

GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

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House Bill 4343

Sponsor: Rep. Kate Ebli

Committee: Great Lakes and Environment

Complete to 11-6-07

A REVISED SUMMARY OF HOUSE BILL 4343 AS INTRODUCED 2-28-07

BRIEF SUMMARY: The bill would add a new Part 342 to the Natural Resources and Environmental Protection Act to ratify the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact).

On December 13, 2005, the governors of the eight Great Lakes states—Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin—and the premiers of two Canadian provinces—Ontario and Québec—agreed to the Great Lakes-St. Lawrence River Sustainable Water Resources Agreement (the Agreement) to be implemented in Ontario and Québec by provincial laws, and in the United States through the Compact, which is an interstate compact among the Great Lakes states. The Agreement and Compact detail how the Great Lakes states and provinces are to manage and protect the waters of the Great Lakes and St. Lawrence River Basin, defined as the "*watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec, within the jurisdiction of the parties.*"

In the United States, all eight Great Lakes states must ratify the Compact through legislation and the U.S. Congress must consent to it. In Canada, the provinces of Ontario and Québec must adopt provincial laws in accordance with the Agreement, but no federal approval is required. The Compact and Agreement are the culmination of a five-year development and negotiation process through the Council of Great Lakes Governors involving many stakeholders and the general public.

Key elements of the Compact are:

- A ban on new diversions of water from the Great Lakes basin with limited exceptions for community public water supply purposes.
- The use of consistent standards by the states and provinces to review proposed uses of Great Lakes water.
- The development of regional goals and objectives for water conservation and efficiency, to be reviewed and updated every five years.
- The development and implementation of state water conservation and efficiency programs (voluntary or mandatory).
- Greater collection and sharing of data to improve water management decision making.

- The encouragement of economic development through sustainable use and responsible management of basin waters.
- A commitment to ongoing public involvement.

DETAILED SUMMARY:

More information is provided in the following summary of Compact provisions:

Article 1: Short Title, Definitions, Purposes and Duration

Short title. "Great Lakes-St. Lawrence River Basin Water Resources Compact."

Definitions. The Compact defines many terms, many of which are set forth at the end of this summary. To understand this summary, it may be helpful to know that the Compact defines "party" as a *state* that is a party to the Compact. "Originating party" means the party [state] within whose jurisdiction an application or registration is made or required. In this summary, "party" and "state" are used interchangeably to refer to a state that is a party to the Compact, and "originating party" is sometimes shortened to state.

Findings. The Compact makes the following findings:

1. Basin waters are precious public natural resources shared and held in trust by the states. (A state is defined as Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.)
2. Basin waters are interconnected and part of a single hydrologic system.
3. The waters can concurrently serve multiple uses but uses are interdependent and must be balanced.
4. Future diversions and consumptive uses of water resources could significantly impact the environment, economy, and welfare of the region.
5. Continued sustainable, accessible, and adequate water supplies for the people and economy of the basin are of vital importance.
6. The parties have a shared duty to protect and manage the renewable but finite waters of the basin for all of their citizens, including generations yet to come, and the most effective means of doing so is through joint principles, policies, and programs.

Purposes. The purposes of the Compact are:

1. To act together to protect, conserve, restore, improve, and effectively manage the waters and water dependent natural resources of the basin without using the current lack of full scientific certainty as a reason to postpone protective measures.
2. To remove causes of present and future controversies.
3. To provide for cooperative planning and action with respect to water resources.
4. To facilitate consistent approaches to water management across the basin while retaining state management authority.
5. To facilitate the exchange of data and strengthen the scientific information upon which decisions are made.
6. To promote interstate and state-provincial comity.

7. To promote an "adaptive management" approach for conserving and managing basin waters resources in which adjustments to policies could be made as knowledge is gained.

Science. The parties commit to strengthening the scientific basis for water management decisions in the basin, including developing a mechanism for assessing the impacts of various water withdrawals, making period assessments of cumulative impacts of withdrawals, diversions, and consumptive uses on a watershed basis, improving the understanding of the role of groundwater, and developing and applying research about water conservation and its efficient use.

