



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2007 Senate Bill 523**

**Senate Substitute Amendment 1  
and Senate Amendment 1 to  
Senate Substitute Amendment 1**

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### **Senate Bill 523**

Senate Bill 523: (1) ratifies the proposed Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”); (2) regulates water use in the Great Lakes basin prior to Congressional consent to the Compact; and (3) implements the Compact in Wisconsin. The “basin” consists of the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec.

The Compact, as ratified by Senate Bill 523 and once ratified by the other seven Great Lakes states and consented to by Congress, will establish the legal framework for prohibiting most new or increased diversions of water to places outside of the Great Lakes basin, and for regulating large withdrawals and consumptive uses of water within the basin. The text of the Compact in Senate Bill 523 is the version endorsed by the Great Lakes governors on December 13, 2005.

The Great Lakes-St. Lawrence River Basin Water Resources Council (“Council”) is the regulatory body for the Compact, and consists of the governors of the eight Great Lakes states. The Council’s review and approval authority relates primarily to exceptions to the prohibition on diversions from the basin that straddle the basin. The Compact contains a standard of review for these decisions, the “exception standard,” which the Council may modify to make more restrictive.

With a few exceptions, new or increased diversions from the basin are prohibited under the Compact. One exception provided by the Compact is for diversions to areas within communities that “straddle” the boundary of the basin. Transfers of water within the basin, but from the watershed of one Great Lake into another, referred to as an “intrabasin transfer,” are regulated as an allowable diversion. An additional exemption from the prohibition is provided for communities that are not within the basin but that are within a county that straddles the basin limits. The Compact provides that Council approval is required for this last type of exception, and that one member of the Council may vote to veto the proposal.

The states are responsible for regulating new or increased withdrawals or consumptive uses within the basin (water that is withdrawn is returned to the basin; consumptive use means that water is removed and not returned to the basin, such as by evaporation). Any proposal that exceeds the baseline volume of water to trigger approval, by an amount set by the state, must obtain this approval based on the standard for decision-making set forth in the Compact.

Senate Bill 523 implements the Compact in two stages. The first stage of regulation applies prior to the ratification of the Compact by the Great Lakes states and consent to the Compact by Congress. These regulations are specific to Wisconsin and consist of the modification of current statutes and the enactment of new statutes. Many of these provisions are based on provisions in the Compact, including that the regulation of interbasin transfers in this period are based on the regulation of diversions under the Compact.

Senate Bill 523 establishes state statutory provisions that apply commencing on the effective date of the Compact and that replace the pre Compact regulations. The bill creates regulatory provisions to implement the standards imposed directly by the Compact, and to adopt state policies as authorized by the Compact. Interbasin transfer approvals issued before the Compact takes effect continue to be valid.

Senate Bill 523 establishes a statewide water conservation and efficiency program, to be administered by the Department of Natural Resources (DNR), the Public Service Commission, and the Department of Commerce. Elements of this program are used as part of the regulation of interbasin transfers, diversions, and withdrawals under the bill.

Senate Bill 523 establishes a new requirement for water supply plans. This planning requirement applies to public water supply systems serving a population of 10,000 or more that withdraws waters from any location in the state after 2025. The bill also requires a public water supply system of any size to prepare a water supply plan as a condition of receiving approval of a proposal for a new or increased withdrawal after the Compact's effective date, or a interbasin transfer or diversion, generally if the proposal is subject to one of the regulatory standards specified in the bill.

A comprehensive summary of the Compact and the provisions implementing it in Senate Bill 523 is provided in the Legislative Reference Bureau analysis at the beginning of Senate Bill 523.

### **Overview of the Amendments**

Senate Substitute Amendment 1 contains the text of Senate Bill 523, as amended by Senate Amendments 1 to 4 to Senate Bill 523. Senate Amendments 1 to 4 deal generally with the following subjects in the provisions in the bill implementing the Compact: Senate Amendment 1, withdrawals; Senate Amendment 2, interbasin transfers and diversions; Senate Amendment 3, water supply planning; and Senate Amendment 4, legislative oversight and other topics.

Senate Amendment 1 to Senate Substitute Amendment 1 relates to withdrawals and to interbasin transfers and decisions.

