




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 212 (Substitute S-3)
Senate Bills 858, 859, and 860 (as introduced 10-29-07)
Sponsor: Senator Patricia L. Birkholz (S.B. 212 & 860)
Senator Gerald Van Woerkom (S.B. 858)
Senator Bruce Patterson (S.B. 859)
Committee: Natural Resources and Environmental Affairs

Date Completed: 11-1-07

CONTENT

Senate Bill 212 (S-3) would amend Parts 327 (Great Lakes Preservation) and 328 (Aquifer Protection) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Provide for the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.
- Revise the prohibition against diverting water from the Great Lakes Basin, and define "diversion".
- Revise a requirement that certain large-quantity water users obtain a water withdrawal permit from the Department of Environmental Quality (DEQ).
- Revise the definition of "withdrawal".
- Beginning January 1, 2009, require a water withdrawal permit applicant to certify that he or she was in compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures.
- Revise the duties of the Groundwater Conservation Advisory Council.

Additionally, the bill would add Part 342 (Great Lakes-St. Lawrence River Basin Water Resources Compact) to NREPA. The Compact does the following:

- Provides for intergovernmental cooperation and consultation

through which the participating states intend to protect, conserve, restore, improve, and effectively manage the waters and water-dependent resources of the Basin.

- Creates the Great Lakes-St. Lawrence River Basin Water Resources Council.
- Establishes a standard of review and decision as the means for the Council to exercise its authority.
- Authorizes the Council to promulgate and enforce rules and regulations to implement and enforce the Compact.
- Within five years, requires each party to develop and maintain a water resources inventory.
- Requires each party to submit to the Council and a regional review body a report detailing its water management and conservation and efficiency programs.
- Requires the Council, in cooperation with the Great Lakes Canadian provinces, to review its water management and conservation and efficiency programs and those of the parties and make findings on whether the program provisions are being met and how to assist the parties in meeting them.
- Within five years of the Compact's effective date, requires certain large-quantity water users to register the withdrawal or diversion.
- Within two years after the Compact takes effect, requires each party to develop water conservation and efficiency goals and objectives and

- implement a conservation and efficiency program.
- Prohibits the approval of a withdrawal proposal that is inconsistent with the Compact or the standard of review and decision.
 - Prohibits certain proposals from being undertaken without the approval of the party in which an application or registration is or must be made.
 - Provides that certain proposals are subject to review by the regional body, and establishes the regional review process.
 - Provides that certain proposals for consumptive use are subject to a 90-day prior notice requirement.
 - Prohibits all new or increased diversions, subject to exceptions for straddling communities and some intra-Basin transfers.
 - Within five years of the Compact's effective date, requires each party to create a program for the management and regulation of new or increased withdrawals and consumptive uses, including threshold levels for their regulation.
 - Establishes a threshold level for any party that fails to set its own levels within 10 years after the Compact takes effect.
 - Requires the parties collectively to conduct periodic cumulative impact assessments of Basin water uses.
 - Allows an aggrieved person to bring a civil action for an alleged violation of the Compact.

Senate Bill 858 would amend the Safe Drinking Water Act to revise provisions requiring the DEQ to evaluate the impact of a proposed waterworks system for a community supply.

Senate Bill 859 would amend Part 327 of NREPA to revise the civil penalties for a violation of Part 327.

Senate Bill 860 would amend Part 327 to do the following:

- Revise requirements for a property owner to register with the DEQ before making a large-quantity withdrawal.
- Require the DEQ, based on the recommendations of the

- Groundwater Conservation Advisory Council, to develop and implement an internet-based water withdrawal assessment tool that could be used to determine if a proposed withdrawal was likely to cause an adverse resource impact.
- Require a property owner to submit to the DEQ a request for a site-specific review if the assessment tool indicated that the proposed withdrawal would fall into a particular category or could cause an adverse resource impact.
 - Allow the DEQ to determine that a proposed withdrawal was not likely to cause an adverse resource impact if restorative measures were implemented.
 - Require the DEQ to notify the applicable water users committee if, according to the assessment tool, a proposed withdrawal were likely to cause an adverse resource impact.

The bills are tie-barred to each other. They are described below in further detail.

Senate Bill 212 (S-3)

Part 327: Great Lakes Preservation

Diversion. Currently, except for a diversion existing on September 30, 1985, "the waters of the Great Lakes basin within the boundaries of this state" may not be diverted. The bill instead would prohibit a diversion of "the waters of the state out of the Great Lakes basin", subject to the same exception.

("Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Basin. "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River.)

Currently, "diverted" means a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Basin into a watershed outside of the Basin. The term includes a transfer of water withdrawn from the waters of the Basin that is removed from the Basin in a container greater than 5.7 gallons (20 liters). The term does not

include a consumptive use; the supply of vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of vehicles; or use in a noncommercial project or on a short-term basis for firefighting, humanitarian, or emergency response purposes.

The bill would delete the definition of "diverted", and instead define "diversion" as 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 a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker. The term would not apply to water that was used in the Basin or a Great Lake watershed to manufacture or produce a product that was then transferred out of the Basin or watershed. The bill specifies that "diverted" would have a corresponding meaning. The bill also would retain the exclusion of certain uses from the definition, as well as the inclusion of a transfer in a container greater than 5.7 gallons (20 liters). (Except for the exclusions and inclusions, this definition of "diversion" is the same as that used in the compact.)

Under the bill, "Great Lakes" would mean Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways, including the St. Marys River, Lake St. Clair, the St. Clair River, and the Detroit River. For purposes of this definition, Lakes Huron and Michigan would be considered a single Great Lake.

(Senate Bill 860 includes the same proposed definitions.)

Water Withdrawal Permit. Under Part 327, except as otherwise provided, the following people must obtain a water withdrawal permit before making a withdrawal:

- A person who develops withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.
- A person who develops increased withdrawal capacity beyond baseline

capacity of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, to supply a common distribution system.

- A person who develops withdrawal capacity to make a new withdrawal of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.
- A person who develops increased withdrawal capacity beyond baseline capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system.

The bill, instead, would require the following people to obtain a permit before making a withdrawal, except as otherwise provided:

- A person who developed withdrawal capacity to make a new withdrawal of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- A person who developed increased withdrawal capacity beyond baseline capacity of more than 2.0 million gallons per day from the waters of the State to supply a common distribution system.
- A person who proposed a withdrawal that would transfer more than 100,000 gallons per day average over any 90-day period from the source watershed of a Great Lake to the watershed of another Great Lake.

("Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of Michigan. The term does not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.)

Under the bill (and Senate Bill 860), "source watershed" would mean the watershed from which a withdrawal originated. If water were withdrawn directly from a Great Lake, then the source watershed would be considered to be the watershed of that Great Lake and its connecting waterways. If water were withdrawn from the watershed of a stream that was a direct tributary to a Great Lake, then the source watershed would be considered to be the watershed of that Great

Lake and its connecting waterways, with a preference for returning water to the direct tributary stream watershed from which it was withdrawn.

Currently, "withdrawal" means the removal of water from its source for any purpose, other than for hydroelectric generation at sites certified, licensed, or permitted by the Federal Energy Regulatory Commission (FERC). Under the bill, the term would mean the taking of water from surface water or groundwater.

Part 327 requires a person to apply for a permit by submitting to the DEQ an application and an application fee of \$2,000. The DEQ must issue a permit to a person who develops new or increased withdrawal capacity of more than 2.0 million gallons per day from the waters of the State, other than the Great Lakes and their connecting waterways, if it determines that the withdrawal is not likely to cause an adverse resource impact. The DEQ must issue a permit to a person who develops new or increased withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways if the following conditions are met:

- All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the course watershed.
- The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts.
- The withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, State, and Federal laws as well as all legally binding regional interstate and international agreements, including the Boundary Waters Treaty of 1909.
- The proposed use is reasonable under common law principles of water law in Michigan.
- The applicant has considered voluntary generally accepted water management practices or environmentally sound and economically feasible water conservation measures.

