



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #585

Great Lakes Compact Implementation and Fees (DNR - Water Quality)

[LFB 2009-11 Budget Summary: Page 481, #12]

CURRENT LAW

2007 Wisconsin Act 227, effective June 11, 2008, included Wisconsin's ratification of the Great Lakes-St. Lawrence River Basin Water Resources Compact, regulated water use in the Wisconsin portion of the Great Lakes basin before Congress ratified the compact, implemented the compact in Wisconsin, and established other water use programs in the state. The eight Great Lakes States ratified the compact in the summer of 2008, the U.S. Congress consented to the Compact in September, 2008, the President signed the Congressional consent resolution in October, 2008, and the compact became effective on December 8, 2008.

The compact requires the eight states to regulate new and increased withdrawals of water that exceeds specified amounts from the Great Lakes basin for use within the basin. It also regulates diversion (removal) of waters to outside of the Great Lakes basin or between basins of the Great Lakes. 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 basin water, to register with the state and provide information about the withdrawal or diversion. Persons who are required to register must annually report information about the amounts of water withdrawn, diverted, or lost through consumptive use (water that is removed and not returned to the basin, such as by evaporation).

The compact creates the Great Lakes-St Lawrence River Basin Water Resources Council consisting of the Governors of the Great Lakes states. The Council oversees the implementation of the compact and has responsibilities related to reviewing water conservation and efficiency objectives and programs, and approving certain proposals that involve diverting water from the basin of one of the Great Lakes. The compact also provides for review of some proposals by a regional body that consists of the Council and the premiers of Ontario and Quebec, Canada.

Act 227 created several regulatory provisions to implement the compact. Some of the major provisions are to: (a) require statewide registration and reporting for water systems that withdraw 100,000 GPD or more in any 30-day period; (b) establish a statewide water conservation and efficiency program; (c) establish a water use permit program for withdrawals of water that average 100,000 GPD or more in any 30-day period; (d) establish a review process for proposed diversions of Great Lakes water; and (e) collect water use data and publish water use reports. Act 227 did not set fees, or provide funding or staff to administer the act.

GOVERNOR

Establish water withdrawal fees, create a program revenue appropriation, and provide expenditure authority and position authority from the fees for water use activities and to implement the Great Lakes Compact provisions under section 281.346 of the statutes. The provision includes:

a. Provide \$187,400 PR and 2.0 PR positions in 2009-10 only in the existing groundwater quantity administrative appropriation.

b. Provide \$999,400 PR and 4.0 PR positions in 2010-11 in a new water use fees program revenue appropriation. The new appropriation would be a continuing appropriation that could spend all moneys received from water use fees.

c. Establish three new water use fees, effective January 1, 2011, for large uses of water statewide and large withdrawals of water from the Great Lakes Basin. The administration estimates the new fees would generate revenue of approximately \$1,606,000 in 2010-11.

d. Create a water withdrawal fee of \$125 annually, to be paid by any person with a water supply system with the capacity to withdraw from state waters (surface or groundwater) an average of 100,000 gallons per day or more in any 30-day period. Authorize DNR to promulgate an administrative rule specifying a different fee amount. The fee would be paid for properties with high capacity wells, municipal water systems, other-than-municipal systems, and large surface water withdrawals. The administration estimates this fee would generate revenue of \$596,000 annually, beginning in 2010-11, based on the statutory \$125 fee amount.

e. Create an annual Great Lakes basin water withdrawal fee, to be paid by any person who withdraws more than 50 million gallons per year from the Great Lakes basin. Direct DNR to promulgate a rule specifying the amount of the fee. The administration estimates this fee would generate revenue of \$1,010,000 annually, beginning in 2010-11. The actual amount of revenue collected would vary depending on the fee system to be established during rule promulgation, and the number of systems that would be registered and report withdrawals.

f. Create a \$5,000 review fee to be paid by a person who submits an application for a diversion of water from the Great Lakes basin to a watershed outside the Great Lakes basin or

from the watershed of one of the Great Lakes to another. The administration estimates this fee would generate minimal revenue.

DISCUSSION POINTS

1. When the Great Lakes compact ratification and implementation language was enacted in 2008, no revenues and staff were provided for Department of Natural Resources (DNR) administration of the provisions. There was a general expectation that subsequent legislation would be enacted to provide some sort of fee system for DNR staff and administrative activities. DNR estimated it would need roughly \$1 million annually to administer the Compact provisions.