Article 2: Organization

Council created. The Compact would create the Great Lakes-St. Lawrence River Basin Water Resources Council (Council) to exist for the duration of the Compact as an agency and instrumentality of the governments of the respective parties.

Council membership. The Council would consist of the governors of the parties, ex officio (by virtue of office).

Alternates. Each governor would appoint at least one alternate who could act and vote in his or her place.

Voting. Each member would get one vote, and Council decisions would be made by a simple majority, unless otherwise stated.

Organization and procedure. The Council would provide for its own organization and could adopt rules governing its meetings, transactions, procedures, and timelines relating to proposals presented to the Council. Each year, the Council would elect a chair and vice-chair from among its members. Each member could appoint an advisor who could attend meetings but not vote. The Council could employ professional and administrative personnel.

Use of existing offices and agencies. The functions, powers, and duties of existing government offices and agencies would be preserved and used to the extent consistent with the Compact.

Jurisdiction. The Council would generally act within the limits of the basin. (With permission of the outside jurisdiction, the Council could act outside the basin to carry out its responsibilities within the basin.)

Status, immunities, and privileges. The Council, as well as council members and personnel, acting in their official capacity and engaged directly in council affairs would have the same immunity from lawsuits and judicial processes as possessed by the parties. The Council could expressly waive its immunity in a particular proceeding or contract. The Council's property and assets, considered public property, would be immune from search or any form of taking by executive or legislative action. Moreover, the Council and its property, assets, income, and operations would *not* be subject to taxation by the

parties [states] or their subdivisions (although the Council could make reasonable payments to local taxing districts in lieu of taxes).

Advisory committees. The Council could form advisory committees.

Article 3: General Powers and Duties

General. The Council would serve as a vehicle for the joint exercise of sovereign powers of the parties in the common interests of the people of the region. The Council and the parties would have to use the standard of review and decision contained in the Compact in exercising their authority. The Council could revise the standard of review and decision only after consultation with the provinces and with the unanimous approval of all Council members and in accordance with a regulation adopted under the Compact and each state's applicable laws. The Council would be required to identify water resources priorities, make plans and policies, and adopt uniform and coordinated policies for water resources conservation and management in the basin.

Council powers. The Council would have the power to conduct research and disseminate data, forecast water levels, conduct investigations, institute court actions, acquire real property, make contracts, receive funds, among many other powers.

Rules and regulations. The Council could adopt and enforce rules to implement and enforce the Compact and adopt reasonable application fees for proposals for exceptions submitted for Council review. Each state could adopt and enforce rules to implement and enforce the Compact and could adopt programs to carry out water management programs.

Program review and findings. Each state would have to submit reports to the Council and the Regional Body (the Council plus the provinces of Ontario and Québec) about its water management and conservation and efficiency programs containing specified information. The first report would be due in one year and subsequent reports would be due every five years thereafter.

The Council, in cooperation with the provinces, would have to review Council and party programs and make findings and recommendations as specified.

Article 4: Water Management and Regulation

Water resources inventory, registration, and reporting. Each party would have to develop and maintain a water resources inventory within five years.

Council duties. The Council would have to assist each party in developing a common base of data and make systematic arrangements for the exchange of data.

Registration of certain water withdrawals or diversions. Within five years, any person who withdraws 100,000 gallons per day or more of water on average in any 30-day period (including consumptive uses) or diverts water *in any amount* would have to register the withdrawal or diversion unless the person had previously registered under an existing state program. The registration would be made to the state using a state form and would have to include specified information. All registrations would have to include

an estimate of the volume of the withdrawal or diversion in terms of average gallons per day in any 30-day period.

Annual volume reports. All registrants would have to annually report the monthly volumes of withdrawals, consumptive uses, or diversions in gallons to the originating party (state) and any other information requested by the state.

Use of annual volume reports. The reports would be used to improve scientific information and understanding of various water issues. The Council and states would further develop an assessment mechanism.