The bill would delete the provision requiring the DEQ to issue a permit for new or increased withdrawal capacity of more than 2.0 million gallons per day if the withdrawal

is not likely to cause an adverse resource impact. Under the bill, the criteria listed above would apply to all withdrawals of more than 2.0 million gallons per day.

In addition, the bill would revise the requirement that the applicant has considered generally accepted water management practices and conservation measures. Under the bill, for permit applications received on or after January 1, 2009, the applicant would have to certify that he or she was in compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under Section 32708a.

(Under that section, by February 28, 2007, each water user's sector had to begin designing guidelines for generally accepted water management practices or environmentally sound and economically feasible water conservation measures within that sector.)

Currently, "adverse resource impact" means either decreasing the flow of a stream by part of the index flow so that the stream's ability to support characteristic fish populations is functionally impaired; or decreasing the level of a body of surface water so that its ability to support characteristic fish populations is functionally impaired. Senate Bill 860 would revise the definition.)

The bill also would require the DEQ to issue a permit to a person who proposed a withdrawal to transfer more than 100,000 gallons per day average over any 90-day period from the source watershed of one Great Lake to the watershed of another if the transfer complied with the Compact's exception standard (described below).

Under the bill, a proposed use for which a permit was issued would be considered to satisfy the requirements of the Compact regarding the decision-making standard (described below).

Exemption from Part 327. A withdrawal pursuant to Part 111 (Hazardous Waste Management), 115 (Solid Waste Management), 201 (Environmental Remediation), or 213 (Leaking Underground Storage Tanks) is exempt from the

requirements of Part 327. Under the bill, the following withdrawals also would be exempt:

- A withdrawal that was not a diversion that was undertaken for hydroelectric generation at sites certified, licensed, or permitted by FERC.
- A withdrawal authorized by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act (Public Law 96-510) or the Resource Conservation and Recovery Act (Public Law 94-580).

The DEQ Director would have to assure that data in the State's possession related to withdrawals that were not regulated under Part 327 were compiled and shared with departmental personnel responsible for implementing Part 327.

Implementation of Compact. The Compact would have to be implemented as follows:

- Except as specifically provided, water withdrawals originating within Michigan would be regulated exclusively under Part 327.
- Water withdrawals originating outside of the State would be regulated under the terms of the Compact.

The bill states that the provisions of Part 327, including those in the bill, "are intended to fully implement the Compact in this state". For purposes of Section 9.1 of the Compact (which provides that all acts and parts of acts inconsistent with it are, to the extent of the inconsistency, repealed), all acts and parts of acts that were inconsistent with the Compact on the effective date of the bill would be modified as necessary to be consistent with the Compact. "[T]herefore, section 9.1 does not repeal any acts or parts of acts."

If the Great Lakes-St. Lawrence River Basin Water Resources Council proposed a revision to the standard of review and decision (described below) under the Compact, the Governor would have to notify the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment. A regulation adopted pursuant to the Compact that amended the standard of review and decision could not be deemed duly adopted

in accordance with the statutory authorities and applicable procedures of the State unless it were approved by the Legislature and enacted into law.

Part 328: Aquifer Protection

Groundwater Conservation Advisory Council Membership. Part 328 creates the Groundwater Conservation Advisory Council within the Department of Natural Resources (DNR). The Council consists of three individuals appointed by the Senate Majority Leader; three appointed by the Speaker of the House of Representatives; four appointed by the DEQ Director; and three representing the DEQ, the DNR, and the Michigan Department of Agriculture (MDA). The appointed members must represent the interests identified in the law.

To assist the Groundwater Conservation Advisory Council in carrying out its responsibilities, Part 328 also required the following people to be appointed as additional Council members:

- One individual appointed by the Senate Majority Leader representing a statewide agricultural organization.
- One individual who is a registered well driller with knowledge and expertise in hydrogeology, appointed by the Speaker of the House.
- Two individuals appointed by the Governor representing municipal water suppliers and a statewide conservation organization.

Under the bill, these people would be Council members, rather than "additional" members.

Council Responsibilities. Part 328 requires the Council to do all of the following:

- Study the sustainability of the State's groundwater use.
- Develop criteria and indicators to evaluate the sustainability of the State's groundwater use.
- Monitor Annex 2001 implementation efforts and make recommendations on Michigan's statutory conformance with Annex 2001, including whether groundwater withdrawals should be subject to best management practices or certification requirements and whether

groundwater withdrawals have an impact on water-dependent natural resources.

- Study the implementation of and the results from the groundwater dispute resolution program created in Part 317 (Aquifer Protection and Dispute Resolution).
- Design and make recommendations regarding the water withdrawal assessment tool.
- Study and make recommendations as to whether the State should consider as part of its groundwater conservation programs proposals to mitigate adverse impacts to the waters of the State or to the water-dependent natural resources of the State that might result from groundwater withdrawals.

The bill would delete the provisions regarding Annex 2001, the implementation and results of the groundwater dispute resolution program, and proposals to mitigate adverse impacts to the State's waters or water-dependent natural resources. In addition, instead of designing and making recommendations regarding a water withdrawal assessment tool, the bill would require the Council to make recommendations regarding the tool's implementation and effectiveness.

The bill would expand the Council's responsibilities by requiring it to do the following:

- Study and make recommendations on whether and how the definition of "adverse resource impact" should be modified to address more specifically potential impacts to the Great Lakes, inland lakes, and other aquatic systems due to large-quantity withdrawals.
- Make recommendations to the DEQ on the development and implementation of the State's water conservation and efficiency program (described below) under the Compact.
- Develop a framework for evaluating restoration activities designed to mitigate adverse resource impacts.
- In consultation with academic institutions and other nonprofit organizations, make recommendations regarding educational materials related to the use and availability of water resources.

("Large-quantity withdrawal" means one or more cumulative total withdrawals of over

100,000 gallons of water per day average in any consecutive 90-day period that supply a common distribution system.)

The bill would delete a requirement that the Council, in consultation with the DEQ, the DNR, the MDA, and a technical advisory committee, do all of the following:

- Design a water withdrawal assessment tool that can be used to protect and conserve the waters and water-dependent natural resources of the State.
- Make factually based recommendations for the policy-based parameters and variables of the tool.
- Recommend an appropriate timetable for periodic updates or changes to the tool or to its parameters or variables.

Council Reports. Part 328 required the Council to submit the following reports, approved by a majority of the voting members, to the Senate Majority Leader, the Speaker of the House, and the standing committees of the Legislature with jurisdiction related primarily to natural resources and the environment:

- By February 8, 2006, a report on the Council's findings and recommendations as of that date.
- By July 1, 2007, the Council's findings and recommendations that had not been reported previously.

Under the bill, those reports would be required by February 8, 2009.

Adoption of Assessment Tool. The bill would delete a requirement that the Legislature provide for the adoption of a water withdrawal assessment tool, including its conceptual framework, its policy-based parameters or variables, the timetable for updating it and its data, and the details for its use.

Part 342: Water Resources Compact

The bill states that the Great Lakes-St. Lawrence River Basin Water Resources Compact "is hereby ratified, enacted into law, and entered into by this state as a party as follows:

Agreement

...The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin

and the commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows..."

