



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 05/09/2008 (Per: RCT)



☞ Appendix A ... Part 02 of 06  
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☞ The 2007 drafting file for LRB-4360  
has been copied/added to the drafting file for

**2007 LRB-4367**

(Ap8 SB-1)

☞ The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Analysis insert*

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**AN ACT ...; relating to: ???**

✓ ***Analysis by the Legislative Reference Bureau***

This bill ratifies the Great Lakes—St. Lawrence River Basin Water Resources Compact and creates provisions for implementing the compact in this state. The bill also includes provisions that apply statewide relating to the registration and reporting of water withdrawals, to water conservation, and to water supply planning for public water supply systems (water utilities).

**CURRENT FEDERAL LAW**

A current federal law, commonly known as the Water Resources Development Act (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 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**

**IN GENERAL**

The Great Lakes—St. Lawrence River Basin Water Resources Compact (the compact) was endorsed by the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin (the states) 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 of the states and is consented to by the U.S. Congress. Any

change in the compact 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.

The compact relates to the withdrawal and use of water (both groundwater and surface water) from the watersheds of the Great Lakes and the St. Lawrence River (the Great Lakes basin). Part of northern Wisconsin is in the Lake Superior watershed and part of eastern Wisconsin is in the Lake Michigan watershed. The rest of the state is in the upper Mississippi River basin.

A compact is basically an agreement among states for dealing with a subject of common concern. Unlike some other compacts, a number of the provisions of this compact are not self-executing. The compact tells states what they must do. Additional state laws or administrative rules are necessary to do the things that the compact requires. The compact gives the states wide choices in how to implement some of its provisions. For example, the compact allows states to determine the threshold size for regulating water withdrawals from the Great Lakes basin. In other cases, the compact specifies regulatory requirements that a state may make more, but not less, restrictive.

The compact creates the Great Lakes—St. Lawrence River Basin Water Resources Council (the council) consisting of the governors of the states. The compact authorizes a governor to designate an alternate to act in the governor's absence. The council oversees the implementation of the compact and has responsibilities such as identifying and reviewing water conservation and efficiency objectives and approving certain proposals that involve diverting water from the watershed of one of the Great Lakes, as explained below. If any member of the council votes to disapprove a proposal for which council approval is required, the proposal is disapproved. The compact requires the members of the council to use the standards set forth in the compact, such as the exception standard described below, in deciding whether to approve or disapprove a proposal that is subject to council approval but also authorizes the council to revise these standards using procedures specified in the compact.

The compact also provides for review of some proposals by the regional body, which consists of the members of the council and the premiers of Ontario and Quebec, Canada. The regional body has no decision-making authority.

#### **REGISTRATION AND REPORTING**

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

The compact requires the states to annually report to the council the information gathered through registration and reporting. The compact also requires each state to develop and maintain a water resources inventory for the collection, exchange, and dissemination of information about water resources.

### 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. 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 new or increased diversions, described below.

The compact 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 (proposals to bottle water).

#### ***Straddling communities***

A straddling community is a community that is partly within the Great Lakes basin and partly outside of the basin when the compact takes effect, but that is wholly within a county that is partly within the basin. The first exception to the prohibition on diversions allows a new or increased transfer of water to the part of a straddling community that is outside of the Great Lakes basin.

The exception 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 for the new or increased diversion must maximize the amount of water that originated in the 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.

If the proposed new diversion or increase in an existing diversion would result from a new or increased withdrawal that averages 100,000 GPD or more in any 90-day period, the diversion must 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 body before the state decides whether to approve the diversion.

#### ***Intrabasin transfers***

An intrabasin transfer 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 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 and 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.

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 must also be reviewed by the regional body and must be approved by the council with no disapproving votes.