Water conservation and efficiency programs. The Council would have to identify, in cooperation with the provinces, basin-wide conservation and efficiency objectives. The objectives would be based on the goals of (1) improving the waters and water dependent resources of the basin, (2) protecting and restoring the hydrologic and ecosystem integrity, (3) keeping surface water and groundwater in the basin, (4) ensuring the sustainable use of basin waters, and (5) promoting efficiency and reducing losses and waste.

State conservation and efficiency plans. Consistent with basin-wide objectives, each state would have to develop and implement water conservation and efficiency goals and objectives within two years, either mandatory or voluntary, for all basin water users (including existing users), and make an annual assessment of its programs to be reported to the Council and Regional Body and made available to the public.

Five-year reviews of basin-wide objectives. Beginning in five years, and every five years thereafter, the Council, in cooperation with the provinces, would review and modify basin-wide objectives and the states would have to consider these modifications in implementing their programs.

State water conservation measures. Within two years, each party [state] would have to promote "environmentally sound and economically feasible" water conservation measures and implement a voluntary or mandatory water conservation program for all basin water users, including existing users. Conservation programs would have to adjust to new demands and the potential impacts of cumulative effects and climate.

Party powers and duties.

State management and regulation of water in accordance with Compact. Each party [state] would be required to manage or regulate new or increased withdrawals, consumptive uses and diversions, including exceptions, in accordance with the Compact.

Applications. Each party would adopt an application form and would prescribe required information.

Approval process. No party could approve a proposal inconsistent with the Compact, its standard of review and decision, or related rules and regulations. A party could (1)

approve, (2) approve with modifications, or (3) disapprove a proposal, based on its consistency with the standard of review and decision.

Monitoring and enforcement. Each party would have to monitor how approved proposals were implemented and take all necessary enforcement actions.

Council or Regional review. No party could approve a proposal subject to council or regional review, or both, without first submitting it for the appropriate review and approval and providing sufficient opportunity for comments.

Requirement for originating party approval. Any proposal subject to management and regulation under the Compact would have to be approved by the originating party (the state where an application or registration is made or required.)

Regional review. The parties intend to participate in regional review of certain proposals with the provinces (Ontario and Québec).

Timeliness goals. The Regional Body would have to attempt to conclude its review within 90 days after it received a specified notice.

Proposal for exceptions. The originating party [state] would submit a proposal for exceptions to the Regional Body for regional review, and where applicable, to the Council for concurrent review.

Principle for reviewing proposals. The overarching principle for reviewing proposals subject to regional review is the protection of the basin ecosystem in the face of uncertainty.

Lead coordination responsibility. The originating party would have lead responsibility for coordinating information needed to resolve issues concerning a proposal and for consulting with the applicant throughout the regional review process.

Significant or precedent-setting proposals. At the request of a majority of its members, the Regional Body could conduct a regional review of regionally significant or potentially precedent-setting proposals, to be conducted within 90 days, if possible. The applicant would have to be consulted beforehand.

Notice of the originating party to the Regional Body. The originating party would have to determine if a proposal is subject to regional review and would be responsible for providing timely notice to the Regional Body and the public. Such notice would not be provided until the state had all necessary information and documents and had completed its technical review of the proposal. States could provide notice to the Regional Body or request regional review, even when not required, after consulting with the applicant, or could provide preliminary notices of potential proposals.

Public participation. The Regional Body would provide notice to the public of a proposal undergoing regional review, indicating the public's opportunity to comment in writing on whether the proposal meets the standard of review and decision. The Regional

Body would have to hold a public meeting in the state or province where the proposal originated to receive public comments. The Regional Body would have to consider public comments before making its decision and also forward them to the state.

Technical review. The originating party [state] would have to provide a technical review of a proposal sufficient to determine whether it meets the standard of review and decision to the Regional Body. Another state or province, or the Regional Body (at the request of a majority of its members) could conduct an independent technical review of a proposal. All parties would have to try to make sure that technical reviews do not unnecessarily delay decisions.