None of these amendments amend the text of the Compact, itself, as set forth in Senate Bill 523.

### **Senate Substitute Amendment 1 - Withdrawals**

Unless otherwise noted, the changes in withdrawal provisions under Senate Substitute Amendment 1 apply to pre-Compact and post-Compact water withdrawal permits.

Senate Substitute Amendment 1 makes the following changes in the provisions in Senate Bill 523, relating to withdrawals:

#### ***Standards***

- Provides an applicant who proposes, after the Compact's effective date, a new or increased water withdrawal of at least 10 million or more gallons per day for any 30 consecutive days the option of complying with the state decision-making standard rather than the Compact decision-making standard, if the applicant demonstrates, using procedures specified by the DNR by rule, that the water loss associated with the new or increased withdrawal will average less than five million gallons per day in every 90-day period.
- Deletes the consumptive use decision-making standard and related provisions and returns to current law under s. 281.35, Stats., to govern approvals for water losses over two million gallons per day. The substitute amendment also establishes that, in general, these water loss approvals are to be specified in an individual water withdrawal permit issued under the bill.
- Deletes from the state decision-making standard, which is applicable to post-Compact individual permits, the criterion that a proposal must satisfy any other standard that the DNR determines is necessary and promulgates by rule.

#### ***Withdrawal Amounts and Baselines***

- Establishes that for purposes of determining water withdrawal amounts and associated baselines, the "water supply system" for which these amounts are being determined is, in general, the equipment handling the water from the point of intake of the water to the first point at which the water is used. In the case of a system for providing water to a public water supply, "water supply system" for these purposes is the equipment from the point of intake of the water to the first point at which the water is distributed. Note that, as drafted, these definitions of "water supply system" do not apply to the use of the term "public water supply system."
- Modifies the general guidance on the aggregation of withdrawals from more than one source that serves a "facility" to determine the water withdrawal amount for the facility based upon summing the water withdrawal amounts for each of the water supply systems serving the facility.
  - "Facility" is defined to mean "an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties." This definition is based upon the

definition of “facility” in s. NR 142.02 (7), Wis. Adm. Code, excluding facilities used to provide water to the public.

- Removes the provisions that on the Compact’s effective date there is no baseline for withdrawals, consumptive uses, and diversions other than those specified in the bill.
- Removes from the determination of initial withdrawal amounts for existing withdrawals from the Great Lakes Basin that the person making the withdrawal may provide DNR other information that DNR considers to be relevant, in addition to the specific types of information listed in the bill, and substitutes “other relevant information.”

### ***Permitting, Permit Conditions, and Reporting***

- Specifies that one of the grounds for DNR redetermining coverage under a new general water withdrawal permit or reissuing a new individual water withdrawal permit is that the person is in substantial compliance with the current general permit or individual permit rather than being in compliance with the permit.
- Deletes the directive to DNR to include in the contents of general and individual water withdrawal permits other conditions, limitations, or restrictions specified in DNR rules that DNR determines are necessary to protect the environment or public health or safety or to ensure the conservation and proper management of the waters of the Great Lakes Basin.
- Establishes that an individual water withdrawal permit is not transferable to any other person except after notice to DNR and that a person who proposes to assume control over a permit or withdrawal must file with DNR a permit application and a statement of acceptance of the permit. DNR may require modification or revocation and reissuance of the permit to change the name of the permittee.
- Deletes the requirement that a general or individual water withdrawal permit must include requirements for reporting, metering, and surveillance as provided in DNR’s rules, and substitutes requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, as provided in DNR’s rules.
- Specifies that the public participation procedures and requirements generally applicable in the review of an individual water withdrawal permit application after the Compact’s effective date do not apply when a person applies for a modification of a permit for a withdrawal and neither the state nor the Compact decision-making standards apply to the modification.
- Authorizes DNR to waive the requirement to obtain coverage under a general water withdrawal permit for a person making a withdrawal that is covered by a permit issued under s. 30.18 (2) (a), Stats., for diversion of water from a stream in the state for the purposes of agriculture, irrigation, or to maintain and restore the normal level of a navigable lake or the normal flow of a navigable stream.