### ***Communities in straddling counties***

The third exception to the prohibition on new or increased diversions is to provide water to a community in a straddling county. A community in a straddling county is a community 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 proposal for a diversion to a community in a straddling county is only allowed under the compact if all of the following apply:

1. All of the water is used to supply water to the public.
2. The community is otherwise without an adequate supply of water that is safe to drink.
3. The diversion satisfies the exception standard.
4. 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.
5. 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).
6. The proposal is reviewed by the regional body.
7. The proposal is approved by the council with no disapproving votes.

### ***Exception standard***

As explained above, some diversions that are approvable under the compact are subject to what is called the exception standard. A proposal for a new or increased diversion meets the exception standard under the compact if it satisfies several criteria including the following:

1. The need for the diversion cannot be avoided through the efficient use and conservation of existing water supplies.
2. The amount of water diverted will be limited to quantities that are reasonable to meet the need.
3. 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.
4. No water from outside of the source watershed will be returned to the source watershed unless it comes from a wastewater system that combines water from inside and outside of that watershed and is treated to satisfy water quality standards and to prevent the introduction of invasive species.
5. The diversion will not result in adverse impacts to the quantity or quality of the waters of the Great Lakes basin or related natural resources.
6. Environmentally sound and economically feasible water conservation measures will be used to minimize the amount of water withdrawn and the amount of water lost to the Great Lakes basin.

**MANAGEMENT AND REGULATION OF NEW AND INCREASED WITHDRAWALS;  
DECISION-MAKING STANDARD**

The compact requires each state to regulate new and increased withdrawals of water from the Great Lakes basin. Each state is required to set thresholds for the regulation of withdrawals and consumptive uses. 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 that the withdrawal will not result in significant adverse impacts to the quantity or quality of the waters of the Great Lakes basin or to related natural resources, that environmentally sound and economically feasible water conservation measures will be used in implementing the withdrawal, and that the proposed use of the water is reasonable, based on a consideration of factors specified in the compact.

The compact requires states to establish baselines for existing withdrawals. A baseline basically grandfathers withdrawals that exist when the compact takes effect. The decision-making standard applies when the increase in an existing withdrawal over its baseline, during a ten-year period, exceeds the threshold set by the state. If a withdrawal is never increased by the threshold amount, the decision-making standard need never be applied.

Under the compact, baselines may be set in only two ways, either on the basis of the actual capacity of the water withdrawal system when the compact takes effect or on the basis of existing withdrawal approvals (such as permits) issued by the state before the compact takes effect. This bill provides for the issuance of approvals for existing withdrawals before the compact's effective date in order to use the second method of setting baselines.

The compact requires a state to notify the other members of the regional body of a proposal that will result in a new or increased water loss to the Great Lakes basin of 5,000,000 GPD or greater average in any 90 day period. The compact also authorizes a majority of members of the regional body to request regional review of a regionally significant or potentially precedent setting proposal that is not otherwise subject to regional review.

**WATER CONSERVATION AND EFFICIENCY**

The compact includes water conservation and efficiency goals for the Great Lakes basin. The council will identify water conservation and efficiency objectives for the basin. The compact requires each state to develop water conservation and efficiency goals and objectives, consistent with the goals and objectives for the Great Lakes basin, and requires each state to develop and implement a water conservation and efficiency program, which 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.

**PUBLIC PARTICIPATION**

The compact requires the states to have procedures that facilitate public participation in the review of proposals for diversions and withdrawals that are regulated under the compact. The compact also requires states to consult with

federally recognized American Indian tribes concerning proposals for which council approval or regional review is required.

#### **OTHER PROVISIONS**

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 states.

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.

#### **PROVISIONS THAT TAKE EFFECT BEFORE THE COMPACT TAKES EFFECT**

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

#### **REGULATION OF INTERBASIN TRANSFERS**

The bill requires any person who transfers water out of the Great Lakes basin to register with the Department of Natural Resources (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.

#### ***Approval required***

The bill requires an approval from DNR for any new or increased interbasin transfer. The bill provides procedures for public participation in the review of proposals for new and increased interbasin transfers.

