

Adopted Rejected

COMMITTEE REPORT

YES: 10
NO: 0

MR. SPEAKER:

Your Committee on Environmental Affairs, to which was referred House Bill 1060, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 14-8-2-20 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. "Basin" has the
- 5 following meaning:
- 6 **(1) For purposes of IC 14-25-1, the meaning set forth in**
- 7 **section 1.2 of IC 14-25-15-1.**
- 8 **(+) (2) For purposes of IC 14-30-1, the meaning set forth in**
- 9 **IC 14-30-1-1.**
- 10 **(-) (3) For purposes of IC 14-30-2, the meaning set forth in**
- 11 **IC 14-30-2-1.**
- 12 **(+) (4) For purposes of IC 14-30-3, the meaning set forth in**
- 13 **IC 14-30-3-1.**
- 14 **(+) (5) For purposes of IC 14-30-4, the meaning set forth in**
- 15 **IC 14-30-4-1."**
- 16 Page 1, between lines 6 and 7, begin a new paragraph and insert:

1 "SECTION 3. IC 14-25-1-11 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The general
 3 assembly finds that a diversion of water out of the ~~Great Lakes basin,~~
 4 **unless conducted under the Great Lakes—St. Lawrence River**
 5 **Basin Water Resources Compact**, will impair or destroy the Great
 6 Lakes. The general assembly further finds that the ~~prohibition~~
 7 **regulation** of a diversion of water from the ~~Great Lakes basin~~ is
 8 consistent with the mandate of the Preamble to and Article 14, Section
 9 1 of the Constitution of the State of Indiana, the United States
 10 Constitution, and the federal legislation according to which Indiana
 11 was granted statehood.

12 (b) Water may not be diverted **outside the basin** from that part of
 13 the ~~Great Lakes drainage~~ basin within Indiana unless the diversion is:

14 (1) approved by the governor of each Great Lakes state under 42
 15 U.S.C. 1962d-20 (Water Resources Development Act); **or**

16 **(2) conducted:**

17 **(A) after the effective date of; and**

18 **(B) in accordance with the requirements of;**

19 **the Great Lakes—St. Lawrence River Basin Water Resources**
 20 **Compact.**

21 (c) The commission shall adopt rules necessary to implement this
 22 section.

23 SECTION 4. IC 14-25-7-15 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. (a) As used in this
 25 section, "significant water withdrawal facility" means the water
 26 withdrawal facilities of a person that, in the aggregate from all sources
 27 and by all methods, has the capability of withdrawing more than one
 28 hundred thousand (100,000) gallons of ground water, surface water, or
 29 ground and surface water combined in one (1) day. **Subject to**
 30 **subsection (b)**, the term does not include:

31 (1) water withdrawal facilities that function as part of the
 32 operation or construction of a landfill; or

33 (2) water withdrawal facilities located in or on an off-stream
 34 impoundment that is principally supplied by a significant water
 35 withdrawal facility.

36 **(b) A water withdrawal facility referred to in subsection (a)(1)**
 37 **or (a)(2) located in the basin (as defined in section 1.2 of**
 38 **IC 14-25-15-1) is subject to the registration requirement of section**

1 **4.1.3 of IC 14-25-15-1.**

2 ~~(b)~~ **(c)** Every person who has a significant water withdrawal facility
3 shall register the facility with the commission on forms provided by the
4 commission that contain the following:

- 5 (1) The name and legal address of the registrant.
6 (2) The source of water supply.
7 (3) The total capability of the water withdrawal facility.
8 (4) The total withdrawal capability per day and the amount from
9 each source.
10 (5) The use to be made of the water, the place of use, and the
11 place of discharge.
12 (6) The geographic location of the supply source.
13 (7) The date of registration.
14 (8) Other information specified by rule.

15 ~~(c)~~ **(d)** A significant water withdrawal facility must be registered
16 within three (3) months after the facility is completed.

