



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

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



➡ Appendix B ... Part 16 of 18



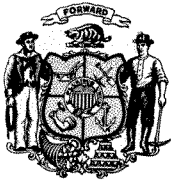
➡ The 2007 drafting file for LRBa1729

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.



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

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

### **☞ Compile Draft – Appendix O**

- |                                                       |                                                       |
|-------------------------------------------------------|-------------------------------------------------------|
| <b>A</b> ☞ The <u>2007</u> drafting file for LRBa1595 | <b>J</b> ☞ The <u>2007</u> drafting file for LRBa1703 |
| <b>B</b> ☞ The <u>2007</u> drafting file for LRBa1694 | <b>K</b> ☞ The <u>2007</u> drafting file for LRBa1704 |
| <b>C</b> ☞ The <u>2007</u> drafting file for LRBa1696 | <b>L</b> ☞ The <u>2007</u> drafting file for LRBa1705 |
| <b>D</b> ☞ The <u>2007</u> drafting file for LRBa1697 | <b>M</b> ☞ The <u>2007</u> drafting file for LRBa1706 |
| <b>E</b> ☞ The <u>2007</u> drafting file for LRBa1698 | <b>N</b> ☞ The <u>2007</u> drafting file for LRBa1707 |
| <b>F</b> ☞ The <u>2007</u> drafting file for LRBa1699 | <b>O</b> ☞ The <u>2007</u> drafting file for LRBa1708 |
| <b>G</b> ☞ The <u>2007</u> drafting file for LRBa1700 | <b>P</b> ☞ The <u>2007</u> drafting file for LRBa1709 |
| <b>H</b> ☞ The <u>2007</u> drafting file for LRBa1701 | <b>Q</b> ☞ The <u>2007</u> drafting file for LRBa1727 |
| <b>I</b> ☞ The <u>2007</u> drafting file for LRBa1702 |                                                       |

**2007 LRBa1708** has been copied/added to the drafting file for

**LRB a1729** Superamendment used to create

LRB-4360 ( ) & LRB-4367 (Ap8 SB-1)

**2007 DRAFTING REQUEST**

**Assembly Amendment (AA-SB523)**

Received: 04/08/2008

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gunderson@legis.wisconsin.gov**

Carbon copy (CC:) to: **John.Stolzenberg@legis.wisconsin.gov**  
**Mark.Patronskey@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Water resources protection act

---

**Instructions:**

See Attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	btradewe 04/11/2008	bkraft 04/11/2008	pgreensl 04/11/2008	_____	cduerst 04/14/2008		
	btradewe 04/14/2008	jdyer 04/14/2008	rschluet 04/14/2008	_____			
/P2	btradewe 04/18/2008	bkraft 04/18/2008	rschluet 04/18/2008	_____	cduerst 04/18/2008		

**LRBa1708**

04/18/2008 03:40:20 PM

Page 2

FE Sent For:

**<END>**

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/P1	btradewe 04/11/2008	bkraft 04/11/2008	pgreensl 04/11/2008	_____	cduerst 04/14/2008		
	btradewe 04/14/2008	jdye 04/14/2008	rschluet 04/14/2008	_____			

FE Sent For:

/P2 bjk 4/18

  
<END>

2007 DRAFTING REQUEST

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/P1	btradewe	/P1 bjk 4/11	4/11	4/11			
			08	10			

FE Sent For:

  
U-H <END>

**15. New or Increased Interbasin Transfers**

**S. 281.344 (2) (f) [page 52] is created to provide:**

(f) *Water Resources Protection Act.* The Department shall evaluate all applications for interbasin transfers using the same standards uniformly applied. Nothing in this section may be interpreted to change Wisconsin's historic application of 42 U.S.C. s. 1962d-20 until such time as the United States Congress repeals or amends that section.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa1708/P1 ✓  
RCT:.....

Today

Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓  
ASSEMBLY AMENDMENT, ✓  
TO 2007 SENATE BILL 523

1 At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows: ✓

3 1. Page 52, line 18: after that line insert:

4 ✓ ✓  
5 "(f) *Water resources protection act.* The department may not change its  
6 interpretation of the way that 42 USC 1962d applies in this state based on any  
7 provision of this section or s. 281.343." ✓

7 2. Page 64, line 21: after that line insert:

8 ✓ ✓  
9 "(j) *Application of requirements.* ✓ The department shall evaluate all  
10 applications under par. (b) using the requirements in this subsection and shall apply  
11 those requirements uniformly." ✓

(END) ✓





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa1708/P1  
RCT:bjk:pg

Today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY AMENDMENT,  
TO 2007 SENATE BILL 523

Note

of the compact ✓

1 At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows:

3 1. Page 52, line 18: after that line insert:

4 "(f) *Water resources protection act.* The department may not change its  
5 interpretation of the way that 42 USC 1962d applies in this state based on any  
6 provision of this section or s. 281.349." ✓

7 2. Page 64, line 21: after that line insert:

8 "(j) *Application of requirements.* The department shall evaluate all  
9 applications under ~~par. (b)~~ <sup>sub. (4)</sup> using the requirements in ~~this subsection~~ <sup>sub. (4)</sup> and shall apply  
10 those requirements uniformly. ✓

11

(END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1708/P1dn

RCT:.....

date

Jld

Mike Bruhn:

This draft corresponds to item 15 on the amendment list.

