



## WISCONSIN LEGISLATIVE COUNCIL

### AGENDA

#### SUBCOMMITTEE ON REGULATION OF WITHDRAWALS, CONSUMPTIVE USES, AND DIVERSIONS OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT

January 31, 2007

Legislative Council Conference Room  
1 East Main Street, Suite 401  
Madison, Wisconsin

9:00 a.m.

CALL TO ORDER.

REVIEW OF MEMO NO. 13, VERSION 2.

CRITERIA IN EXCEPTION TO PROHIBITION ON DIVERSIONS TO STRADDLING COMMUNITIES [proposed s. 281.343 (4n) (a) in LRB-0058/P1].

- Discussion of the allowance for consumptive use in sub. (4n) (a) 1. (intro.).
  - Recommendation in Memo No. 11 to establish an upper limit on criteria in compact that all water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed “less an allowance for consumptive use”. [Memo No. 11, p. 6, item 8.]
- Discussion of the location of return flow in sub. (4n) (a) 1 c.
  - Recommendation in Memo No. 11, p. 6. item 6. [The subcommittee discussed and deferred acting on this item at its January 11 meeting.]

**Comment:** This recommendation also applies to the return flow provision in the exception standard, proposed s. 281.343 (4n) (d) 3. in LRB-0058/P1. Also, see the definition of “source watershed” in proposed s. 281.343 (1e) (r) in LRB-0058/P1.

CRITERIA IN EXCEPTION TO PROHIBITION ON DIVERSIONS TO COMMUNITIES IN STRADDLING COUNTIES [proposed s. 281.343 (4n) (c) in LRB-0058/P1]:

- Public Member Dan Duchniak has proposed the following language for the implementing legislation:

“Without adequate supplies of potable water” in par. (c) 1. a. means not having a water supply that is economic and environmentally sustainable in the long term to meet reasonable demands for a water supply that is fully protective of public health and welfare and is without substantial adverse environmental impacts.

“Hydrologically interconnected” in par. (c) 2. means surface or groundwater that is physically connected to other surface or groundwater so as to affect its level, flow, or recharge. This includes, but is not limited to, circumstances in which the historic use of groundwater by municipalities within the Great Lakes surface divide has contributed to the drawdown of the groundwater supply of a municipality outside the surface divide that is making a proposal.

“Substantive consideration” in par. (c) 2. means approval is to be expected unless it is demonstrated that the conditions in s. 281.343 (4n) (c) 1. are not met. Any lack of a hydrological connection shall not be used as a reason to disapprove a proposal.

Substantive consideration shall also be given to restoration of hydrologic conditions and functions of the source watershed.

EXCEPTION STANDARD CRITERIA FOR NEW OR INCREASED DIVERSIONS TO STRADDLING COMMUNITIES AND COMMUNITIES IN STRADDLING COUNTIES [proposed s. 281.343 (4n) (d) in LRB-0058/P1]:

- Public Member Dan Duchniak has proposed the following language for the implementing legislation:

Proposals shall be considered to comply with the standard under s. 281.343 (4n) (d) 1. unless the community’s existing water supplies, efficiently used and with implementation of environmentally sound and economically feasible conservation measures, is shown to be as environmentally sustainable, as protective of public health, as reliable and not to have the potential for greater adverse environmental impacts than the proposal.

**Comment:** The Subcommittee on Water Conservation and Bottled Water has defined “environmentally sound and economically feasible conservation measures” for the conservation of existing water supplies. Does the Regulation Subcommittee want to clarify the rest of the “reasonably avoided” test in this subsection?

DEFINITIONS RELATING TO DIVERSIONS [proposed s. 281.343 (1e) in LRB-0058/P1]:

- Discussion of establishing boundaries of straddling communities and communities in straddling counties in sub. (1e) (d) and (t).
  - Recommendations in Memo No. 11, p. 1-2, items 2., 3., 11. and parts of 12.
- Discussion of interpreting “equivalent thereof” in definitions of straddling community and community in a straddling county to apply to villages and towns and to special purpose units of government that may provide public water supplies (e.g., a town sanitary district) in sub. (1e) (d) and (t).
- Discussion of definition of “product” in sub. (1e) (o).
  - Recommendation in Memo No. 11, p. 1, item 1.