2. The compact went into effect sooner than many people anticipated, with a final effective date of December 8, 2008. DNR currently has workload related to activities such as: (a) administrative rule development for registration and reporting of water use, water use permitting, water conservation and efficiency planning, water supply service area planning; (b) processing of interim approvals of water withdrawals; (c) implementing a registration and reporting program, water use permitting program, and planning activities; and (d) developing databases. DNR has been allocating one federally-funded position to begin program implementation.

3. The bill would provide \$187,400 PR in 2009-10 for 2.0 permanent positions and two limited-term employees (LTEs) in the existing groundwater quantity administrative appropriation. This would provide 3.0 full-time equivalent (FTE) of staff effort for startup costs for Compact implementation until the water use fees authorized in the bill are received beginning in 2010-11. In 2010-11, the funding for the permanent and LTE positions would be transferred to the new water use fees appropriation, and 2.0 additional positions would be provided in the new appropriation, for a total of 4.0 permanent positions and 1.0 FTE of LTE time.

4. The groundwater quantity appropriation receives funds from the \$500 fee for high capacity well applications and \$50 notification fee for construction of other wells. The fees are appropriated for five staff for review of high capacity well applications, administration of issues related to wells and groundwater quantity, and research and monitoring. Any of the well fees that are not spent on these activities are available to be used for mitigation of the effects of wells located in groundwater protection areas. DNR has not spent any funds for groundwater mitigation.

5. Table 1 shows the actual and estimated revenues and expenditures from the groundwater quantity fees under the bill. The table shows \$1,200,000 is being transferred from the appropriation balance to the general fund in 2008-09, and \$22,600 is intended to be transferred to the general fund during the 2009-11 biennium, all as part of overall agency allocations of budget lapse requirements for the two biennia. Table 1 also shows that DNR plans to continue making no expenditures for groundwater mitigation during the 2009-11 biennium. The appropriation would have an estimated balance of \$195,700 at the end of 2010-11. Thus, there would be a sufficient balance to fund the proposed expenditures for compact startup activities.

TABLE 1

**Estimated Revenue and Expenditures for Groundwater Quantity
Administration, Research, Mitigation Grants, and Local Assistance**

	2007-08 <u>Actual</u>	2008-09 Est <u>Base</u>	2009-10 <u>AB 75</u>	2010-11 <u>AB 75</u>
Opening Balance	\$1,429,200	\$1,555,800	\$235,000	\$80,600
Revenue	<u>747,900</u>	<u>560,900</u>	<u>658,200</u>	<u>747,900</u>
Total Available	\$2,177,100	\$2,116,700	\$893,200	\$828,500
Expenditures				
Administration	\$508,000	\$518,100	\$692,200	\$504,800
Research and Monitoring	113,300	100,000	99,000	99,000
Mitigation Grants and Local Assistance *	0	0	0	0
Reserves / prior yr encumbrances	<u>0</u>	<u>63,600</u>	<u>10,100</u>	<u>17,700</u>
Total Expenditures	\$621,300	\$681,700	\$801,300	\$621,500
Transfer to general fund	\$0	\$1,200,000	\$11,300	\$11,300
Closing Balance	\$1,555,800	\$235,000	\$80,600	\$195,700
Authorized positions	5.00	5.00	7.00	5.00

* DNR is authorized to spend all of the amounts not spent on administration, research and monitoring, for mitigation grants and local assistance. To date, DNR has not spent any funds for mitigation grants and local assistance, and does not plan to spend any for the purpose during the 2009-11 biennium.

6. The groundwater quantity administrative appropriation is not currently authorized to be used for administration of the Great Lakes compact implementation activities included in section 281.346 of the statutes. The bill could be amended to authorize use of the appropriation for 2009-10 only (Alternative 2a) to accomplish the intent of the administration. In addition, if the Committee wishes to accelerate work on some of the one-time database development activities funded from water use fees in 2010-11 under the bill, an additional \$75,000 could be appropriated from the groundwater quantity fees during 2009-10 instead of the same amount from the new water use fees in 2010-11 (Alternative 2b).

