by the association and a statement showing that a majority of the prospective consumers in the area are included in the project, no public utility may begin any such construction, installation or operation within the territory until after the expiration of 6 months from the date of

filing the map and notice. If the cooperative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice of the agreement to the commission, no public utility may begin any construction, installation or operation within the territory until 12 months after the date of the loan agreement.

SECTION 21. 196.98 of the statutes is created to read:

196.98 Water reporting required. The commission shall ensure that each public utility to which s. 144.026 applies shall comply with the requirements of that section and shall report its volume and rate of withdrawal, as defined under s. 144.026 (1) (m), and its volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, to the commission in the form and at the times specified by the department of natural resources. The commission shall provide the information reported under this section to the department of natural resources.

SECTION 22. **Nonstatutory provisions.** (1) NATURAL RESOURCES BOARD; REPORT TO LEGISLATURE. The natural resources board shall, before August 1, 1986, prepare and present to the chief clerk of each house of the legislature an interim report on its progress in preparing the plan required under section 144.026 (8) of the statutes, as created by this act.

(2) DEPARTMENT OF NATURAL RESOURCES; RULE MAKING. (a) Before October 1, 1986, the department of natural resources shall notify the legislature that the rules required under section 144.026 (10) (a) 5 of the statutes, as created by this act, are in final draft form.

(b) Before the first day of the 15th month commencing after the effective date of this paragraph, the department of natural resources shall notify the legislature that the rules required under section 144.026 (5) (c) (intro.) and (10) (a) 1 to 4 of the statutes, as created by this act, are in final draft form.

(3) DEPARTMENT OF NATURAL RESOURCES; TECHNICAL ADVISORY COMMITTEE. (a) The department of natural resources shall establish a technical advisory committee composed of representatives of industries, including at least one representative of the paper industry, agriculture, public water utilities and electric power generating utilities to which section 144.026 of the statutes, as created by this act, will apply and of other interested persons, including at least one representative of an environmental group and at least one American Indian, to assist and advise that department in developing the rules required under section 144.026 of the statutes, as created by this act.

(b) This subsection ceases to apply on the first day of the 18th month commencing after the effective date of this paragraph.

(4) LEGISLATIVE COUNCIL STUDY. The legislative council is requested to study the issues related to implementation of this act, to identify potential problems that may arise in connection with its enforcement and to submit a report that includes recommendations

for any statutory changes that are needed to the governor and to the chief clerk of each house of the legislature for distribution to the members of the appropriate standing committees before January 31, 1987.

SECTION 23. Appropriation changes; natural resources. The appropriation to the department of natural resources under section 20.370 (2) (ma) of the

statutes, as affected by the acts of 1985, is increased by \$99,700 for fiscal year 1985-86 and by \$179,000 for fiscal year 1986-87 to fund 1.0 FTE GPR project position to develop the information system required under section 144.026 (11) of the statutes, as created by this act, and to fund 3.0 FTE GPR positions to perform the additional responsibilities assigned to the department under this act.

SECTION 24. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
144.855 (2)(b)	30.18 (2)	30.18 (1)(b)

SECTION 25. Initial applicability. The treatment of sections 30.18 (3) (b), (5), (6) (a) and (d) and (6m) (c), 144.025 (2) (e), 144.026 (4) to (7), 144.04, 144.836 (3) (a), 144.976, 144.977 and 196.49 (2) of the statutes by this act first applies on the first day of the first

month commencing 18 months after the effective date of this SECTION.

SECTION 26. Effective date. This act takes effect on January 1, 1986, or the day after publication, whichever is later.