Declaration of finding. The Regional Body would meet to consider proposals, at which time the applicant would have an opportunity to present its proposal. The Regional Body would make a declaration of finding as to the proposal based on (1) the notice, (2) the originating party's technical review, (3) any other technical reviews, (4) comments or objections, and (5) any other information provided. The declaration of finding would say that a proposal: (1) meets the standard of review and decision, (2) does *not* meet the standard, or (3) would meet the standard if certain conditions were met.

An originating party [state] could decline to participate in the Regional Body's declaration of finding. Unanimous decisions would be favored. If all members of the body who participate in the decision agree, a written declaration of finding with consensus would be issued. If there isn't agreement, the Regional Body would try to achieve a consensus within 25 days. If a consensus is not achieved, the Regional Body could issue a declaration of finding that presents different points of views and the conclusions of each party. Declarations of findings would be released to the public.

Proposals subject to prior notice. Within five years, states would have to provide other states and provinces under the Compact with notice, an opportunity to comment, and a response to comments *on any proposal for a new or increased consumptive use of five million or more gallons per day on average in any 90-day period*. A party could provide notice, an opportunity to comment, and a response to comments even if not otherwise required after consulting with the applicant.

Council actions.

Proposals for exceptions. Proposals for exceptions subject to Council review would be submitted to the Council by the originating party [state] for Council review, and where applicable, to the regional body for concurrent review.

Actions on exception proposals. The Council would review and act on proposals in accordance with the Compact and its standard of review and decision. The Council could *not* act on a proposal subject to regional review before the Regional Body had reviewed it. The Council would consider any findings made by the Regional Body.

Prohibition of new or increased diversions. All new or increased diversions would be prohibited except as provided for in Article 4.

Exceptions to the prohibition of diversions.

Straddling communities. A proposal to transfer water to a straddling community outside the basin or watershed could be allowed, managed, and regulated by the originating party [state] despite the general ban on diversions if the water is used solely for public water supply purposes in the straddling community (no matter how much water is transferred), and:

- All water withdrawn from the basin is returned, either naturally or after use, to the source watershed less an allowance for consumptive use. (Surface water or ground water from outside the basin could not be used to satisfy this criterion unless (1) it is part of a water supply or wastewater treatment system combining water from inside and outside the basin, (2) it is treated to meet water quality discharge standards and to prevent the introduction of invasive species, and (3) the proposal maximizes the portion of water returned as basin water and minimizes the transfer of surface water groundwater from outside the basins).
- The proposal meets the exception standard (if the proposal results from a new or increased withdrawal of 100,000 or more gallons per day on average over any 90-day period).
- The proposal undergoes regional review (if the proposal results in a new or increased consumptive use of 5 million or more gallons per day on average over any 90-day period).

Intra-basin transfer. A proposal for an intra-basin transfer that meets the definition of diversion and does not fall under the straddling community exception described above would be excepted from the diversion ban provided that the following requirements were met:

Withdrawals resulting in consumptive use under 5 million gallons. A proposal for an intra-basin transfer that results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period *and* results in a consumptive use of less than 5 million gallons or more per day on average over any 90-day period would have to meet all of the following requirements:

- The proposal is subject to the management and regulation of the originating party, at its discretion.
- The proposal meets the exception standard and is subject to management and regulation by the originating party (except that the water may be returned to another Great Lake watershed instead of the source watershed).
- The originating party provides notice to the other parties before making any decision on the proposal.

Consumptive use of 5 million gallons or more. A proposal for an intra-basin transfer that results in a new or increased consumptive use of 5 million or more gallons per day on average over any 90-day period would have to meet all of the following requirements:

- The proposal is subject to management and regulation by the originating party and it meets the exception standard, ensuring that water withdrawn is returned to the source watershed.
- There is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water would be transferred, including conservation measures.
- The proposal undergoes regional review.