- Removes an exception to the water withdrawal reporting requirement for persons operating a wastewater treatment system, so that if a person to whom the reporting requirements generally applies provides the water to a public water supply system, the person who operates the public water supply system, rather than the withdrawer must, annually report to DNR the volume of water loss from consumptive use of the water provided to the public water supply system.
- Clarifies that listed statutory approvals that are a prerequisite for an individual water withdrawal permit for a new or increased withdrawal or for coverage under a general permit for a new or increased withdrawal apply to approvals that are required for the withdrawal.
- Modifies the requirement that an individual water withdrawal permit issued after the Compact's effective date must contain provisions that DNR determines are necessary for tracking increases in water loss resulting from increases in withdrawal amounts during the term of the permit to provide that these provisions are for tracking only substantial increases in these water losses.

### ***Enforcement***

- Authorizes DNR to issue an emergency order to a person who has been issued an individual water withdrawal permit or notice of coverage under a general water withdrawal permit to immediately stop the withdrawal if the department determines that there is a danger of imminent harm to the public health, safety, welfare, to the environment, or to the water resources or related land resources of the state.
- Establishes that it is not a violation of the water withdrawal provisions in the bill to inadvertently withdraw an amount of water that exceeds that withdrawal amount specified in an individual permit or the database of withdrawal amounts for withdrawals covered by a general permit.
- Modifies the grounds for DNR to suspend or revoke coverage under a general or individual water withdrawal permit from misrepresentation or failure to disclose relevant facts or violating the terms of the permit to misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.
- Modifies the penalty provisions applicable to violations of the pre- and post-Compact implementation statutes. These penalties authorize the court to order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking any other action necessary to eliminate or minimize any environmental damage caused by the defendant. The substitute amendment specifies that this damage must be caused by the violation rather than the defendant.

### **Senate Substitute Amendment 1 - Interbasin Transfers and Diversions**

Senate Substitute Amendment 1 makes the following changes in the provisions in Senate Bill 523, relating to interbasin transfers and diversions:

- Adds to the exception standard for interbasin transfers and diversions, and related requirements for applications for these approvals that, if water will be returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water must be protected and sustained as required under the specified statutes based upon an additional consideration of potential adverse impacts due to changes in temperature and nutrient loadings caused by this return flow.
- Changes the documentation in an application for an interbasin transfer or a diversion where the applicant will not be directly withdrawing the water proposed to be transferred, so that the applicant may provide evidence of support from the entity that will withdraw the water in the form of a letter or resolution rather than an agreement. Similarly, if the applicant will not be directly returning the water to the Great Lakes basin, the application must provide evidence of any support from the entity that will be returning the water in the form of a letter or resolution rather than an agreement.
- In the requirements for a new or increased interbasin transfer or diversion to provide water for public water supply purposes in a community within a straddling county, deletes the requirement that the community must not have a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for water supply based on consideration of both public health, economic feasibility, and direct and avoided environmental impacts; and substitutes that the community is without an adequate supply of potable water.
  - The substitute amendment also defines “without adequate supplies of potable water” to mean “without a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is available at a reasonable cost, and does not have adverse environmental impacts greater than those likely to result from the proposed new or increased interbasin transfer or diversion.”
- For purposes of the requirements for providing a new or increased interbasin transfer or diversion for public water supply purposes in a community within a straddling county, defines “reasonable supply alternative” to mean a supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased interbasin transfer or diversion and that does not have greater adverse environmental impacts than the proposed new or increased interbasin transfer or diversion.
- In the provisions relating to proposals for a new or increased interbasin transfer or diversion for public water supply purposes in a community within a straddling county relating to evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Great Lakes basin, establishes that DNR may not use a lack of hydrologic connection as a reason to disprove a proposal.
- Directs that in the DNR rules specifying how an applicant for a new or increased interbasin transfer or diversion will demonstrate the efficient use and conservation of existing water supplies, the rules must include requirements that the applicant document the water

conservation planning and analysis used to identify feasible water conservation and efficiency measures based on an analysis that considered direct and avoided economic and environmental costs, and that the applicant implemented in order to make this demonstration.