Article I: Short Title, Definitions, Purposes, & Duration

Findings. Article I contains the following findings:

- "The waters of the basin are precious public natural resources shared and held in trust by the states".
- "The waters of the basin are interconnected and part of a single hydrologic system".
- "The waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic, and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem."
- "Future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes- St. Lawrence River Region".
- "Continued sustainable, accessible, and adequate water supplies for the people and economy of the basin are of vital importance".
- "The parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite waters of the basin for the use, benefit and enjoyment of all their citizens, including generations yet to come."

The Compact states that other purposes of Basin waters are encouraged, recognizing that such uses are interdependent and must be balanced. Additionally, the Compact states that the most effective means of protecting, conserving, restoring, improving, and managing the Basin waters is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by all parties.

Purposes. Article I specifies the following purposes of the Compact:

- To act together to protect, conserve, restore, improve, and effectively manage the waters and water-dependent natural resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation.
- To remove causes of present and future controversies.
- To provide for cooperative planning and action by the parties with respect to such water resources.
- To facilitate consistent approaches to water management across the Basin while retaining state management authority over water manage decisions within the Basin.
- To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water-dependent natural resources of the Basin.
- To prevent significant adverse impacts of withdrawals and losses on the Basin's ecosystems and watersheds.
- To promote interstate and state-provincial comity.
- To promote an adaptive management approach to the conservation and management of Basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's waters and water-dependent natural resources.

Science. Article I indicates that the parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision-making under the Compact. The strategy must guide the collection and application of scientific information to support the following:

- An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the Basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed.
- The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lakes and St. Lawrence River watershed basis.
- Improved scientific understanding of the waters of the Basin.

- Improved understanding of the role of groundwater in Basin water resources management.
- The development, transfer, and application of science and research related to water conservation and water use efficiency.

Article II: Organization

Council. Article II creates the Great Lakes-St. Lawrence River Basin Water Resources Council as a body politic and corporate, with succession for the duration of the Compact, as an agency and instrumentality of the governments of the respective parties. The Council consists of the governors of the parties, ex officio. Each member of the Council must appoint at least one alternate who may act in his or her place, with authority to attend all Council meetings and with power to vote in the member's absence. Unless otherwise provided by law of the party for which he or she is appointed, each alternate will serve during the term of the member appointing him or her, subject to removal at the pleasure of the member.

Each member is entitled to one vote on all matters that may come before the Council. Unless otherwise stated, the rule of decision will be by a simple majority. The Council annually must adopt a budget for each fiscal year and the amount required to balance the budget must be apportioned equitably among the parties by unanimous vote of the Council. The appropriation of this amount is subject to such review and approval as required by the budgetary processes of the respective parties. The participation of Council members from a majority of the parties constitutes a quorum for the transaction of business at any meeting of the Council.

Organization & Procedure. The Council must provide for its own organization and procedures, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review, and consideration of proposals that come before it for its review and action. The Council must organize, annually, by the election of a chair and vice chair from among its members. Each member may appoint an advisor who may attend all meetings of the Council and its committees, but does not

have voting power. The Council may employ or appoint professional and administrative personnel, including an executive director, as it deems advisable, to carry out the Compact's purposes.

Use of Existing Offices & Agencies. Article II states that it is the policy of the parties to preserve and use the functions, powers, and duties of existing offices and agencies of government to the extent consistent with the Compact. The Council must promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the Basin. To this end, but without limitation, the Council may do all of the following:

- Advise, consult, contract, assist, or otherwise cooperate with any and all such agencies.
- Employ any other agency or instrumentality of any of the parties for any purpose.
- Develop and adopt plans consistent with the water resources plans of the parties.

Jurisdiction. Under Article II, the Council is to have, exercise, and discharge its functions, powers, and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent that such action is necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction in which it proposes to act.

Status, Immunity, & Privileges. The Council, its members, and personnel in their official capacity and when engaged directly in the Council's affairs, its property and its assets, have the same immunity from suit and every form of judicial process as the parties have, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

The Council's property and assets are considered public property and are immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

The Council, its property and assets, income, and the operations it carries out pursuant to the Compact are immune from

all taxation by or under the authority of any of the parties or any political subdivision of the parties. In lieu of property taxes, however, the Council may make reasonable payments to local taxing districts in annual amounts that approximate the taxes lawfully assessed upon similar property.

Advisory Committees. The Council may constitute and empower advisory committees, which may consist of representatives of the public and Federal, state, tribal, county, and local governments, water resources agencies, water-using industries and sectors, water-interest groups, and academic experts in related fields.

Article III: General Powers & Duties

General Provisions. Article III states that the waters and water-dependent natural resources of the Basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of the Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in the Compact. The Council and the parties must use the standard of review and decision and procedures contained in or adopted pursuant to the Compact as the means to exercise their authority under it. The Council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all Council members, by regulation adopted in accordance the Compact and each party's respective statutory authorities and applicable procedures. The Council must identify priorities and develop plans and policies relating to Basin water resources. It must adopt and promote uniform and coordinated policies for water resources conservation and management in the Basin.

Council Powers. The Council may do all of the following:

- Plan.
- Conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses.
- Forecast water levels.
- Conduct investigations.
- Institute court actions.

- Design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest in the property as it deems necessary, useful, or convenient to carry out the purposes of the Compact.
- Make contracts.
- Receive and accept payments, appropriations, grants, gifts, loans, advances, and other funds, property, and services as may be transferred or made available to it by any party or by any other public or private agency, corporation, or individual.
- Exercise such other and different powers as may be delegated to it by the Compact or otherwise pursuant to law.
- Have and exercise all powers necessary or convenient to carry out its express or reasonably implied powers.

Rules & Regulations. Under Article III, the Council may promulgate and enforce rules and regulations as necessary for the implementation and enforcement of the Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to Council review. ("Exception" means a transfer of water that is excepted under the Compact from its prohibition against diversions, as described below.) Any rule or regulation of the Council, other than one that deals solely with the internal management of the Council or its property, may be adopted only after public notice and hearing.

Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce the Compact and the programs adopted by the party to carry out the management programs contemplated by the Compact.

Program Review & Findings. Article III requires each party to submit to the Council and the regional body a report detailing its water management and conservation and efficiency programs that implement the Compact. The report must set forth the manner in which withdrawals are managed by sector, water source, quantity, or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report must be

provided one year from the Compact's effective date and every five years after that.

The Council, in cooperation with the provinces (Ontario and Quebec), must review its water management and conservation and efficiency programs and those of the parties that are established in the Compact and make findings on whether the water management program provisions are being met, and, if not, recommend options to assist the parties in meeting them. The review must take place as follows:

- Thirty days after the first report is submitted by all parties.
- Every five years after the Compact's effective date.
- Any other time at the request of one of the parties.

As one of its duties and responsibilities, the Council may recommend a range of approaches to the parties with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the Basin, including groundwater, and the impacts of withdrawals on the Basin ecosystem.

Article IV: Water Management & Regulation

Inventory, Registration, & Reporting. Within five years after the Compact's effective date, each party must develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the water resources of the party, including information on the location, type, quantity, and use of those resources as well as withdrawals, diversions, and consumptive uses. To the extent feasible, the water resources inventory must be developed in cooperation with local, state, Federal, tribal, and other private agencies and entities, as well as the Council. Each party's agencies must cooperate with that party in the development and maintenance of the inventory.

The Council must assist each party in developing a common base of data regarding the management of the water

resources of the Basin and in establishing systematic arrangements for the exchange of those data with other states and provinces.

To develop and maintain a compatible base of water use information, within five years of the Compact's effective date, any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period (including consumptive uses) from all sources, or diverts water of any amount, must register the withdrawal or diversion by a date set by the Council unless the person has registered previously in accordance with an existing state program. The person must register the withdrawal or diversion with the originating party using a form prescribed by that party. The form must include, at a minimum, the following information:

- The name and address of the registrant and date of registration.
- The locations and sources of the withdrawal or diversion.
- The capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source.
- The uses made of the water.
- Places of use and places of discharge.
- Other information required by the originating party.