This draft prohibits DNR from changing its interpretation of the way that 42 USC 1962d-20 (commonly called WRDA) applies. The proposed language (the language that was provided to me) provided that s. 281.344 could not be interpreted to change the application of WRDA until WRDA is repealed or amended. This draft does not refer to the amendment or repeal of WRDA.

This draft provides that DNR may not change its interpretation of WRDA based on anything in s. 281.344 or in the compact. If WRDA is amended, the interpretation of WRDA might appropriately change, not because of anything in the compact or s. 281.344, but because of the change in WRDA. If an amendment to WRDA is adopted that is not relevant to the application of WRDA in this state, the proposed language would seem to allow DNR to change the interpretation of the application of WRDA simply because of the irrelevant amendment.

Any interpretation of WRDA becomes irrelevant once WRDA is repealed because then it will no longer be applied to anyone. It is unnecessary to authorize DNR to change its interpretation of WRDA after the repeal of WRDA.

Finally, it should be noted that s. 281.344 is sunset when the compact takes effect (see page 82, lines 19 and 20, of the substitute amendment). Thus the language in this amendment (which is in s. 281.344) does not apply once the compact takes effect. The process for the approval of diversions in the compact will replace the process in WRDA. WRDA will be repealed when the compact is approved by Congress. Therefore, WRDA and the language in this amendment about the application of WRDA will both cease to have any legal effect at the same time.

*Presumably  
presumably*

In the sentence of this amendment that requires uniformity in the evaluation of applications for interbasin transfers, I included a cross-reference to the part of the precompact statute that contains the requirements for interbasin transfers [subsection (4)], in order to clarify that other requirements may not be added.

Please contact me with any questions about this amendment.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1708/P1dn  
RCTjld:rs

April 14, 2008

Mike Bruhn:

This draft corresponds to item 15 on the amendment list.

This draft prohibits DNR from changing its interpretation of the way that 42 USC 1962d-20 (commonly called WRDA) applies. The proposed language (the language that was provided to me) provided that s. 281.344 could not be interpreted to change the application of WRDA until WRDA is repealed or amended. This draft does not refer to the amendment or repeal of WRDA.

This draft provides that DNR may not change its interpretation of WRDA based on anything in s. 281.344 or in the compact. If WRDA is amended, the interpretation of WRDA might appropriately change, not because of anything in the compact or s. 281.344, but because of the change in WRDA. If an amendment to WRDA is adopted that is not relevant to the application of WRDA in this state, the proposed language would seem to allow DNR to change the interpretation of the application of WRDA simply because of the irrelevant amendment.

Any interpretation of WRDA becomes irrelevant once WRDA is repealed because then it will no longer be applied to anyone. It is unnecessary to authorize DNR to change its interpretation of WRDA after the repeal of WRDA.

Finally, it should be noted that s. 281.344 is sunset when the compact takes effect (see page 82, line 19, of the substitute amendment). Thus the language in this amendment (which is in s. 281.344) does not apply once the compact takes effect. The process for the approval of diversions in the compact will replace the process in WRDA. WRDA will presumably be repealed when the compact is approved by Congress. Therefore, WRDA and the language in this amendment about the application of WRDA will both cease to have any legal effect at the same time.

In the sentence of this amendment that requires uniformity in the evaluation of applications for interbasin transfers, I included a cross-reference to the part of the precompact statute that contains the requirements for interbasin transfers [subsection (4)], in order to clarify that other requirements may not be added.

Please contact me with any questions about this amendment.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

**Tradewell, Becky**

---

**From:** Bruhn, Mike  
**Sent:** Tuesday, April 15, 2008 11:37 AM  
**To:** Tradewell, Becky  
**Subject:** FW: Draft review: LRB 07a1708/P1 Topic: Water resources protection act

Becky,

Attached are changes for LRB 1708/P1.

There are concerns about the changes made in this draft. First, the omission of the "historic" portion of our agreed-upon language is a critical component. Second, changing "interpretation" from "application" is problematic. We believe that both concepts are important.

Finally, this section should not be limited by the requirement that the Department's interpretation or application be "based on any provision of this section or of the compact." (We have no concerns with the second sentence of the draft amendment.) Accordingly, we suggest the following changes to the proposed amendment:

"(f) *Water resources protection act*. The department may not change its historic interpretation or application of the way that 42 USC 1962d-20(d) applies in this state ~~based on any provision of this section or of the compact~~. The department shall evaluate all applications under sub. (4) (b) using the requirements in sub. (4) and shall apply those requirements uniformly."

In addition, we believe that the addition of the notation to sub. (d) in the reference to WRDA (i.e., 42 USC 1962d-20(d)) alleviates the drafter's concern about irrelevant amendments to WRDA permitting DNR to change their interpretation, which she notes in the second paragraph of her drafter's note. Sub. (d) is specifically limited to diversions and, as such, is entirely within the scope of this legislation. Any amendment to sub. (d) would be relevant. (For your reference, I have included the text of 42 USC 1962d-20 below.)