17 ~~(d)~~ **(e)** The owner of a registered significant water withdrawal
18 facility shall, within three (3) months after the end of each year, make
19 a verified report to the commission on forms to be provided by the
20 commission of the amounts of water withdrawn during the year.

21 ~~(e)~~ **(f)** Under rules adopted by the ~~department;~~ **commission**, the
22 department may waive the requirement of the information set forth in
23 subsections ~~(b)~~ **(c)** and ~~(d)~~ **(e)** with respect to a temporary significant
24 water withdrawal facility.".

25 Page 35, after line 29, begin a new paragraph and insert:

26 **"Sec. 2. (a) The governor, ex officio, shall:**

- 27 **(1) serve as the Indiana administrator of the compact; and**
28 **(2) appoint at least one (1) alternate under section 2.3 of the**
29 **compact.**

30 **(b) The governor shall do the following as administrator:**

31 **(1) Receive copies of all agreements that are entered into**
32 **under the compact by the following:**

- 33 **(A) This state.**
34 **(B) Other states.**
35 **(C) Political subdivisions of this state.**
36 **(2) Consult with, advise, and aid the states and political**
37 **subdivisions referred to in subdivision (1) in the formulation**
38 **of those agreements.**

1 **(3) Make any recommendations that the governor considers**
 2 **desirable in order to effectuate the purposes of the compact to**
 3 **the following:**

- 4 **(A) The general assembly.**
 5 **(B) Legislatures of other states.**
 6 **(C) Governmental agencies of other states.**
 7 **(D) Political subdivisions of this state.**
 8 **(4) Consult with and cooperate with the compact**
 9 **administrators of the states other than Indiana.**

10 **(c) Pursuant to section 9.2 of the compact, the governor may**
 11 **take actions necessary for the initial organization and operation of**
 12 **the council.**

13 **Sec. 3. Agencies of this state are authorized to cooperate with**
 14 **the council.**

15 **Sec. 4. (a) Before casting a vote under section 3.1 of the compact**
 16 **with respect to any regulation that amends or revises the standard**
 17 **of review and decision, the governor or the governor's alternate**
 18 **shall obtain authorization from the general assembly for the vote.**
 19 **The governor or the governor's alternate shall exercise the vote**
 20 **consistent with the terms of the general assembly's authorization.**

21 **(b) An authorization by the general assembly under subsection**
 22 **(a) must be by adoption of:**

- 23 **(1) an act; or**
 24 **(2) a concurrent resolution.**

25 **Sec. 5. The natural resources commission:**

26 **(1) except as provided in subdivision (2), may not:**

- 27 **(A) adopt rules to establish; or**
 28 **(B) otherwise implement;**
 29 **any mandatory program governing water conservation and**
 30 **efficiency under section 4.2 of the compact;**
 31 **(2) may adopt rules to establish a mandatory program**
 32 **governing water conservation and efficiency under section 4.2**
 33 **of the compact only if the general assembly adopts an act**
 34 **authorizing the adoption of the rules;**
 35 **(3) shall adopt rules under IC 4-22-2 that implement**
 36 **voluntary water conservation and efficiency programs; and**
 37 **(4) shall adopt rules under IC 4-22-2, which may provide for**
 38 **general permits, for the implementation, administration, and**

1 enforcement of article 4 of the compact.

2 **Sec. 6. A proposal for an exception to the prohibition in section**
3 **4.8 of the compact to transfer water to an area outside the basin**
4 **shall be managed and regulated using the thresholds established in**
5 **section 4.9 of the compact.**

6 **Sec. 7. (a) Except as provided in section 8 of this chapter, a**
7 **person must, under the rules established under section 5(4) of this**
8 **chapter, obtain a permit from the department for a daily**
9 **withdrawal in excess of any of the following, calculated on average**
10 **over any ninety (90) day period:**

11 (1) Five million (5,000,000) gallons from Lake Michigan
12 surface water.