("Originating party" means that party within whose jurisdiction an application or registration is made or required.)

All registrations must include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period. All registrants annually must report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party and any other information requested by that party.

Each party annually must report the information gathered under these provisions to a Great Lakes-St. Lawrence River water use data base repository and aggregated information must be made publicly available, consistent with the confidentiality requirements in the Compact.

Information gathered by the parties must be used to improve the sources and applications of scientific information regarding the waters of the Basin and the

impacts of the withdrawals and diversions from various locations and water sources on the Basin ecosystem, and to understand better the role of groundwater in the Basin. The Council and the parties must coordinate the collection and application of scientific information to develop further a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions will be assessed.

Conservation & Efficiency Programs. Article IV provides that the Council commits to identify, in cooperation with the provinces, Basin-wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency program. The objects must be based on the following goals:

- Ensuring improvement of the waters and water-dependent natural resources.
- Protecting and restoring the hydrologic and ecosystem integrity of the Basin.
- Retaining the quantity of surface water and groundwater in the Basin.
- Ensuring sustainable use of waters of the Basin.
- Promoting the efficiency of use and reducing losses and waste of water.

Within two years of the Compact's effective date, each party must develop its own water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party annually must assess its programs in meeting the party's goals and objectives, report to the Council and the regional body, and make the annual assessment available to the public.

Beginning five years after the Compact takes effect, and every five years after that, the Council, in cooperation with the provinces, must review and modify as appropriate the Basin-wide objectives, and the parties must consider any such modifications in implementing their programs. The assessment must be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment as prescribed in the Compact.

Article IV provides that within two years after the Compact's effective date, the parties commit to promote environmentally sound and economically feasible water conservation measures, such as the following:

- Measures that promote efficient use of water.
- Identification and sharing of best management practices and state-of-the-art conservation and efficiency technologies.
- Application of sound planning principles.
- Demand-side and supply-side measures or incentives.
- Development, transfer, and application of science and research.

Each party must implement a voluntary or mandatory water conservation program for all Basin water users, including those already existing. Conservation programs must adjust to new demands and the potential impacts of cumulative effects and climate.

Party Powers & Duties. Each party, within its jurisdiction, must manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with the Compact.

Each party must require an applicant to submit an application in the manner and with the accompanying information prescribed by the party. ("Applicant" means a person who is required to submit a proposal that is subject to management and regulation under the Compact. "Proposal" means a withdrawal, diversion, or consumptive use of water that is subject to the Compact.)

No party may approve a proposal if it determines that the proposal is inconsistent with the Compact or the standard of review and decision or any implementing rules or regulations promulgated under it. The party may approve, approve with modifications, or disapprove any proposal depending on its consistency with the Compact and the standard of review and decision.

Each party must monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

No party may approve a proposal subject to Council and/or regional review pursuant to the Compact unless it is first submitted to and reviewed by either the Council or regional body, or both, and approved by the Council, as applicable. Sufficient opportunity must be provided for comment on the proposal's consistency with the Compact and the standard of review and decision. All comments must become part of the party's formal record of decision, and the party must take into consideration any comments received.

("Regional body" means the members of the Compact and the premiers of Ontario or Quebec or their designees.)

Originating Party Approval. No proposal subject to management and regulation under the Compact may be undertaken by any person unless it has been approved by the originating party.

Regional Review. Article IV states that it is the intention of the parties to participate in regional review of proposals with the provinces, as described in the Compact and the agreement. Unless the applicant or the originating party otherwise requests, it must be the regional body's goal to conclude its review within 90 days after notice of the proposal is received from the originating party.

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

Article IV states that the parties agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin ecosystem will be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that might be placed on Basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions might harm the integrity of the Basin system.

The originating party must have lead responsibility for coordinating information for resolution of issues related to evaluation

of a proposal, and must consult with the applicant throughout the regional review process.

A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent-setting proposal. This review must be conducted, to the extent possible, within the time frames set forth in the Compact. The review must be undertaken only after the applicant has been consulted.

The originating party must determine if a proposal is subject to regional review. If so, the originating party must provide timely notice to the regional body and the public. The notice may not be given unless and until all information, documents, and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

An originating party may give the regional body notice of an application, even if notification is not required, or request regional review of an application, even if regional review is not required. Any such regional review may be undertaken only after the applicant has been consulted.

An originating party may provide preliminary notice of a potential proposal.

To ensure adequate public participation, the regional body must adopt procedures for the review of proposals that are subject to regional review in accordance with Article IV. The regional body must give notice to the public of a proposal undergoing regional review. The notice must indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

The regional body must hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision. The regional body must consider the comments received before issuing a declaration of finding, and must forward the comments it receives to the originating party.

The originating party must give the regional body its technical review of the proposal under consideration. The technical review must analyze thoroughly the proposal and provide an evaluation of it sufficient for a determination of whether it meets the standard of review and decision. Any member of the regional body may conduct its own technical review of any proposal subject to regional review. At the request of the majority of its members, the regional body must make arrangements as it considers appropriate for an independent technical review of a proposal.

All parties must exercise their best efforts to ensure that a technical review by an individual party or an independent technical review does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews must be completed within 60 days after the notice of the proposal was given to the regional body.

The regional body must meet to consider a proposal. The applicant must be given an opportunity to present the proposal to the regional body at that time. Having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections, including the analysis of comments made by the public, First Nations, and federally recognized Tribes, and any other information provided under the Compact, the regional body must issue a declaration of finding that the proposal under consideration meets the standard of review and decision; does not meet the standard of review and decision; or would meet the standard if certain conditions were met.

An originating party may decline to participate in a declaration of finding made by the regional body.

Article IV states that the parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision. If the members who participate in the declaration of finding all agree, they must issue a written declaration of finding with consensus. If they cannot agree, the regional body must make every reasonable effort to achieve consensus

within 25 days. If consensus is not achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

The regional body must release the declarations of finding to the public. The originating party and the Council must consider the declaration of finding before making a decision on the proposal.

Proposals Subject to Prior Notice. Beginning within five years after the Compact's effective date, an originating party must give all parties and the provinces detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of 5.0 million gallons per day or greater average in any 90-day period. Comments must address whether the proposal is consistent with the standard of review and decision. The originating party must provide a response to any comment received from another party.

A party may provide notice, an opportunity to comment, and a response to comments even if it is not required. Any provision of the notice and opportunity to comment may be undertaken only after the applicant has been consulted.

Council Actions. Proposals for exceptions subject to Council review must be submitted by the originating party to the Council and, where applicable, to the regional body for concurrent review.

The Council must review and take action on proposals in accordance with the Compact and the standard of review and decision. The Council may not take action on a proposal subject to regional review unless it has been first submitted to and reviewed by the regional body. The Council must consider any findings resulting from the review.

Prohibition on New or Increased Diversions. All new or increased diversions are prohibited, except as provided for in Article IV.

Exception for Straddling Community. A proposal to transfer water to an area within a straddling community but outside the Basin or outside the source Great Lake

watershed must be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume transferred, all the transferred water will be used solely for public water supply purposes within the straddling community, and the following conditions are met:

- If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal meets the exception standard.
- If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal also will undergo regional review.
- All water withdrawn from the Basin will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of water to the Basin unless it:

- Is part of a water supply or wastewater treatment system that combines water from inside and outside the Basin.
- Is treated to meet applicable water quality discharge standards and prevent the introduction of invasive species into the Basin.
- Maximizes the portion returned to the source watershed as Basin water and minimizes the surface water or groundwater from outside the Basin.

