

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date August 9, 2023</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 851 – Management of Great Lakes Diversions</p>	
<p>4. Subject Creation of ch. NR 851 for the management of diversions (transfers of water from the Great Lakes basin to outside of the Great Lakes basin) and intrabasin transfers including the application and review process and other related criteria. Board Order DG-03-22</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected N/A</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors (e.g. hydrostatic pipe testing) <input checked="" type="checkbox"/> Local Government Units   <input checked="" type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). The department estimates costs associated with applying for diversions or intrabasin transfers to be an average of \$140,000 per application. The expected rule implementation costs, however, are due to the requirements for applying for a diversion or intrabasin transfer established in Wisconsin statute and Great Lakes Compact rather than the provisions of this rule. Due to statutory requirements, costs associated with this rule will be applicable even without rule development. Based on past experience, the department anticipates receiving a minimal number of applications in the future. The department has received and approved a total of 6 diversion or intrabasin transfer applications since 2008 when the Compact was ratified, averaging approximately one application every 4 years.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Chapter NR 851 will provide applicants a structure for: the diversion application process, department review and determinations related to diversion applications, approval content, and annual reporting requirements.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Department staff interviewed local governmental units that have been through the application process to determine actual costs incurred during the diversion application process already required under state statute.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. Village of Somers, City of Racine, City of Waukesha</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The framework for diversion applications is already provided in state statute and the Great Lakes - St. Lawrence River Water Resources Compact (Compact). Implementation costs associated with the proposed diversion rule are the same as the costs already associated with the requirements in state statute. The proposed rule defines requirements for a more efficient application submittal and approval process and is expected to reduce costs and time for applicants preparing and submitting documents for department review.</p>	

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No additional economic or fiscal impact is expected from the proposed rule on businesses, business sectors, or on the state's economy. In cases where a public water utility or local government chooses to apply for a diversion, the economic and fiscal impact is anticipated to be minimal because the total costs for a diversion application could be divided among the public utility rate payers over time.

Although the rule does not change any costs related to the application and review of a diversion approval, out of an abundance of caution, the department estimates a conservative cost of \$140,000 per application, depending on the scope of the application, to comply with existing state statute and Great Lakes Compact requirements. Based on past experience, the department anticipates receiving a minimal number of applications in the future.

Since the Compact and implementing legislation was passed in December 2008, the department has received and approved 4 diversion applications (Cities of New Berlin, Waukesha and Racine, and Village of Somers) and 2 intrabasin transfer applications (Enbridge, hydrostatic pipe testing). The department anticipates a similar limited number of applications in future years. The department conducted interviews and gathered costs from recent diversion applications (Cities of Racine and Waukesha, and Village of Somers). Based on these interviews, the costs of applying for a diversion or intrabasin transfer ranged from approximately \$80,000 (Somers) and \$208,000 (City of Racine) for straddling community diversion applications to \$4,000,000 for a community in a straddling county application (Waukesha). The City of Waukesha's application for a community in a straddling county was the first of any straddling county applications under the Compact, and costs included the preparation of two applications with various water supply and return flow options, hydrologic modeling, and preparation of an Environmental Impact Statement. Although Waukesha's application costs were on the high end of the range, the City of Waukesha's application costs were only 1.5% of the overall project cost.

#### **Specific Businesses and Business Sectors (Private Businesses)**

The department anticipates the rule will have no significant economic impact on specific businesses or business sectors. Implementation costs associated with the proposed diversion rule are the same as the costs already associated with the requirements in state statute. No additional implementation costs would result from the proposed administrative rule.

#### **Impacts on Public Utility Rate Payers**

The department anticipates the rule will have no significant economic impact on public utility rate payers. Implementation costs associated with the proposed diversion rule are the same as the costs already associated with the requirements in state statute. No additional implementation costs would result from the proposed administrative rule.

#### **Impacts on Local Governmental Units**

As noted above, the department anticipates the rule will have minimal economic impact on local government units. Implementation costs associated with the proposed diversion rule are the same as the costs already associated with the requirements in state statute. No additional implementation costs would result from the proposed administrative rule.

#### **Fiscal Impact and Impact on State Economy**

The department anticipates the rule will have no fiscal impact to state agencies. The department anticipates the rule will have no adverse effect in a material way on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The primary benefit of implementing this proposed rule is that it defines requirements for a more efficient application

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submittal and approval process for municipalities. Section 281.346(4), Wis. Stats., mirrors Compact requirements and this proposed rule helps provide more specifics, allowing for consistency and transparency in the application process, and is expected to reduce costs and time for applicants when preparing and submitting documents for department review.

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### 16. Long Range Implications of Implementing the Rule

This rule will support department decisions related to diversions and provide consistency in the content of diversion and intrabasin approvals and annual reporting requirements.

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### 17. Compare With Approaches Being Used by Federal Government

There are no comparable federal regulations pertaining to the management of diversions and intrabasin transfers regulated under the Compact. There are specific procedures that are laid out in the Compact Rules of Practice and Procedure that have been considered while drafting this rule.

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### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

In comparison to adjacent states, Illinois' rules are the most similar to what Wisconsin is proposing for the diversion rule. Michigan and Minnesota have state statutes that mirror the Compact requirements but no corresponding rules. Iowa is not a party to the Compact, and diversions out of Iowa are reviewed under their rules for withdrawals.

**Illinois:** Illinois' program regulates diversions within the restrictions of the most recent U.S. Supreme Court decree entered in *Wisconsin v. Illinois*, 278 U.S. 367 (1929). The decree limits Illinois' diversion of Lake Michigan water to 3,200 cubic feet per second. Illinois' administrative rules identify the following: requirements for the contents of an application, criteria for determining water needs, emergency conditions, process for transferring water use rights, required conservation practices, other permit conditions, the duration of permits and renewals, reporting requirements, the process for modifying a permit, Illinois' review and decision process, and penalties. Illinois' Part [3730 Administrative Rules](#) address the application and review of diversion proposals (Lake Michigan allocations) under the Compact and Agreement in Illinois.

**Michigan:** Michigan has no administrative rule related to the review of Great Lakes diversions or intrabasin transfers.

**Minnesota:** Minnesota has no administrative rule related to the review of Great Lakes diversions or intrabasin transfers. Minnesota's statute does contain additional requirements for all diversions greater than 5 million gallons a day. The statute states that Minnesota must notify and solicit comments from the office of the governors and premiers of the Great Lakes states and provinces, the water management agencies, and the international joint commission. The Minnesota state legislature must approve the diversion. The commissioner must consider any comments received, hold a meeting to resolve any objections and send notification of any final decision to the offices originally notified. State Statutes Implementation: M.S. 103G.265, subd. 4)

**Iowa:** Diversions of water outside of Iowa are reviewed under the same process as withdrawal applications. Iowa's administrative rules identify the fees for application, the information required in the application, the review process for applications, the public notice requirements, the decision requirements, and the appeals process for a decision. Iowa's rules also specify the criteria for authorizing a diversion, the duration of permits, monitoring and reporting requirements, modifications, designated protected flow streams, water conservation requirements, and priority allocation restrictions. The authority and process for when and how Iowa reviews water diversion applications is outlined in Code at: <https://www.legis.iowa.gov/docs/code/455B.265.pdf>

The details on how the code is implemented are included in the following chapters:

<https://www.legis.iowa.gov/docs/iac/chapter/03-08-2023.567.50.pdf>

<https://www.legis.iowa.gov/docs/iac/chapter/03-08-2023.567.52.pdf>

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19. Contact Name

20. Contact Phone Number

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