7. The groundwater quantity administration activities could be viewed as related to Great Lakes compact implementation, and as necessary on a one-time basis until the new water use fees are implemented. It could also be considered inappropriate to reallocate high capacity well revenues to compact startup activities. If the Committee considers the reallocation of funds as inappropriate, it could delete the \$187,400 PR and 2.0 PR positions from the groundwater quantity appropriation in 2009-10 (Alternative 2c).

8. Table 2 shows the estimated revenues of \$1,606,000 and expenditures of \$999,400 PR from the new water use fees appropriation in 2010-11. The expenditures would include \$757,200 for ongoing costs, and \$242,200 in one-time costs. There would be 2.0 new positions in addition to the 2.0 positions and two LTEs authorized in 2009-10 in the groundwater quantity appropriation and moved to the new appropriation in 2010-11. The 4.0 permanent positions would include three water supply specialists and one hydrogeologist to implement the water use registration, permitting and reporting program, and to coordinate and develop a statewide water conservation and efficiency program.

9. While the program is new and does not have a base funding level, the administration calculated the cost of the positions and associated funding, then reduced the recommended funding level by 1%. The administration has indicated its intent to transfer \$10,100 to the general fund, which is equal to 1% of the calculated cost of the new program. Under the bill, the administration could choose whether to transfer additional funds from the appropriation to the general fund during the biennium.

10. The funding for developing and maintaining the registration and reporting database includes \$211,700 in one-time costs and \$36,900 in ongoing annual costs. Act 227 requires registration by water users that have the capacity to withdraw 100,000 gallons or more per day over 30 consecutive days, and reporting of actual withdrawals by water users that withdraw 100,000 gallons or more per day over 30 consecutive days. DNR estimates the one-time funding would pay for 2,770 to 3,230 hours of contractor and DNR information technology time to perform activities such as: (a) identify water users that need to register and obtain a permit; (b) send and receive mailings; (c) develop a web application for the permit process; (d) enter data about registered and permitted water users; and (e) integrate water user databases for surface water, public water systems, and high capacity wells. DNR estimates the ongoing annual costs of maintaining and updating the database would require 440 to 640 hours per year.

11. Funding includes \$24,500 in one-time and \$11,100 in ongoing costs for developing and maintaining the web-based system for collecting submittals of water withdrawal data from water users online. Under the compact, water users have to report their actual water withdrawals. The one-time costs would be based on 330 hours of contractor time for design, system development, security setup, testing, setup, training, documentation, and implementation. DNR estimates ongoing costs would require approximately 150 hours per year for maintenance, database checks, and training.

12. The Department would begin to develop geographic information system (GIS) based data layers over several years intended to eventually enable the integration of water withdrawal and monitoring data with other agency data layers. Information related to aquifer mapping, withdrawals by type (such as by aquifer, water body or watershed) would be utilized. Funds would primarily be used to obtain data services by contract to begin to assemble a GIS-based system to get a more complete picture of water-withdrawal and other related cumulative impacts on the state's water resources.

TABLE 2

**Great Lakes Compact Implementation Water Use Fees
Estimated Revenue and Expenditures, AB 75**

	<u>2010-11</u>
Opening Balance	\$0
Revenue	
Water Use base fee	596,000
Great Lakes Basin withdrawal fee	1,010,000*
Diversion application fee	<u>0</u>
Total	\$1,606,000
Total Revenue Available	\$1,606,000
Expenditures - ongoing	
Permanent salary and fringe	\$268,000
LTE salary and fringe	43,800
Supplies for positions	8,900
Outreach-related supplies	25,000
Registration and reporting database development	36,900
Web-based annual reporting	11,100
Geographic information systems development	100,000
Master lease for surface water stream gauging network and observation well network	166,000
Ongoing operation of surface water stream gauging network and observation well network	<u>97,500</u>
Subtotal ongoing expenditures	\$757,200
Expenditures - one-time	
Equipment for two new positions	\$6,000
Registration and reporting database development	211,700
Web-based annual reporting	<u>24,500</u>
Subtotal one-time expenditures	\$242,200
Total Authorized Expenditures	\$999,400
Transfer to general fund	\$10,100
Closing balance	\$596,500
Authorized positions	4.00

* Fee to be set by rule, DNR has indicated revenue targets between \$0.5 million and \$1.0 million annually.