Each interbasin transfer must have an interbasin transfer amount in its approval. 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 bill requires DNR to 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 requires DNR to automatically issue an approval to a person who makes an interbasin transfer when this bill is enacted if the transfer is not for public

water supply purposes. DNR determines the interbasin transfer amount in the same way that it determines initial withdrawal amounts, described below.

***New and increased interbasin transfers***

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.

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 person operating the public water supply system that receives the water from the transfer must 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 those entities in the form of a letter or resolution. Also, 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 those entities in the form of a letter or resolution.

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.

***Straddling communities***

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

The exception only applies if all of the transferred water is used to supply water to the public and if an amount of water equal to the amount transferred, less an allowance for consumptive use, will be returned to the Great Lakes basin. The proposal must maximize the amount of water that originated in the 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. The proposal must also be consistent with an approved water supply plan under the planning provisions described below. 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, in the manner described below.

***Intrabasin transfers***

The bill authorizes DNR to approve an intrabasin transfer (from the Lake Superior watershed to the Lake Michigan watershed or vice versa) that would 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, and, if the water will be used for public water supply purposes, the proposal is consistent with an approved water supply plan.

For a larger intrabasin transfer, 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 and the exception standard applies, in the manner described below, except that it does not matter whether the transferred water is returned to the watershed from which it was withdrawn (unless there is a very large new or increased water loss). If the water will be used for public water supply purposes, the proposal must be consistent with an approved water supply plan.

### ***Communities in straddling counties and other communities***

The third exception to the prohibition on new or increased interbasin transfers is to provide water to a community in a straddling county. A community in a straddling county is a community 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). The bill also allows a new or increased interbasin transfer to a community that would be a community in a straddling county except that it extends beyond the straddling county into a county that lies entirely outside the Great Lakes basin, as long as the water is only used in the part of the community that is in the straddling county.

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

1. All of the water is used to supply water to the public.
2. The community is without a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands, that is available at a reasonable cost, and that has adverse environmental impacts that are less than those likely to result from the interbasin transfer.
3. The interbasin transfer satisfies the exception standard, in the manner described below.
4. 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.
5. There is no reasonable water supply alternative in the basin in which the community is located.
6. The proposal is consistent with an approved water supply plan.

### ***Exception standard***

As mentioned above, some interbasin transfers that may be approved under the bill (when the compact is not in effect) are subject to the exception standard. The bill provides two different methods in which the exception standard is applied before the compact takes effect.

If, before the compact takes effect DNR receives an application for approval of an interbasin transfer for a straddling community or for a community in a straddling county or a community that would be a community in a straddling county except that

it extends beyond the straddling county, then DNR determines whether to approve the application through the water supply planning process that is described below.

In that planning process, DNR must consider the criteria contained in the exception standard in the compact (described above) as factors in determining whether the proposal provides for a 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. DNR must also consider, in making that determination, whether the place at which the water is returned to the Great Lakes basin is 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. Also, if the water is returned through a stream tributary to Lake Michigan or Lake Superior, DNR must consider whether the physical, chemical, and biological integrity of the stream is protected and sustained.

If, before the compact takes effect, DNR receives an application for approval of an intrabasin transfer, the proposed intrabasin transfer only meets the exception standard if it satisfies all of the criteria contained in the exception standard in the compact. In addition, 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. Also, 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.

#### **STATEWIDE WATER SUPPLY PLANNING FOR PUBLIC WATER SUPPLY SYSTEMS**

The bill requires DNR to 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. The bill authorizes regional planning commissions to prepare water supply plans for public water supply systems. A plan may cover more than one public water supply system.

The bill requires a person preparing a water supply plan to identify the sources and quantities of water supplies in the area for which the plan is prepared and to forecast the expected population of the area during the planning period and the demand for water in the area during that period. The person must identify alternatives for supplying water in the area and compare the costs and benefits of the alternatives. A plan must delineate service areas for the public water supply systems in the area covered by the plan. In an area of the state for which an areawide water quality planning agency has been designated under the federal Clean Water Act, that agency delineates the service areas for the public water supply systems in its planning area.