Straddling counties. A proposal to transfer water to a community within a straddling county that would otherwise fall under the diversion ban would be exempted from the diversion ban provided that all of the following conditions are satisfied:

- The water is used solely for the public water supply purposes of a community that is within a straddling county and that lacks adequate supplies of potable water.
- The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as basin water and minimizing surface water or groundwater from outside the basin.
- The proposal is subject to management and regulation by the originating party [state] regardless of its size.
- There is no reasonable alternative in the community's own basin, including conservation measures.
- Caution must be used in determining whether this exception applies, and it must be shown that the proposal will not endanger the integrity of the basin ecosystem.
- The proposal undergoes regional review.
- The Council approves the proposal. (The Council would approve a proposal unless one or more members objects.)

In addition, substantive consideration must be given to whether the existing water supply is derived from groundwater hydrologically connected to the waters of the basin.

Exception standard. Proposals could meet the "exception standard" and be approved as appropriate only if the following criteria are met:

- The need for all or part of an exception could not be reasonably avoided through the efficient use and conservation of existing water supplies.
- Quantities are reasonable for the proposed purposes.
- All water withdrawn is returned naturally, or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin could be used to satisfy any portion of this criterion unless it is part of a water supply or wastewater treatment system that combines water from inside and outside the basin and is treated to meet water quality discharge standards and to prevent the introduction of invasive species.
- The exception would be implemented to ensure no resulting significant individual or cumulative adverse impacts to the quantity or quality of waters and water dependent natural resources of the basin with consideration given to potential impacts and the consequences of setting a precedent with the exception.

- The exception would be implemented in compliance with all applicable municipal, state, and federal laws, as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- All other applicable criteria are met.

Management and regulation of new or increased withdrawals and consumptive uses.

State programs. Within five years, each party [state] would have to create a program for managing and regulating new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each state would set and modify regulatory thresholds to assure that specified requirements were met. Each state could determine the scope and thresholds of its program, including which new or increased withdrawals would be subject to the program. During the first 10 years of the Compact, a state that fails to set its own threshold level would be subject to a default threshold level of 100,000 gallons per day or greater on average in any 90-day period.

Evolution of programs. The parties intend that programs will evolve as necessary to protect basin waters. The Council, in cooperation with the provinces, would periodically assess state management programs and could recommend changes to state programs.

Decision-making standard. A proposal subject to the "decision-making standard" would have to meet the following criteria:

- All water withdrawn would be returned, naturally or after use, to the source watershed less an allowance for consumptive use.
- The withdrawal or consumptive use would be implemented to ensure that the proposal would result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed.
- The withdrawal or consumptive use would be implemented to incorporate environmentally sound and economically feasible water conservation measures.
- The withdrawal or consumptive use would be implemented to ensure compliance with all applicable municipal, state, and federal laws, and regional, interstate and international agreements, including the Boundary Water Treaty Act of 1909.
- The proposed use is *reasonable* based on a consideration of the following factors:
 1. Whether the proposed withdrawal or consumptive use will use water efficiently and avoid or minimize its waste.
 2. Whether efficient use will be made of existing water supplies (if the proposal is for an increased withdrawal or consumptive use).
 3. The balance between economic development, social development, and environmental protection of the proposed withdrawal or use and other existing or planned withdrawals and uses sharing the water source.
 4. The supply potential of the water source, considering specified factors.
 5. The probable degree and duration of any adverse impacts caused or expected to be caused under foreseeable conditions to other uses of the water or to the

quantity and quality of the water and water dependent natural resources of the basin, and what will be done to avoid or mitigate such impacts.

6. Restoration of hydrologic conditions and functions of the source watershed, if restoration is included in a proposal.

Applicability.

Minimum standard. This standard of review and decision is a minimum standard. Parties could impose a more restrictive standard and a proposal could be disapproved under the more restrictive standard.

Baseline. To establish a baseline, each state would have to develop either or both of the following lists: (1) a list of all existing water approvals as of the Compact's effective date; or (2) a list of the capacity of existing systems as of the Compact's effective date, presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors, and representing the state of the systems. Existing capacity determinations would be based on approval limits or the most restrictive capacity information. The volumes of diversions, consumptive uses, or withdrawals set forth in the list or lists prepared by each party would constitute the baseline volume for all purposes under the Compact. The list(s) would have to be furnished to the Regional Body and Council within one year of the Compact's effective date.