13. DNR estimates costs of purchasing and installing observation well and stream gauging equipment would total approximately \$708,000, paid for through a master lease with annual costs of \$166,000 for five years, and ongoing operational costs would be approximately \$97,500 annually. Act 227 requires development of data about how much water is being used in what areas of the state. DNR hopes to install or convert approximately 20 wells to observe groundwater characteristics in Milwaukee, Waukesha, Brown, Outagamie, and Winnebago Counties. DNR is working with the U.S. Geological Survey and Wisconsin Geological and Natural History Survey to locate observation wells in cones of depression (areas where long-term pumping has lowered the groundwater levels), groundwater recharge areas, areas expected to experience rapid population growth, and areas where areas of surface water or groundwater have been affected by lots of pumping. DNR would gather data about things such as the quantity of groundwater, and direction and speed of flow. The stream gauging equipment would be installed in streams near observation wells, and would measure the amount of water flowing in the location.

14. The compact implementation expenditures would be funded from the fees created in the bill. DNR indicates these fees would be in lieu of application or permit fees (other than the inter-basin diversion review fee under the bill).

15. The \$125 annual fee would be charged statewide to persons with a water supply system with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period. The estimated \$596,000 in annual revenue is based on preliminary tallies of 4,768 water users, but DNR indicates it would need to register water users under the Act 227 provisions before it could obtain a more accurate estimate of the ongoing revenue from the fee. DNR is aware of potential payers that include approximately 3,700 properties with high capacity wells, 546 municipal water systems, 122 other-than-municipal systems, and 400 surface water withdrawals (from a lake or river).

16. The bill would allow DNR to change the \$125 fee amount through the administrative rule process. DNR does not have specific plans for whether or when it might change the fee amount. The Department wants the flexibility of the rules process to make future changes in the fee amount. It could be argued that greater legislative oversight would be provided if there would be a statutory maximum amount, for example \$250, for a change made in rule to the \$125 fee (Alternative 3a), or if the Department would not be provided the authority to change the fee in rule (Alternative 3b). On the other hand, the requirement that administrative rule changes must be submitted to legislative committees for review may be considered adequate legislative oversight.

17. The Great Lakes basin water withdrawal fee would be charged to water users that withdraw more than 50 million gallons per year (approximately 137,000 gallons per day). It would only be assessed to water withdrawals from the Great Lakes basin (not statewide like the \$125 fee). The administration estimated the Great Lakes basin fee would generate revenue of \$1,010,000 annually, beginning in 2010-11, based on a DNR preliminary estimate of a potential tiered fee system and roughly 1,290 potential payers of the fee. For example, the fee could vary between \$0.25 (for withdrawals that exceed 50 million gallons per year) and \$2.50 per million gallons withdrawn per year, with a higher fee per withdrawal increment (the highest fee might apply to

withdrawals that exceed 500 million gallons per year). The actual amount of revenue collected would vary depending on the fee system to be established during rule promulgation, and the number of systems that would be registered and report withdrawals.

18. DNR officials currently indicate the Department's goal is to generate approximately \$500,000 from the Great Lakes basin fee rather than the \$1 million included in earlier estimates. They further indicate the Department seeks total annual revenue of approximately \$1 million from the statewide and Great Lakes basin fees, rather than \$1.6 million. Further, ongoing revenues of approximately \$800,000 annually would be sufficient to support ongoing costs under the bill (approximately \$760,000 in 2010-11).

19. Under the bill, there would be uncertainty about the amount of Great Lakes basin fee that would be paid by an individual person or system that meets the 50 million gallon threshold. This uncertainty would be resolved through the rule promulgation process.

20. There are many variations in a fee system that could make a substantial difference in the fee amount paid by an individual water withdrawal payer. For example, the capacity of a system to withdraw water is often much greater than the actual number of gallons withdrawn from the surface or groundwater. Under the bill, the rules process would determine which measure of water withdrawal would be used. Alternatively, the bill could be amended to specify the rule would be based on capacity (Alternative 4a) or actual amount pumped (Alternative 4b).

21. The bill does not include a maximum Great Lakes basin fee. The amount of water withdrawn would vary considerably, whether based on capacity or amount of water pumped. Some would argue that a maximum fee amount should be established in statutes to provide a degree of certainty about what water systems and withdrawals might expect to pay. For example, the bill could be amended to provide a maximum fee of \$5,000 (Alternative 5a), \$10,000 (Alternative 5b), \$25,000 (Alternative 5c), \$50,000 (Alternative 5d), or some other amount. The actual amount paid by a payer subject to the fee would continue to depend on the actual fee system that would be established in administrative rule. On the other hand a maximum fee would likely have the effect of shifting a greater portion of program costs to lower quantity users.