(The Compact defines "straddling community" as any incorporated city, town, or the equivalent of a city or town, wholly within any county that lies partly or completely within the Basin, whose corporate boundary existing as of the Compact's effective date is partly within the Basin or partly within two Great Lakes watersheds.)

Exception for Intra-Basin Transfer. A proposal for an intra-Basin transfer that would be considered a diversion under the Compact and not otherwise excepted must be excepted from the prohibition against diversions, provided that the following provisions apply.

If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90-day period, the proposal is subject to management and regulation at the discretion of the originating party.

If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period and if the consumptive use resulting from the withdrawal is less than 5.0 million gallons per day average over any 90-day period, the proposal must meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and the originating party must provide notice to the other parties before making any decision with respect to the proposal.

If the proposal results in a new or increased consumptive use of 5.0 million gallons per day or greater average over any 90-day period, the proposal is subject to management and regulation by the originating party and must meet the exception standard, ensuring that water withdrawn will be returned to the source watershed; the applicant must demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; the proposal must undergo regional review; and the proposal must be approved by the Council. Council approval must be given unless one or more Council members vote to disapprove.

Exception for Straddling Counties. A proposal to transfer water to a community within a straddling county that would be considered a diversion under the Compact must be excepted from the prohibition, provided that it satisfies all of the following conditions:

- The water will be used solely for the public water supply purposes of the community within a straddling county that is without 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 the surface water or groundwater from outside the Basin.
- The proposal is subject to management and regulation by the originating party, regardless of its size.
- There is no reasonable water supply alternative within the Basin in which the community is located, including conservation of existing water supplies.
- Caution will be used in determining whether the proposal meets the conditions for this exception (which should not be authorized unless it can be shown that it will not endanger the integrity of the Basin ecosystem).
- The proposal undergoes regional review.
- The proposal is approved by the Council.

Council approval must be given unless one or more Council members vote to disapprove.

Additionally, substantive consideration also will be given to whether the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Basin.

Exception Standard. Proposals subject to management and regulation must be declared to meet the exception standard and may be approved as appropriate only when the following criteria are met:

- The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies.
- The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.
- The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources of the Basin with consideration given to the potential

cumulative impacts of any precedent-setting consequences associated with the proposal.

- The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use.
- The exception will be implemented so as to ensure that it is 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 also have been met.
- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

No surface water or groundwater from outside the Basin may be used to satisfy any portion of the criterion related to the return of the water, unless it is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin; and is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin.

New or Increased Withdrawals & Consumptive Uses.

Within five years of the Compact's effective date, each party must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, must set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water-dependent natural resources of the Basin, determined on the basis of significant impacts on the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the Compact are achieved. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

Any party that fails to set threshold levels that comply with the Compact within 10 years of its effective date must apply a threshold level for management and regulation of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90-day period.

Article IV states that the parties intend programs for new or increased withdrawals and consumptive uses to evolve as necessary to protect Basin waters. As prescribed in the Compact, the Council, in cooperation with the provinces, periodically must assess the water management programs of the parties. The assessments may produce recommendations for the strengthening of the programs, including establishing lower thresholds for management and regulation in accordance with the decision-making standard.

Decision-Making Standard. Proposals subject to management and regulation must be declared to meet the decision-making standard and may be approved as appropriate only when the following criteria are met:

- All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.
- The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water-dependent natural resources and the applicable source watershed.
- The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.
- The withdrawal or consumptive use will be implemented so as to ensure that it is 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.

Additionally, the proposed use must be reasonable, based upon a consideration of the following factors:

- Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the

water, and will avoid or minimize the waste of water.

- If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies.
- The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source.
- The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources.
- The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water-dependent natural resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts.

If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

Applicability. Article IV provides that this standard of review and decision must be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision, it may not be approved under the laws of the originating party that has implemented more restrictive measures.

To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party must develop either or both of the following lists for its jurisdiction:

- A list of existing withdrawal approvals as of the Compact's effective date.
- A list of the capacity of existing systems as of the Compact's effective date.

The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity-limiting factors.

The capacity of the existing systems must represent the state of the systems. Existing capacity determinations must be based upon approval limits or the most restrictive capacity information.

For all purposes of the Compact, volumes of diversions, consumptive uses, or withdrawals set forth in the lists prepared by each party will constitute the baseline volume.

Applications for new or increased withdrawals, consumptive uses, or exceptions must be considered cumulatively within 10 years of any application.

Unless a new owner proposes a project that will result in a proposal for a new or increased diversion or consumptive use subject to regional review or Council approval, the change of ownership in and of itself will not require regional review or Council approval.

The Basin surface water divide must be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

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

The watershed of each Great Lake includes its upstream and downstream connecting channels.

Transmission of water within a line that extends outside the Basin as it conveys water from one point to another within the Basin may not be considered a diversion if none of the water is used outside the Basin.

The Lake Michigan and Lake Huron watersheds must be considered to be a single hydrologic unit and watershed.

A proposal to withdraw water and to remove it from the Basin in any container greater than 5.7 gallons must be treated in the same manner as a proposal for a diversion. Each party has the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove

it from the Basin in any container of 5.7 gallons or less.

Exemptions. Withdrawals from the Basin for the following purposes are exempt from the requirements of Article IV:

- To supply vehicles, including vessels and aircraft, whether for the needs of the people or animals being transported or for ballast or other needs related to the operation of the vehicles.
- To use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

U.S. Supreme Court Decree: *Wisconsin v. Illinois.* Article IV specifies that, notwithstanding any terms of the Compact to the contrary, except as otherwise provided, current, new, or increased withdrawals, consumptive uses, and diversions of Basin water by the State of Illinois are governed by the terms of the U.S. Supreme Court decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), and are not subject to the terms of the Compact or any rules or regulations promulgated under it.

Article IV indicates that the parties acknowledge that the decree will continue in full force and effect, that the Compact does not modify any of its terms, and that the Compact grants the parties no additional rights, obligations, remedies, or defenses to it. The parties specifically acknowledge that the Compact does not prohibit or limit the State of Illinois in any manner from seeking additional Basin water as allowed under the terms of the decree, any other party from objecting to any request by Illinois for additional Basin water under the terms of the decree, or any party from seeking any other type of modification to it. If any party applies to the U.S. Supreme Court to modify the decree, the parties to the Compact who also are parties to the decree must seek formal input from the provinces of Ontario and Quebec, with respect to the proposed modification; must use best efforts to facilitate the appropriate participation of the provinces in the proceedings; and may not unreasonably impede or restrict such participation.

Except as otherwise provided, the provisions related to current, new, or increased withdrawals, consumptive uses, and

diversions of Basin waters do not apply to the State of Illinois. All other provisions of the Compact not listed, including the water conservation programs provisions, apply to Illinois.

Assessment of Cumulative Impacts. The parties, in cooperation with the provinces, must conduct collectively within the Basin, on a lake watershed and St. Lawrence River Basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the Basin, every five years or each time the incremental Basin water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever occurs first, or at the request of one or more of the parties. The assessment will form the basis for a review of the standard of review and decision, Council and party regulations, and their application.

The assessment must use the most current and appropriate guidelines for such a review, which may include guidelines of the Council on Environmental Quality and Environment Canada. The assessment also must 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 appropriate measures to exercise caution in cases of uncertainty if serious damage might result.

In addition, the assessment must consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds, and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

The parties have the responsibility of conducting this cumulative impact assessment, and applicants are not required to participate in it.

Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application, but must submit information about the potential impacts on the quantity or quality of the waters and water-dependent natural resources of the

applicable source watershed. An applicant may, however, provide an analysis of how its proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

Article V: Tribal Consultation

In addition to all other opportunities to comment pursuant to the Compact, appropriate consultations must occur with federally recognized tribes in the originating party for all proposals subject to Council or regional review pursuant to the Compact. The consultations must be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

All federally recognized tribes within the Basin must receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the regional body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or Council approval. Any notice from the Council must inform the tribes of any meeting or hearing that is to be held and invite them to attend. The parties and the Council must consider the comments received under these provisions before approving, approving with modifications, or disapproving any proposal subject to Council or regional review.

In addition to the specific consultation mechanisms described in the Compact, the Council must seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with and input from federally recognized tribes on matters to be dealt with by the Council. Also, the Council must seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of the Compact. This may include participation of tribal representatives on advisory committees established under the Compact or such other processes that are mutually agreed upon with tribes individually or through duly authorized intertribal agencies or bodies.

Article VI: Public Participation

Meetings, Public Hearings, & Records.

Article VI indicates that the parties recognize the importance and necessity of public participation in promoting management of the water resources of the Basin. Consequently, all meetings of the Council must be open to the public, except with respect to personnel issues.

The minutes of the Council must be a public record open to inspection at its offices during regular business hours.

Public Participation. Article VI states that it is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the parties and through regional review. To ensure adequate public participation, each party or the Council must ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

- The provision of public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.
- The assurance of public accessibility to all documents relevant to an application, including public comment received.
- The provision of guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and place of such meetings or hearings, and procedures for conducting them.
- The provision of the record of decision for public inspection, including comments, objections, responses and approvals, approvals with conditions, and disapprovals.

Article VII: Dispute Resolution & Enforcement

Good Faith Implementation. Article VII states that each of the parties pledges to support implementation of all provisions of the Compact, and covenants that its officers and agencies will not hinder, impair, or prevent any other party carrying out any provision of the Compact.

Alternative Dispute Resolution. Article VII states that the parties agree that disputes

between them regarding interpretation, application, and implementation will be settled by alternative dispute resolution. The Council, in consultation with the provinces, must provide by rule procedures for the resolution of disputes.

Enforcement. Any person aggrieved by any action taken by the Council pursuant to the authority contained in the Compact is entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, any aggrieved person has the right to judicial review of a Council action in the U.S. District Courts for the District of Columbia or the district court in which the Council maintains offices, provided such action is commenced within 90 days. Additionally, any aggrieved person has the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for the review is commenced within the time frames provided for by the party's law. For the purposes of these provisions, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to the Compact.

Any party or the Council may initiate actions to compel compliance with the Compact's provisions, as well as the rules and regulations promulgated by the Council. Jurisdiction over these actions is granted to the court of the relevant party, as well as the U.S. District Courts for the District of Columbia and the district court in which the Council maintains offices. The remedies available to any such court include equitable relief and civil penalties.

Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authority contemplated by the Compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

Any aggrieved person, party, or the Council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with the Compact should any person, without approval having been given, undertake a new or increased withdrawal, consumptive

use, or diversion that is prohibited or subject to approval pursuant to the Compact.

No action may be commenced if the originating party or Council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or the originating party or Council has found that the new or increased withdrawal, consumptive use, or diversion is not subject to approval pursuant to the Compact.

No action may be commenced unless the person commencing it has first given 60 days prior notice to the originating party, the Council, and the person alleged to be in noncompliance; and neither the originating party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance.

The available remedies include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of the Compact.

Article VIII: Additional Provisions

Effect on Existing Rights. Nothing in the Compact may be construed to affect, limit, diminish, or impair any rights validly established and existing as of its effective date under state or Federal law governing the withdrawal of the waters of the Basin.

Nothing in the Compact may be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

Nothing in the Compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the Federal government of the U.S. based upon its status as a recognized tribe.

An approval by a party or the Council under the Compact does not give any property

rights, or any exclusive privileges, and it may not be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a party. Approval also does not authorize any injury to private property or invasion of private rights, or infringement of Federal, state, or local laws or regulations; or obviate the necessity of obtaining Federal assent when necessary.

Relationship to Agreements Concluded by the United States. Nothing in the Compact is intended to provide or may be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement, and nothing is intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

Nothing in the Compact is intended to infringe or may be construed to infringe upon the treaty power of the U.S., and no term may be construed to alter or amend any treaty or term of a treaty that has been or may be executed by the U.S.

Nothing in the Compact is intended to affect or may be construed to affect the application of the Boundary Waters Treaty.

Confidentiality. Nothing in the Compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information. A party may take measures, including deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party must summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authority.

Additional Laws. Nothing in the Compact may be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

Amendments & Supplements. The provisions of the Compact will remain in full force and effect until amended by action of the governing bodies of the parties and

consented to and approved by any other necessary authority in the same manner as the Compact is required to be ratified to become effective.

Severability. If a court of competent jurisdiction holds any part of the Compact to be void or unenforceable, it will be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation will continue in full force and effect.

Duration of Compact & Termination. Once effective, the Compact will continue in force and remain binding upon each and every party unless terminated. The Compact may be terminated at any time by a majority vote of the parties. In the event of termination, all rights established under it will continue unimpaired.

Article IX: Effectuation

Repealer. All acts and parts of acts inconsistent with the Compact are to the extent of the inconsistency repealed. (As provided in Senate Bill 212 (S-2), however, inconsistent acts of this State would be modified, rather than repealed.)

Effectuation by Chief Executive. The Governor is authorized to take action as necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation under it.

Entire Agreement. Article IX states that the parties consider the Compact to be complete and an integral whole. Each provision is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted, any change or amendment made by any party in its implementing legislation or by the U.S. Congress when giving its consent to the Compact is not considered effective unless concurred in by all parties.

Effective Date & Execution. The Compact will become binding and effective when ratified through concurring legislation by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and consented to by the U.S. Congress. The

Compact must be signed and sealed in nine identical original copies by the respective chief executives of the signatory parties. One copy must be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy must be filed and retained in the archives of the Council upon its organization. The signatures must be affixed and attested under the form specified in the Compact.

Senate Bill 858

Under the Safe Drinking Water Act, upon receiving the plans and specifications for a proposed waterworks system, the DEQ must evaluate its adequacy to protect the public health by supplying water meeting State drinking water standards.

The Act permits the Department to evaluate the impact of a proposed system that will do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons of water per day from a source of water other than the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.
- Provide new total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways.
- Provide an increased total designed withdrawal capacity of more than 5.0 million gallons per day from the Great Lakes and their connecting waterways beyond the system's total designed withdrawal capacity.

The bill, instead, would require the DEQ to evaluate the impact of a proposed system that would do any of the following:

- Provide new total designed withdrawal capacity of more than 2.0 million gallons of water per day from the waters of the State.
- Provide an increased total designed withdrawal capacity of more than 2.0 million gallons per day from the waters of

the State beyond the system's total designed withdrawal capacity.

- Provide new total designed withdrawal capacity or an increased total designed withdrawal capacity that would transfer more than 100,000 gallons per day average over any 90-day period from the source watershed of a Great Lake to the watershed of another Great Lake.

Under the Act, the DEQ must reject the plans and specifications if it determines that the system will not meet the applicable standard provided in Section 32723(5) or (6) of NREPA unless both of the following conditions are met:

- The DEQ determines that there is no feasible and prudent alternative location for the withdrawal.
- The DEQ includes in the approval conditions related to depth, pumping capacity, rate of flow, and ultimate use that ensure that the environmental impact of the withdrawal will be balanced by its public benefit related to public health, safety, and welfare.