- Modifies the element in the provision relating to automatic approval for existing interbasin transfers that prohibits DNR from issuing an automatic approval before the interbasin transfer begins to limit this prohibition to the issuance of an automatic approval under this provision.
- Limits the requirement in the exception standard applicable to new or increased interbasin transfers and diversions that the structure used to return the water is designed and will be operated to meet the applicable permit requirements under s. 30.12, Stats., and DNR has approved a permit under that section for the structure to apply only if the water is returned through a structure on the bed of a navigable water.
- Establishes an exception to the requirement that beginning on the Compact's effective date, no person may begin a diversion or increase the amount of a diversion if an approval was issued for the transfer under the pre-Compact implementation statute applicable to new or increased interbasin transfers.

#### **Senate Substitute Amendment 1 - Water Supply Planning**

Senate Substitute Amendment 1 makes the following changes in the provisions in Senate Bill 523, relating to water supply planning:

- Deletes "regional" from the title of the statutory section on water supply planning.
- Deletes in the plan approval criteria that the plan must provide for the most cost-effective water supply system that meets the specified conditions and substitutes that the plan must provide for a cost-effective water supply system that meets the specified conditions.
- In the plan approval criteria, deletes the requirement that the area-wide water quality management plan, with which the water supply plan must be consistent, must have been updated within five years before the proposed water supply plan was submitted to DNR.
- In the plan approval criteria and associated application requirements, modifies the provision that the plan must effectively maximize the use of existing water supply and wastewater infrastructure to be that the plan must effectively maximize the use of existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.

#### **Senate Substitute Amendment 1 - Legislative Oversight and Other Provisions**

Senate Substitute Amendment 1 makes the following changes in the provisions in Senate Bill 523, relating to legislative oversight and other miscellaneous topics:

- Establishes that the Governor may designate an individual other than the designee of the Secretary of Natural Resources to be an alternate to the Governor on the Council and to vote

at meetings of the Council in the absence of the Governor. Such a designee is subject to Senate confirmation. This designee is in addition to the authority under the bill of the Governor to designate the Secretary of Natural Resources as an alternate.

- Specifies in the pre- and post-Compact implementation statutes that nothing in those statutes or the statute containing the text of the Compact, s. 281.343, may be interpreted to change the application of the public trust doctrine. This doctrine is established in article IX, section 1 of the Wisconsin Constitution.
- Directs the Governor and his or her alternates on the Council to submit any proposed Council regulation that modifies the standard of review and decision or that creates or amends a Council rule or regulation implementing or enforcing the Compact decision-making standard, exception standard, or regional review under the Compact, other than a rule or regulation that deals solely with the internal management of the Council on its property, to the Joint Committee on Legislative Organization (JCLO) for approval in a 60-day passive review process. Under this process, the Governor or his or her alternate may not vote on the proposed rule or regulation only if JCLO objects to the proposed rule or regulation.
  - Defines, for purposes of the JCLO review, that the “standard of review and decision” is the Compact’s decision-making standard, exception standard, and reviews conducted under the water management and regulation provisions in the Compact (s. 281.343 (4) to (4z)) that do not deal solely with the internal management of the Council.
- Makes various technical corrections to correct cross-references and identification of standards.

### **Senate Amendment 1 to Senate Substitute Amendment 1**

#### ***Water Withdrawals***

Senate Amendment 1 makes the following changes to Senate Substitute Amendment 1, relating to water withdrawals:

- In the provision authorizing DNR to require a person who would otherwise be eligible for coverage under a pre- or post-compact general water withdrawal permit to instead obtain an individual permit, deletes the grounds for DNR to require the individual permit if coverage under an individual permit is necessary to protect public health or safety or to ensure the conservation and proper management of the waters of the state.
- Deletes “inadvertently” from the provisions establishing in the pre- and post-compact water withdrawal regulations that it is not a violation of those regulations to inadvertently withdraw an amount of water that exceeds the withdrawal amount specified in an individual permit or in DNR’s database for withdrawals covered under a general permit. The amendment also creates an exception to this provision in the post-compact implementation statute that it is a violation of those regulations if the amount by which the withdrawal exceeds the withdrawal amount would result in the application of either the state or compact decision-making

standard. (This exception is not needed in the pre-compact implementation statute because these standards are not applied under that statute.)