22. The \$5,000 application fee for a diversion request is expected to generate minimal revenue because there would not be many applications. The fee is intended to cover some of the costs of administrative review of the request.

23. Whether the fee authorization under the bill is adopted as recommended, or modified with a maximum fee amount per payer, the total revenue collected under the fees would not be known until the administrative rules would be finalized and fees are collected under the new fee structure. Thus, it is uncertain whether the fees would generate \$1 million or \$1.6 million, or some other amount. The Committee could consider amending the bill to require that if DNR assesses more than \$1.0 million in fees in an individual fiscal year, it must promulgate rule changes to reduce the total fee amount assessed to less than \$1.0 million in the following fiscal year (Alternative 6). This would establish a maximum amount of revenue to be collected under the program.

24. The Department did not request funding for compact implementation in its biennial budget request to the Governor. If revenues and staff are not provided for Great Lakes compact implementation, it is uncertain how, or from what source, DNR would find resources and staff to implement compact requirements.

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) provide \$187,400 PR and 2.0 PR positions in 2009-10 in the existing groundwater quantity administrative appropriation; (b) provide \$999,400 PR and 4.0 PR positions in 2010-11 in a new water use fees program revenue continuing appropriation; (c) create a water withdrawal fee of \$125 annually, to be paid by any person with a water supply system with the capacity to withdraw from state waters an average of 100,000 gallons per day or more in any 30-day period; (d) authorize DNR to promulgate an administrative rule specifying a different fee amount for the water withdrawal fee; (e) create an annual Great Lakes basin water withdrawal fee, to be paid by any person who withdraws more than 50 million gallons per year from the Great Lakes basin, with the amount of the fee to be established in DNR rule; and (f) create a \$5,000 review fee to be paid by a person who submits an application for a Great Lakes water diversion.

2. Adopt the Governor's recommendation, as modified related to use of the existing groundwater quantity administrative appropriation in one of the following ways:

a. Authorize DNR to use the existing groundwater quantity administrative appropriation for administration of the Great Lakes compact, in 2009-10 only.

b. Adopt Alternative 2a, and in addition, increase the 2009-10 one-time expenditures from the groundwater quantity administrative appropriation by \$75,000 PR and decrease the 2010-11 one-time expenditures from the Great Lakes water use fees appropriation by \$75,000 PR.

c. Delete \$187,400 PR and 2.0 PR positions in 2009-10 in the existing groundwater quantity administrative appropriation. (Funding for Great Lakes compact administration would begin in 2010-11.)

ALT 2c	Change to Bill Funding
PR	- \$187,400

3. Modify the \$125 annual water withdrawal fee in one of the following ways: (If no alternative is selected here, DNR could change the annual fee amount through the administrative rule process.)

a. Allow DNR to change the \$125 annual fee amount through the administrative rule process, but set a statutory maximum fee of \$250.

b. Delete the authority for DNR to change the \$125 fee amount through the administrative rule process. (A statutory change would be required to change the \$125 fee amount.)

4. Require that the DNR rule for the Great Lakes basin water withdrawal fee be based on one of the following: (If no alternative is selected here, DNR would determine this through the administrative rule process.)

a. The maximum capacity of the water system to withdraw water.

b. The actual gallons of water withdrawn (pumped) by the water system.

5. Establish a statutory maximum Great Lakes basin water withdrawal fee of one of the following amounts: (If no alternative is selected here, DNR would determine this through the administrative rule process.)

a. \$5,000

b. \$10,000

c. \$25,000

d. \$50,000

6. Require that if DNR collects more than \$1,000,000 in an individual fiscal year for the sum of the annual water use fee and Great Lakes basin water withdrawal fee, the Department must promulgate rule changes effective in the following fiscal year to reduce the total fee amount assessed to be less than \$1.0 million.

7. Delete provision (no state revenue or expenditures would be authorized for compact implementation).

ALT 6	Change to Bill		
	Revenue	Funding	Positions
PR	-\$1,606,000	-\$1,186,800	- 4.00

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