(Section 32723(5) requires the DEQ to issue a permit to a person who develops new or increased capacity to withdraw more than 2.0 million gallons per day from waters other than the Great Lakes and their connecting waterways to supply a common distribution system if it determines that the withdrawal will not cause an adverse resource impact. Subsection (6) requires the DEQ to issue a permit to a person who develops new or increased capacity to withdraw 5.0 million gallons per day from the Great Lakes and their connecting waterways to supply a common distribution system if specified conditions are met. Senate Bill 212 (S-3) would amend these requirements, as described above.)

The bill would require the DEQ to reject the plans and specifications if the system would not meet the applicable standard in Section 32723. The DEQ could, however, approve those plans and specifications if they did not allow the transfer of more than 100,000 gallons per day average over any 90-day period from the source watershed of one Great Lake to the watershed of another.

Senate Bill 859

Part 327 of NREPA allows the DEQ to request the Attorney General to commence a civil action for appropriate relief for a violation of Part 327 or a rule promulgated under it. In addition to any other relief, the court may impose a maximum civil fine of \$1,000. A person who knowingly violates Section 32721 or 32723 or the terms of a permit issued under Section 32723 is subject to a civil fine of up to \$5,000 per day of violation.

(Section 32721 prohibits a person from making a new or increased large-quantity withdrawal that causes an adverse resource impact. Section 32723 requires certain users to obtain a water withdrawal permit.)

The bill would increase the maximum fine for a violation of those sections to \$10,000 per day. Additionally, the bill would prescribe a civil fine of up to \$5,000 for a person who knowingly conducted a withdrawal in violation of Part 327. For all other violations of Part 327, the maximum civil fine would remain \$1,000.

Senate Bill 860

Withdrawal Registration

Under Part 327, except as otherwise provided, the owner of real property who has the capacity on that property to make a large-quantity withdrawal from the waters of the State must register with the DEQ before beginning the withdrawal. The bill would refer to the owner of real property who "intends to develop" capacity to make a large-quantity withdrawal, rather than an owner who "has the" capacity. Additionally, the owner would have to register after using the assessment tool and before beginning the withdrawal. A registration could be made using the online registration process (described below).

Currently, the owner of a noncommercial well on residential property is exempt from the registration requirement. Under the bill, such a person would be exempt if the well were located on single-family residential property, unless the well were a lake augmentation well.

The bill would require a person who was required to register a lake augmentation

well located on single-family residential property to register under Part 327 within 90 days after the bill took effect.

(The bill would define "lake augmentation well" as a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream.)

The bill would delete a requirement that the registration be on a form provided by the DEQ or the MDA, as appropriate.

The bill would require the DEQ to develop and implement an internet-based online process that could be used for registrations. The process would have to be designed to work in conjunction with the assessment tool.

Part 327 requires each registration to consist of a statement and supporting documentation that includes certain information regarding a withdrawal. Under the bill, the registration also would have to include a statement and supporting documentation of the capacity of the equipment used for making the withdrawal. Additionally, for a new or increased withdrawal, the registration would have to include the determination from the use of the assessment tool, the determination from the site-specific review, or the DEQ's determination of a petition.

Assessment Tool

The bill would require the DEQ to develop and implement an internet-based water withdrawal assessment tool based upon the recommendations of the Groundwater Conservation Advisory Council. The assessment tool would have to be designed to operate in two modes: a screening mode and a site-specific mode.

("Screening mode" would mean an operation of the water withdrawal assessment tool that used modeled stream flow data and the capacity for the withdrawal, and incorporated into its determination a flow-based safety factor. The screening mode would have to be designed to determine, with a flow-based safety factor, whether a withdrawal was a zone A, B, C, or D withdrawal (described below) and whether it was likely to cause an adverse resource impact. "Flow-based safety factor" would

mean a protective measure of the assessment tool's screening mode that reduced the portion of the stream-specific index flow available for the withdrawal to one-half of the stream-specific index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.

"Site-specific mode" would mean an operation of the tool that used site-specific data and did not incorporate into its determination a flow-based safety factor. This mode would have to be designed to determine, based upon site-specific data, whether a withdrawal was a zone A, B, C, or D withdrawal and whether it was likely to cause an adverse resource impact.)

The screening mode would have to be designed to allow the user to enter into fields the following data related to a proposed withdrawal:

- The capacity of the equipment used for making the withdrawal.
- The location of the withdrawal.
- The withdrawal source, whether surface water or groundwater.
- If the source of the withdrawal were groundwater, whether the source was a glacial stratum or bedrock.
- The depth of the withdrawal, if from groundwater.
- The amount and rate of water to be withdrawn.
- Whether the withdrawal would be continuous or seasonal.

In addition to those fields, the site-specific mode would have to be designed to allow the user to enter the following data related to a proposed withdrawal:

- The intended maximum monthly and annual volumes and rates of the withdrawal, if different from the capacity of the equipment used.
- If the amount and rate of the intended withdrawal would have seasonal fluctuations, the relevant information related to the seasonal use.
- The amount and rate of any return flow.
- Actual stream flow data from the affected stream as opposed to modeled data.

The assessment tool, both in screening mode and in site-specific mode, would have to contain a print function that allowed the

user, upon receiving the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

In both modes, the tool would have to be designed to work in conjunction with the online registration process for zone A and zone B withdrawals, and also would have to allow operation independent of the online registration process.

On an ongoing basis, the DEQ would have to add data to the assessment tool's database from annual reports submitted to the DEQ by registrants and annual water use conservation plans submitted to the MDA by farm owners, water withdrawal permits, and other sources of data regarding the State's water.

Before registering a withdrawal, a property owner would have to use the assessment tool by entering the data related to the proposed withdrawal into the screening mode. Upon entry of the data, the tool would have to indicate to the user whether the withdrawal was likely to cause an adverse resource impact and whether it fell into the category of zone A, B, C, or D.

("Zone A withdrawal" would mean a withdrawal as determined by the assessment tool that would result in less than a 10% reduction in populations of thriving fish in a stream and was not likely to cause an adverse resource impact. "Zone B withdrawal" would mean a withdrawal as determined by the assessment tool that would result in less than a 20% reduction in populations of thriving fish in a stream, was not a zone A withdrawal, and was not likely to cause an adverse resource impact. "Zone C withdrawal" would mean a withdrawal as determined by the assessment tool that was not a Zone A or B withdrawal and was not likely to cause an adverse resource impact. "Zone D withdrawal" would mean a withdrawal as determined by the assessment tool that was likely to cause an adverse resource impact.)

Except as otherwise provided, if the assessment tool designated a withdrawal as a zone A or B withdrawal, the property owner could register and proceed to make it. Upon registration, the withdrawal would be afforded a rebuttable presumption that it was not likely to cause an adverse resource

impact. If the capacity to make the withdrawal were not developed within one year after registration, however, the presumption would not be valid. If the tool designated a withdrawal affecting a cold transitional stream as a zone B withdrawal, the property owner could not proceed with registration or with the withdrawal unless a site-specific review by the DEQ confirmed that it would not cause an adverse resource impact.

If the assessment tool designated a withdrawal as a zone C or D withdrawal, the property owner could not register or make it unless the DEQ determined, based upon a site-specific review, that it would not cause an adverse resource impact.

(Under the bill, "adverse resource impact" would mean either of the following: 1) decreasing the level of a body of surface water such that its ability to support characteristic fish populations is functionally impaired; or 2) decreasing the flow of a stream by part of the index flow as follows:

- For a cold-water stream, the withdrawal will result in a 5% or more reduction in populations of thriving fish.
- For a warm-water stream, the withdrawal will result in a 20% or more reduction in populations of thriving fish.
- For streams that are not cold-water or warm-water streams, the withdrawal will result in a 10% or more reduction in populations of characteristic fish.)