- Adds to the items DNR may include in an individual withdrawal permit issued after the compact's effective date any limit on the amount of the withdrawal necessary to ensure compliance with the state or compact decision-making standard, if the standard applies to the withdrawal. (Inclusion of this provision further clarifies that the specification of a withdrawal amount in an individual withdrawal permit is not an enforceable limit on the amount of the withdrawal.)
- Deletes from the permissible contents of an individual water withdrawal permit issued after the compact's effective date "provisions that the department determines are necessary for tracking substantial increases in water loss resulting from increases in withdrawal amounts during the term of the permit" and substitutes "provisions for estimating, and, if necessary, monitoring substantial increases in water loss resulting from increases in withdrawal amounts during the term of the permit and reporting the results of the estimating or monitoring, as provided in rules promulgated by the department."
- Modifies the provision directing DNR to not act on a proposal, for which the regional body has requested a regional review due to it being a "regionally significant or potentially precedent setting proposal." Under the substitute amendment, DNR may not act on the proposal until the proposal has undergone regional review and the department has considered the regional declaration of finding. The amendment authorizes DNR to act on the proposal, 90 days after the department submits the proposal for regional review, even if the regional review has not yet been completed. (The Compact sets a goal of regional reviews being completed within 90 days.)
- Modifies the provision in current law regulating water losses statewide that exceed more than two million gallons per day averaged over any 30-day period from new or increased withdrawals that addresses aggregating water losses from multiple withdrawals by deleting the reference to a single use and related uses and substituting that the use is to supply a single facility or public water supply system. "Facility" is defined in this context to mean an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties. This definition of "facility" is the same as the definition in comparable provisions in the pre-compact implementation statutes created by the substitute amendment. The resulting criterion for aggregating multiple withdrawals is comparable between this provision and the aggregation provisions in the pre- and post-compact implementation statutes.

### ***Interbasin Transfers and Diversions***

Senate Amendment 1 makes the following changes to Senate Substitute Amendment 1, relating to interbasin transfers and diversions:

- In the water supply plan approval criteria, and associated application requirements, modifies the requirement that the plan will effectively maximize the use of existing water supply

storage and distribution facilities and waste water infrastructure to the extent practicable to be that the plan must effectively utilize the specified facilities and infrastructure to the extent practicable.

- Establishes procedures DNR must use to review an application for a new or increased interbasin transfer providing water for public water supply purposes in either a straddling community or a community within a straddling county before it promulgates rules regarding requirements for the applicant to demonstrate the efficient use and conservation of existing water supplies (as required under certain regulations applicable to these proposals), or July 1, 2010, whichever is earlier. Under these procedures, the department must review the application through the water supply planning process prescribed in the substitute amendment, considering the regulatory standards applicable to the interbasin transfer as factors in the cost-effective analysis required under the water supply planning process. The amendment specifies that these procedures apply notwithstanding the text in the applicable interbasin transfer regulations that all of the items following the cited introductory provisions must apply to the proposal for which the application is made.

### **Legislative History**

On March 5, 2008, the Senate Committee on Environment and Natural Resources introduced and recommended adoption of Senate Amendments 1 to 4 to Senate Bill 523 by votes of Ayes, 5; Noes, 0; and recommended engrossment of Senate Amendments 1 to 4 into Senate Substitute Amendment 1 and introduction and adoption of Senate Substitute Amendment 1 to Senate Bill 523 by votes of Ayes, 5; Noes, 0. On March 5, 2008, the Senate Committee on Environment and Natural Resources recommended passage of Senate Bill 523, as amended, by a vote of Ayes, 3; Noes, 2.

On March 6, 2008, Senator Miller offered Senate Amendment 1 to Senate Substitute Amendment 1. On March 6, 2008, the Senate adopted Senate Amendment 1 to Senate Substitute Amendment 1 and Senate Substitute Amendment 1 on voice votes and passed Senate Bill 523, as amended, by a vote of Ayes, 26; Noes, 6.

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