Timing of additional applications. Applications for new or increased withdrawals would be considered cumulatively within 10 years of any application.

Change in ownership. Unless a new owner proposed a new or increased diversion or consumptive use subject to regional review or council approval, a change of ownership would not require regional review or council approval.

Groundwater. The basin surface water divide would be used to manage and regulate new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

Withdrawal systems. The total volume of surface water and groundwater resources that supply a common distribution system would determine the volume of a withdrawal, consumptive use, or diversion.

Connecting channels. The watershed of each Great Lake would include its upstream and downstream connecting channels.

Transmission in water lines. Transmission of water within a line that extends outside the basin as it conveys water from one point to another within the basin would not be a diversion if none of the water is used outside the basin.

Hydrologic units. The Lake Michigan and Lake Huron watersheds would be considered a single hydrologic unit and watershed.

Bulk water transfer. A proposal to withdraw water and to remove it from the basin in any container greater than 5.7 gallons would be treated as a diversion. Each party [state] would have the discretion, within its jurisdiction, to determine how a proposal to withdraw and remove water from the basin in containers of 5.7 gallons or less would be treated.

Exemptions. Withdrawals from the basin for the following purposes are exempt from the requirements of Article 4:

- To supply vehicles, including vessels and aircraft.
- To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Supreme Court Decree: Wisconsin v. Illinois, 377 U.S. 426 (1967). With an exception described below, current, new, or increased withdrawals, consumptive uses, or diversions of basin water by the State of Illinois would be governed by the United States Supreme Court's decision in Wisconsin v. Illinois and *not* by the Compact. This means withdrawals, uses, and diversions within the State of Illinois would be allowed unless prohibited by Wisconsin v. Illinois. The Compact would *not* limit the State of Illinois from seeking additional basin water as allowed under the terms of that court decision (but also would not limit any other party from objecting to such a request under the terms of the decree or from seeking to modify the decree). The Compact sets forth applicable requirements if any party to the Compact seeks to modify that decree.

Because current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the State of Illinois are *not* subject to the Compact, with the exception described below, the State of Illinois could not use the Compact, including Section 4.9, to seek new or increased withdrawals, consumptive uses, or diversions of basin water. All other provisions of the Compact that do *not* relate to current, new, or increased withdrawals, consumptive uses, or diversions (and which are not on the Compact's list of related provisions) *would* apply to the State of Illinois, including the provision concerning water conservation programs.

Exception. In the event of a proposal for a diversion of basin water for use outside the territorial boundaries of parties to the Compact, a decision by the State of Illinois regarding such a proposal *would* be subject to all terms of the compact.

The Compact states that all of this section is necessary, and if severed, the Compact would no longer be binding or enforceable by or against the State of Illinois.

Assessment of cumulative impacts. The parties in cooperation with the provinces would collectively conduct within the basin, on a lake watershed basis, and on a St. Lawrence River basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the basins. An assessment would be conducted: (1) every five years *or* each time the incremental basin water losses reach a 50-million gallons per day average in any 90-day period above the

amount of the previous assessment, whichever comes first; or (2) at the request of one or more of the parties.

Assessments would have to:

- Use the most current and appropriate guidelines for such a review.
- Give substantive consideration to climate change or other significant threats to basin waters and take into account the current state of scientific knowledge, or uncertainty, and exercise caution in the face of uncertainty if serious damage could result.
- Consider adaptive management principles and approaches.

Only parties, not applicants, would have to conduct a cumulative impact assessment. Applicants would not be required to participate.

Unless required by other statutes, applicants would not be required to conduct a separate cumulative impact assessment in connection with an application but would have to submit information about the potential impacts of their proposals to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. Applicants could, however, provide an analysis of how their proposal meets the "no significant adverse cumulative impact" provision of the standard of review and decision.

Article 5: Tribal Consultation

Notice and consultation. In addition to other opportunities to comment, the originating party [state] would have to consult federally-recognized tribes regarding proposals subject to Council or regional review. Tribes would have to be provided notices, an opportunity to attend Council and regional meetings, and have their comments considered before proposals were acted on. In addition, the Council would have to seek to establish processes for ongoing communication and information sharing with individual tribes or intra-tribal bodies.