Site-Specific Review

The bill would require the property owner submit to the DEQ a request for a site-specific review if the screening mode determined that a withdrawal was a zone C or D withdrawal or a zone B withdrawal affecting a cold transitional stream, before the owner registered and made the withdrawal. A request would have to be submitted in a form required by the Department and include all of the following:

- The intended maximum monthly and annual volumes and rates of the withdrawal, if different from the capacity of the equipment used for making the withdrawal.
- If the amount and rate of the intended withdrawal would have seasonal

fluctuations, the relevant information related to the seasonal use.

-- The amount and rate of any return flow.

Upon receiving a request, the DEQ would have to enter the data submitted with the request along with the actual stream flow data of any affected stream or stream segment into the site-specific mode. If the DEQ determined, based upon the review, that the withdrawal was a zone A or B withdrawal, it would have to give the property owner written notification and the owner could register and proceed with the withdrawal. Upon registration, the property owner would be afforded the rebuttable presumption that the withdrawal was not likely to cause an adverse resource impact under the conditions for which the determination was made.

If the DEQ determined that the withdrawal was a zone C withdrawal, it would have to give the property owner written notification and the owner could register and proceed with the withdrawal. When the property owner registered the withdrawal, however, he or she would have to self-certify that he or she was in compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector (as Senate Bill 212 (S-3) would require). Upon registration, the owner would be afforded the rebuttable presumption that the withdrawal was not likely to cause an adverse resource impact under the conditions for which the determination was made.

If the DEQ determined that a withdrawal was a zone C withdrawal, it would have to initiate the formation of a water users committee (described below), unless one already existed for that watershed.

If the DEQ determined that the withdrawal was a zone D withdrawal, the property owner could not register and make the withdrawal unless he or she petitioned the Department as prescribed in Part 327 for a hydrogeological analysis and the Department determined on the basis of that analysis that the withdrawal was not likely to cause an adverse resource impact.

The DEQ would have to make its determination within 30 days of receiving

the required information from the property owner.

Water Use Reporting Fee

Part 327 requires a registrant or permit holder to file with the DEQ an annual report including specified information regarding the withdrawal. Except as otherwise provided, a person who files an annual report or notification also must remit an annual water use reporting fee of \$200, or, upon legislative enactment of the assessment tool, \$100.

Under the bill, the fee would be \$100.

Informational Materials

Part 327 allows the DEQ to contract for the preparation and distribution of informational materials to people who withdraw water for irrigation or industrial purposes regarding the purposes, benefits, and requirements of Part 327. Additionally, the DEQ may provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

Under the bill, the DEQ could contract for the preparation and distribution of informational materials to members of the public, rather than people who withdraw water for irrigation or industrial purposes.

Notification by DEQ

The bill would require the DEQ, upon receiving an assessment tool determination of a zone B, C, or D withdrawal, or an assessment tool determination that a withdrawal would reduce the population of thriving fish in a cold-water stream by more than 1%, to notify the conservation district and any regional planning agency with jurisdiction over the location of the proposed withdrawal.

Rebuttable Presumption

Part 327 provides that, until a water withdrawal assessment tool becomes effective upon legislative enactment, there is a rebuttable presumption that a new or increased large-quantity withdrawal will not cause an adverse resource impact if the location of the withdrawal is more than

1,320 feet from the banks of a designated trout stream, or the well is at least 150 feet deep. Under the bill, if the assessment tool determined, or if the DEQ, based on a site-specific review, determined that a withdrawal was not likely to cause an adverse resource impact, there would be a rebuttable presumption that the withdrawal under the conditions that were the basis of the determination would not cause an adverse resource impact.

Also, if the DEQ determined, upon a property owner's petition, that a withdrawal was not likely to cause an adverse resource impact, there would be a rebuttable presumption that it would not do so.

Petition

Currently, a person who intends to make a large-quantity withdrawal for which a permit is not required may petition the DEQ for a determination that the withdrawal is not likely to cause an adverse resource impact. Under the bill, instead, upon petition by the owner of real property, the DEQ would have to conduct a hydrogeological analysis to determine whether a new or increased large-quantity withdrawal on that property, for which a permit was not required, was likely to cause an adverse resource impact.

Part 327 requires the petitioner to submit to the Department the petition, a \$5,000 fee, and a report containing specified information and an evaluation of the environmental, hydrological, and hydrogeological conditions that exist and the predicted effects of the intended withdrawal that provides a reasonable basis for the determination to be made. The bill would allow the petitioner to submit any other information related to restorative measures that the petitioner wished to be considered in conjunction with the determination.

Within 120 days after receiving an administratively complete petition, the DEQ must issue to the petitioner a written determination that either affirms that the proposed withdrawal is not likely to cause an adverse resource impact or specifies the reasons that an affirmative determination cannot be made and states how the petition may meet the criteria to obtain an affirmative determination. The bill also would allow the DEQ to issue a determination affirming that the proposed

withdrawal, along with the implementation of restorative measures, was not likely to cause an adverse resource impact.

If the Department approved restorative measures, it would have to establish an implementation schedule for their completion.

(Under the bill, "restorative measures" would mean an action that would restore or improve stream hydrology, improve the temperature gradient of a stream, improve fisheries-related habitat, or otherwise prevent an adverse resource impact.)

The bill would allow the property owner to register and proceed with or make the withdrawal, upon receiving a determination affirming that the proposed withdrawal, or the proposed withdrawal with the implementation of restorative measures, was not likely to cause an adverse resource impact. At the time the property owner registered the withdrawal, however, he or she would have to self-certify that he or she was in compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector. Additionally, unless a water users committee already existed for that watershed, the DEQ would have to initiate the formation of one.

The DEQ could revoke a determination if it determined, following a hearing, based upon clear and convincing scientific evidence, that the withdrawal was causing an adverse resource impact.

The bill would delete a requirement that the DEQ, in making a determination with regard to a community supply owned by a political subdivision, consider the factors provided in Section 4(4)(a) and (b) of the Safe Drinking Water Act. (Under those subsections, the DEQ must reject the plans and specifications for a proposed waterworks system that will not meet certain NREPA standards unless particular conditions are met. Senate Bill 858 would amend those provisions, as described above.)

Water Users Committee

Under Part 327, all users making large-quantity withdrawals within a watershed are

encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A committee may be composed of all registrants, water withdrawal permit holders, and local government officials within the watershed.

If the DEQ determines by reasonable scientifically based evidence that adverse resource impacts are occurring or are likely to occur from one or more large-quantity withdrawals, it must notify the water users committee in the watershed or convene a meeting of all registrants and water withdrawal permit holders within the watershed and attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts. Under the bill, this provision also would apply if the DEQ determined that a withdrawal was causing an adverse resource impact based upon use of the assessment tool.

MCL 324.32701 et al. (S.B. 212)
325.1004 (S.B. 858)
324.32713 (S.B. 859)
324.32701 et al. (S.B. 860)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would cost the State an indeterminate amount for information technology and staff expenses. In FY 2006-07, \$738,000 was appropriated for administrative costs of the water withdrawal program. In FY 2005-06, \$500,000 was appropriated for initial development of a water withdrawal assessment tool. An unknown amount of additional funding would be necessary for the increased responsibilities of the Department of Environmental Quality under these bills. Those duties would include operation of the internet-based water withdrawal assessment tool, continuing maintenance of the data in the assessment tool and monitoring system, and increased staff oversight of allowable withdrawals. The bills do not identify a source of funding for the additional cost.

Senate Bill 859 would increase the civil penalties for violations of Part 327. An indeterminate amount of additional revenue

would be received depending on the number of violations. Revenue from civil penalties is deposited into the General Fund.

Fiscal Analyst: Jessica Runnels

S0708\S212sb

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.