DNR may not approve a water supply plan unless it determines that the water supply plan provides for a water supply system that is cost-effective, that is, one 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. The bill also requires that a water supply plan be 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).

#### **STATEWIDE REGISTRATION AND REPORTING OF WITHDRAWALS**

The bill requires any person in this state who, three years after this 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 a 30-day period (such as a high capacity well) to register the withdrawal with DNR and provide information about the system and the withdrawal. 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 the withdrawal is from the Great Lakes basin and it equals an average of 100,000 GPD or more in any 30 day period, the person must include in the registration an estimate of the maximum capacity of the most restrictive part of the water supply system used to make the withdrawal.

If a person who is required to register a withdrawal 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.

#### **PERMITTING OF WITHDRAWALS IN THE GREAT LAKES BASIN**

##### ***Permit requirement***

This bill generally 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 or individual water withdrawal permit. 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.

##### ***Initial withdrawal amounts***

Each withdrawal that is covered by a permit must have a withdrawal amount. For a withdrawal that is covered by a permit before the compact's effective date, the withdrawal amount on the compact's effective date is the baseline and is used to determine when a withdrawal has increased by the threshold amount that triggers certain requirements after the compact takes effect, as described below. The bill requires DNR to determine initial withdrawal amounts for existing withdrawals.

Generally, DNR 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.

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. DNR 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***

This bill requires DNR to issue one or more general 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. A general permit covers numerous withdrawals with similar characteristics, as specified by DNR. DNR is required to include requirements for reporting and for water conservation in a general permit, in accordance with rules that DNR promulgates. A general permit has a 25-year term.

The bill requires DNR to automatically issue a notice of coverage under a general permit to persons who make 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 and who comply with the registration and reporting requirements in the bill. In an automatic notice of coverage, 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 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 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 notice of coverage 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. 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.

If a person making a withdrawal that is covered by a general permit proposes to increase the amount of the withdrawal 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.

### ***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 permit. DNR must include in an individual permit a withdrawal amount, and, in accordance with rules promulgated by DNR, requirements for reporting and for 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 individual permits to persons who make withdrawals from the Great Lakes basin that equal <sup>at least</sup> 1,000,000 GPD for any 30 consecutive days and who comply with the registration and reporting requirements in the bill 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 <sup>at least</sup> 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 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 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 ten-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.

### ***Interim approval***

The bill provides that if, before the compact takes effect, DNR has not automatically issued a notice of coverage by a general permit or automatically issued an individual permit to a person who qualified for automatic issuance, registration of the withdrawal constitutes an approval of the withdrawal and the estimate of the maximum capacity of the most restrictive part of the water supply system used to make the withdrawal included in the registration is, generally, the withdrawal amount for the withdrawal.

The bill requires DNR, after the compact takes effect, to automatically issue a notice of coverage by a general permit or an individual permit to a person who qualifies for an interim approval. It also requires DNR to use the process for setting initial withdrawal amounts, described above, to determine whether to modify the withdrawal amount for a withdrawal that is covered by an interim approval and, if DNR does modify the withdrawal amount, provides that the modified withdrawal amount is the baseline for the purposes of the compact.

### **STATEWIDE WATER CONSERVATION**

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 voluntary statewide water conservation and efficiency program that includes the promotion of environmentally sound and economically feasible water conservation measures. DNR must consult with the Department of Commerce and the Public Service Commission 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 withdrawals required to be covered by general or individual permits. In the rules, DNR may not require retrofitting of existing fixtures, appliances, or equipment.

### **PROVISIONS THAT TAKE EFFECT AFTER THE COMPACT TAKES EFFECT**

#### **REGULATION OF DIVERSIONS**

### ***Approval required***

Under this bill, no person may begin or increase a diversion without an approval from DNR. An interbasin transfer approval issued by DNR before the compact takes effect continues to be valid after the compact takes effect, but if the amount of the interbasin transfer (called a diversion in this part of the bill) is

proposed to be increased over the interbasin transfer amount in the approval, the postcompact provisions related to diversions, described below, apply.