Article 6: Public Participation

Meetings, public hearings, and records. Except for personnel issues, Council meetings would be open to the public, and minutes would be available for inspection. Public participation is deemed a necessity, and the Council would conduct public participation processes concurrently and jointly with other processes. The procedures of each state and the Council would have to include:

- Public notice of applications received and a reasonable opportunity for the public to submit comments before applications are acted on.
- Public access to all documents relevant to an application, including public comments.
- Standards for when and how to conduct a public meeting or hearing.

- Public access to the record of decision, including comments, objections, responses, approvals, approvals with conditions, and disapprovals.

Article 7: Disputes Resolution and Enforcement

Good faith implementation. By adopting the Compact, each party pledges to support implementation of all provisions of the Compact and promises that its officers and agencies will not hinder any other party from carrying out any provision of the Compact.

Alternative dispute resolution. The Council, in consultation with the provinces, would develop procedures for the alternative resolution of disputes between parties regarding the interpretation, application, and implementation of the Compact.

Enforcement.

Judicial review. A person aggrieved by *Council* action would be entitled to a hearing before the Council. A person aggrieved by the action of a *party* [state] would be entitled to an administrative hearing in that state. After exhausting these administrative remedies, a person could seek judicial review of a party or Council action.

A case seeking judicial review of a *party* action would be brought in a state court within the time period provided for by that state's law. A case seeking review of a *Council* action would be brought in a specified federal district court (Washington, D.C. or the district where the Council maintains offices) within 90 days. For the purposes of administrative hearings and judicial review, a state or province is deemed to be an "aggrieved person" with respect to party (state) actions under the Compact.

Actions to compel compliance. Any party or the Council could bring an action to compel compliance with provisions of the Compact and its rules in the state court of the relevant party or federal court. Remedies available would include equitable relief and civil penalties.

Actions to compel compliance to prevent unapproved withdrawals, consumptive uses, or diversions. Any aggrieved person, a party, or the Council could commence a civil action in a state court and administrative systems to compel any person to comply with the Compact should any person undertake an unauthorized new or increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval under the Compact.

Conditions for bringing an action to compel compliance are: (1) the proposal must not have already been approved by the state or Council; (2) the state or Council must not have already determined that no approval is necessary; (3) the person must have given 60 days' notice to the state, the Council, and the person alleged to be in noncompliance; and (4) the state or Council must not have already brought an enforcement action that is being diligently prosecuted.

Available remedies under this section would include equitable relief and, in appropriate cases, the recovery of the costs of litigation, including reasonable attorney and expert witness fees.

Each state could adopt additional enforcement mechanisms and remedies applicable within its jurisdiction.

Article 8: Additional Provisions

Effect on existing rights. The Compact sets forth guidance on its intended effects on existing rights:

Water withdrawal. The Compact would not affect or impair existing water withdrawal rights under state or federal law as of the effective date of the Compact.

Common law water rights. The Compact would not affect and is not intended to affect common law water rights.

Treaty rights. The Compact is not intended to abrogate treaty rights or other rights held by virtue of a tribe's status as a federally-recognized tribe.

Private property/laws/federal assent requirements. An approval under the Compact would *not*: (1) grant property rights or exclusive privileges; (2) authorize any injury to private property or invasion of private rights; (3) authorize infringement of federal, state, or local laws or regulations; (4) eliminate the need to obtain a federal assent when required.

Relationship to agreements concluded by the United States of America. Nothing in the Compact is intended to provide any person a right under a treaty or international agreement or, on the other hand, to impair any right that may already exist under any treaty or international agreement. Nor is the Compact intended to infringe on the federal treaty power. The Boundary Waters Treaty of 1909 would continue to apply in addition to the requirements of the Compact.

Confidentiality. The Compact contains rules to protect commercially sensitive or proprietary information.

Additional laws. States could enact or enforce additional restrictions on waters within its jurisdiction.