Please let me know if you have any questions regarding my comments.

**For Your Reference:** Text of 42 USC 1962d-20 quoted below.

**(a) Congressional findings and declarations**

The Congress finds and declares that—

- (1) the Great Lakes are a most important natural resource to the eight Great Lakes states and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the Great Lakes region, and recreational uses for millions of United States and Canadian citizens;
- (2) the Great Lakes need to be carefully managed and protected to meet current and future needs within the Great Lakes basin and Canadian provinces;
- (3) any new diversions of Great Lakes water for use outside of the Great Lakes basin will have

04/15/2008

significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces; and

(4) four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Waters Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the United States would affect the relations of the Government of the United States with the Government of Canada.

**(b) Congressional declaration of purpose and policy**

It is therefore declared to be the purpose and policy of the Congress in this section—

(1) to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;

(2) to encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin;

(3) to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and

(4) to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

**(c) "Great Lakes State" defined**

As used in this section, the term "Great Lakes State" means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

**(d) Approval by Governors for diversion of water**

No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake <sup>[1]</sup> States.

**(e) Approval of Governors for diversion studies**

No Federal agency may undertake any study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governor of each of the Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters Treaty of 1909.

**(f) Previously authorized diversions**

This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on November 17, 1986.

**From:** Duerst, Christina  
**Sent:** Monday, April 14, 2008 2:57 PM  
**To:** Rep.Gunderson  
**Subject:** Draft review: LRB 07a1708/P1 Topic: Water resources protection act

**Following is the PDF version of draft LRB 07a1708/P1 and drafter's note.**

\*\*\*\*\*

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

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\*\*\*\*\*

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

4/16/08 Mtg with Mike Bruhn, Jordan Hamb, Hank Helich,  
Dale Sawyer, John Stolzenberg:

I explained that if the phrase that begins  
with "based on" is deleted, we should add "unless that  
provision is amended." and that was agreed to.

RET

**Tradewell, Becky**

---

**From:** Bruhn, Mike  
**Sent:** Friday, April 18, 2008 11:20 AM  
**To:** Stolzenberg, John; Tradewell, Becky  
**Subject:** FW: Proposal for LRB-1708

John and Becky,

We have been discussing John's suggestions regarding LRB-1708 (WRDA) and we propose the following. We took into consideration John's concern about use of the term "historic" and suggest that we maintain use of that term (as it is important to several involved) and, instead, define it using John's link to the effective date.

1. Page 52, line 18: after that line insert:

“(f) *Water resources protection act.* The department may not change its historic interpretation or application of the way that the department applies 42 USC 1962d-20(d) to a public water supply for a community until such time as the United States Congress repeals or amends that section. The department shall evaluate all applications under sub. (4) (b) using the requirements in sub. (4) and shall apply those requirements uniformly. For purposes of this par., "historic" refers to the department's interpretation and application of 42 USC 1962d-20(d) made prior to the effective date of this section.”

Please let me know if you have any questions,

Mike Bruhn  
Rep. Gunderson's office

04/18/2008



Today

stage VMY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

ASSEMBLY AMENDMENT ,

TO 2007 SENATE BILL 523

Inserts

Note

pr application

1 At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows:

3 1. Page 52, line 18: after that line insert:

Insert 1-4

# 2.

4 (f) Water resources protection act. The department may not change its

historic

5 interpretation of the way that 42 USC 1962d-20 applies in this state based on any

Insert 1-5

6 provision of this section or of the compact. The department shall evaluate all

Insert 1-6

7 applications under sub. (4) (b) using the requirements in sub. (4) and shall apply  
8 those requirements uniformly.”

9

(END)

D-note

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa1708/P2ins

RCT.....

Lbjk

**Insert 1-4**

<sup>NO</sup> 1. In this paragraph, "historic" means made before the effective date of this subdivision .... [revisor inserts date]. ✓

**Insert 1-5**

<sup>NO</sup> (d) to a public water supply for a community

**Insert 1-6**

<sup>NO</sup> until that provision is amended

end of inserts

**DRAFTER'S NOTE  
FROM THE  
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LRBa1708/P2dn

RCT.....

Lbjk

**Mike Bruhn:**

I had to restructure the proposed language a little to comply with the drafting rules for definitions. ✓

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa1708/P2  
RCT:bjk:rs

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TO 2007 SENATE BILL 523

1 At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows:

3 1. Page 52, line 18: after that line insert:

4 "(f) *Water resources protection act.* 1. In this paragraph, "historic" means made  
5 before the effective date of this subdivision .... [revisor inserts date].

6 2. The department may not change its historic interpretation or application of  
7 42 USC 1962d-20 (d) to a public water supply for a community in this state until that  
8 provision is amended. The department shall evaluate all applications under sub. (4)  
9 (b) using the requirements in sub. (4) and shall apply those requirements  
10 uniformly."

11 (END)