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

***New and increased diversions***

The general prohibition on new diversions and on increases in existing diversions and the three exceptions to the prohibition continue to apply after the compact takes effect.

***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 very large new or increased water loss to 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.

***Communities in straddling counties and other communities***

In addition to the requirements that apply before the compact takes effect, a proposal for a diversion to a community in a straddling county or a community that would be a community in a straddling county except that it extends beyond the straddling county into a county that lies entirely outside 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.

***Exception standard***

After the compact takes effect, a proposed diversion does not meet the exception standard unless it meets all of the criteria included in the exception standard in the compact. In addition, 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. Also, 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. ✓

**WATER SUPPLY PLANNING**

The statewide water supply planning provisions described above continue in effect after the compact takes effect, but, for some public water supply systems that withdraw water from the Great Lakes basin, new requirements are added.

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 one of the

decision-making standards, as described below, 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 a public water supply system serving a population of more than 10,000, the decision-making standards are applied through the water supply planning process instead of through the withdrawal permitting process.

#### **STATEWIDE REGISTRATION AND REPORTING OF WITHDRAWALS**

The statewide requirement for registration and reporting of withdrawals, described above, continues after the compact takes effect.

#### **PERMITTING 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 before the compact takes effect continues to be valid, but postcompact 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 and modifying individual water supply permits does not generally change when the compact takes effect.

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. 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, except that if the person applying for the permit demonstrates that the water loss resulting from the withdrawal averages less than 5,000,000 GPD in every 90-day period, the state decision-making standard applies.

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. 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, except that if the person applying for the permit demonstrates that the water loss resulting from the increase in the withdrawal averages less than 5,000,000 GPD in every 90-day period, the state decision-making standard applies.

If a proposal will result in a new water loss or an increase in water loss that averages 5,000,000 gallons 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 that the withdrawal will result in a water loss that averages at least 5,000,000 GPD in any 90-day period, DNR must submit the proposal for regional review and may not act on the proposal until the regional review is complete, unless regional review takes more than 90 days.

#### ***State decision-making standard***

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

1. The amount of the withdrawal is needed to meet the projected needs of the persons who will use the water.
2. Cost-effective conservation practices will be implemented to ensure efficient use of the water.
3. One of the following applies:
  - a. The withdrawal will cause no significant adverse environmental impacts to the waters of the state.
  - b. 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.
  - c. 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 very 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:

1. The withdrawal will not result in significant adverse 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.
2. Environmentally sound and economically feasible water conservation measures will be used in implementing the withdrawal.
3. The proposed use of the water is reasonable, based on a consideration of factors specified in the bill.

**STATEWIDE WATER CONSERVATION**

The requirement for a statewide water conservation and efficiency program continues to apply after the compact takes effect. The bill requires DNR to specify water conservation and efficiency goals and objectives for the waters of the Great Lakes basin that are consistent with the goals in the compact and the objectives specified by the council. By 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.

**Legislative oversight**

The bill authorizes the governor to designate the secretary of natural resources to be the governor's alternate on the council in the governor's absence. Any designee other than the secretary is subject to senate confirmation.

Under the bill, before voting on a regulation of the council for the implementation or enforcement of the compact, or on a regulation that amends the exception standard or the compact's decision-making standard, other than a regulation that deals solely with the internal management of the council, the governor must submit a report describing his or her proposed vote on the proposed regulation to the joint committee on legislative organization. The bill provides for passive review of the report. If the committee meets and takes action on the report within the periods provided in the bill, the governor may only vote on the proposed regulation in accordance with the position taken by the committee by majority vote.

**PUBLIC PARTICIPATION**

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

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

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(END)

*of analysis insert*