Amendments and supplements. Amendments to the Compact would have to be adopted by action of the governing bodies of the parties [states] and approved by other parties in the same manner the Compact has to be ratified.

Severability. If any part of the Compact is determined to be void or unenforceable, the rest of the Compact would remain in effect.

Duration of Compact and termination. The Compact would remain in effect and binding on each party until terminated, which could be accomplished at any time by a majority vote of the parties. If terminated, rights established under the Compact would continue.

Article 9: Effectuation

Repealer. All acts and parts of acts would be repealed to the extent they are inconsistent with the Compact.

Effectuation by chief executive. A governor would be authorized to take actions necessary and proper actions in his or her discretion to effectuate the Compact.

Entire agreement. The Compact would be considered a complete and integral whole and each provision deemed material. The failure to implement any provision could be considered a material breach. Unless otherwise noted, any change or amendment made by a state in its implementing legislation or by Congress would not be effective unless concurred in by all parties.

Effective date and execution. The Compact would become binding and effective when ratified through concurring legislation by Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, and consented to by the United States Congress.

Definitions

The Compact's definitions (which would also apply to supplemental or concurring legislation) include:

"Adaptive management" would mean "water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plan and programs based on experience and the evolution of scientific knowledge concerning water resources and water dependent natural resources."

"Agreement" would mean the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.

"Basin" or "Great Lakes-St. Lawrence River Basin" would mean "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec, within the jurisdiction of the parties."

"Basin ecosystem" or Great Lakes-St. Lawrence River Basin Ecosystem" would mean "the interacting components of air, land, water and living organisms, including humankind, within the basin."

"Community within a straddling county" would mean "any incorporated city, town or the equivalent thereof, that is located outside the basin but wholly within a county that lies partly within the basin and that is not a straddling community."

"Consumptive use" would mean "that portion of the water withdrawn or withheld from the basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes."

"Cumulative impacts" would mean "the impact on the basin ecosystem that results from incremental effects of all aspects of a withdrawal, diversion or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions and consumptive uses, regardless of who undertakes the other withdrawals, diversions and consumptive uses. Cumulative impacts can result from individually minor but collectively significant withdrawals, diversions and consumptive uses taking place over a period of time."

"Diversion" would mean "a transfer of water from the basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to water that is used in the basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the basin or watershed. Divert has a corresponding meaning."

"Environmentally sound and economically feasible water conservation measures" would mean "those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use or diversion that *i*) are environmentally sound, *ii*) reflect best practices applicable to the water use sector, *iii*) are technically feasible and available, *iv*) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and *v*) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors."

"Originating party" would mean "the party within whose jurisdiction an application or registration is made or required." **"Party"** would mean "a state party to this compact."

"Person" would mean "a human being or legal person, including a government or a nongovernmental organization, including any scientific, professional, business, non-profit, or public interest organization that is neither affiliated with, nor under the direction of a government."

"Product" would mean "something produced in the basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. *(i)* Water used as part of the packaging of a product shall be considered to be part of the product. *(ii)* Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the basin is not a product or part of a product. *(iii)* Except as

provided in (i) above, water which is transferred as part of a public or private supply is not a product or part of a product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product."

"Public water supply purposes" would mean "water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water withdrawn directly from the basin and not through such a system shall not be considered to be used for public water supply purposes."

"Source watershed" would mean "the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn."

"Standard of review and decision" would mean "the exception standard, decision-making standard and reviews as outlined in Article 4 of this compact."

"Straddling community" would mean "any incorporated city, town, or the equivalent thereof, wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of this compact, is partly within the basin or partly within two Great Lakes watersheds."

"Water" would mean "ground or surface water contained within the basin."

"Water-dependent natural resources" would mean "the interacting components of land, water and living organisms affected by the waters of the basin."

"Waters of the basin" would mean "the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the basin."

FISCAL IMPACT:

The bill does not refer to dues or other commitments to the Compact. There may be some expenses if the state participates fully in all activities of the Council and its programs (for example, attending meetings and supporting Council projects), but the level and timing of DEQ budgetary requirements are difficult to estimate.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.