PARTY POWERS AND DUTIES [proposed s. 281.343 (4d) in LRB-0058/P1, pp. 20-21]:

- Discussion of “sufficient opportunity” to comment on a proposal in sub. (4d) (e).
  - Recommendation in Memo No. 11, p. 5, item 1.
- Potential discussion question:
  - Subsection (4d) (e) contains the broad phrase a party must take “into consideration” any of the comments received under this provision. Should this phrase be clarified?

REGIONAL REVIEW [proposed s. 281.343 (4h) in LRB-0058/P1, pp. 22-25]:

- Discussion of “regionally significant or potentially precedent setting proposal” in sub. (4h) (a) 6.
  - Recommendation in Memo No. 11, p. 5, item 1.
- Discussion of whether to restrict Wisconsin’s ability to request regional review of a proposal even if such review is not required and in sub. (4h) (b) 3. b.
  - Recommendation in Memo No. 11, p. 5, item 2.
- Potential discussion questions:
  - Should Wisconsin provide notice of an application or request regional review even if notification or regional review is not required under sub. (4h) (b) 3. a. and b.?
  - Should Wisconsin provide preliminary notice of a potential proposal under sub. (4h) (b) 4.?

REGULATION OF NEW WITHDRAWALS AND CONSUMPTIVE USES SUBJECT TO THE DECISION-MAKING STANDARD [proposed s. 281.343 (4p) in LRB-0058/P1, pp. 31-32]:

- Discussion of meaning of creating a state program “consistent with the decision making standard” and provision allowing each state to “determine the scope and thresholds of its program” in sub. (4p) (a).
  - Recommendation in Memo No. 11, pp. 6-7, item 1.

- Discussion of terms “significant impacts” and “significant individual or cumulative adverse impacts” in sub. (4p) (a).
  - Recommendation in Memo No. 11, p. 7, item 3.
- Potential discussion questions:
  - Should Wisconsin implement a program for managing new or increased withdrawals in less than five years of the compact’s effective date?
  - Where should the threshold be set for new withdrawals subject to the compact? The compact provides that the threshold must be set before 10 years after the compact’s effective date or the default threshold of 100,000 gallons per day or greater average in any 90-day period must be used.

DECISION-MAKING STANDARD [proposed s. 281.343 (4r) in LRB-0058/P1, pp. 32-33] and DEFINITIONS RELATED TO THE DECISION-MAKING STANDARD [proposed s. 281.343 (1e) in LRB-0058/P1]:

- Discussion of criteria a proposal for a new or increased withdrawal or consumptive use must meet in the decision-making standard in sub. (4r) (a) to (e), including the terms “allowance for consumptive use,” and “no significant individual or cumulative adverse impacts to the quantity and quality of the waters and water dependent natural resources and the applicable watershed.”
  - Recommendations in Memo No. 11, p. 7, items 1, 2, 5., 7 to 12.
- Discussion of definitions of “new or increased withdrawal or consumptive use,” “significant adverse impacts,” and “water resources” used in the decision making standard in sub. (4r) (b).
  - Recommendations in Memo No. 11, p. 2, item 4 and part of item 13.

ASSESSMENT OF CUMULATIVE IMPACTS [proposed s. 281.343 (4z) in LRB-0058/P1, pp. 37-38]:

- Discussion of required content of a cumulative impact assessment and relationship of this assessment to cumulative impact assessment in the decision making standard in sub. (4r) (a) and (c).
  - Recommendations in Memo No. 11, p. 10, items 1, 2 and 3.
- Potential discussion question:
  - Subsection (4z) (c) gives parties the discretion to require an applicant to conduct a separate cumulative impact assessment in connection with an application for a withdrawal, diversion, or consumptive use by use of the phrase “unless required by other statutes.” Should Wisconsin require a separate assessment under these circumstances?

GENERAL POWERS AND DUTIES OF THE COUNCIL – REVIEW OF THE STANDARD OF REVIEW AND DECISION [proposed s. 281.343 (3) (a) 2. in LRB-0058/P1, p. 15]:

- Discussion of the scope and effect of the council’s power to revise the standard of review and decision, council rule-making authority, and public notice and hearing in sub. (3) (a) 2. and (c).

- Recommendations in Memo No. 11, pp. 3-4, items 1, 2, 3, 4, 5, and 10.
- Potential discussion question:
  - Should a provision be included similar to a provision in Ohio's bill, specifying that the Governor or the Governor's alternate must receive the Legislature's authorization prior to casting a vote that amends or revises the standard of review and decision?

OTHER BUSINESS.

ADJOURNMENT.