13 (2) Subject to subsection (b), one hundred thousand (100,000)
14 gallons from a salmonid stream.

15 (3) For any other surface water or groundwater source, one
16 million gallons (1,000,000).

17 (b) Notwithstanding 327 IAC 2-1.5-5(a)(3), the salmonid streams
18 subject to subsection (a)(2) are the following:

19 (1) Trail Creek and its tributaries downstream to Lake
20 Michigan.

21 (2) Galien River and its tributaries in LaPorte County.

22 (3) East Branch of the Little Calumet River and its tributaries
23 downstream to Lake Michigan via Burns Ditch.

24 (4) St. Joseph River and its tributaries in St. Joseph County
25 from the Twin Branch Dam in Mishawaka downstream to the
26 Indiana/Michigan state line.

27 (5) Subject to subsection (c), any other watercourse
28 determined by rule by the commission.

29 (c) Before adopting a rule under subsection (b)(5), the
30 commission shall seek input from the U.S. Fish and Wildlife
31 Service.

32 **Sec. 8. Except as provided in this section, a withdrawal that does**
33 **not exceed the amount of a baseline status determination made**
34 **under section 12 of this chapter is exempt from section 7(a) of this**
35 **chapter. The director may limit a withdrawal that would reduce**
36 **flow in a watercourse below the established minimum stream flow.**

37 **Sec. 9. Not later than ten (10) years after the compact takes**
38 **effect under section 9.4 of the compact, the general assembly shall**

1 study and make findings and recommendations concerning the
2 following:

3 (1) The appropriateness of the permit threshold amounts
4 established in section 7(a) of this chapter considering:

5 (A) advances made under section 1.4 of the compact;

6 (B) findings under IC 14-25-14; and

7 (C) other new water management technology and practices
8 that become available.

9 (2) Any changes in those amounts that the general assembly
10 deems warranted.

11 Sec. 10. (a) The criterion of section 4.11.2 of the compact is met
12 only if the withdrawal or consumptive use will be implemented so
13 as to ensure that the proposal will result in no significant individual
14 or cumulative adverse impacts to the quantity or quality of the
15 waters and water dependent natural resources of either:

16 (1) The basin considered as a whole; or

17 (2) The Lake Michigan or Lake Erie watershed considered as
18 a whole.

19 (b) Impacts of a withdrawal or consumptive use on the quantity
20 or quality of waters and water dependent natural resources of
21 more localized areas that affect less than:

22 (1) the basin considered as a whole; or

23 (2) the Lake Michigan or Lake Erie watershed considered as
24 a whole;

25 are considered a part of the evaluation of reasonable use under
26 section 4.11.5 of the compact.

27 (c) When determining whether there will be significant
28 individual or cumulative adverse impacts under this section:

29 (1) consideration shall be given to the impacts incurred in a
30 particular tributary or stream reach where those impacts are
31 important to:

32 (A) the basin; or

33 (B) the Lake Michigan or Lake Erie watershed as a whole;
34 and

35 (2) a judgment shall be made of the nature, degree, scope, and
36 materiality of the impacts and the regional importance of
37 those impacts to:

38 (A) the basin; and

- 1 **(B) the Lake Michigan or Lake Erie watershed.**
- 2 **Sec. 11. An applicant may use either of the following methods to**
3 **provide consumptive use amounts required under article 4 of the**
4 **compact:**
- 5 **(1) The most current values published for the appropriate**
6 **sector from:**
- 7 **(A) the United States Geological Survey;**
8 **(B) the Great Lakes Commission;**
9 **(C) the council; or**
10 **(D) other sources approved by the department.**
- 11 **(2) Site specific calculations for the applicant's facility that**
12 **are based on standard engineering practices.**
- 13 **Sec. 12. (a) This section governs any status determination of a**
14 **baseline under section 4.12.2 of the compact for each of the**
15 **following from the Indiana portion of the basin:**
- 16 **(1) The total withdrawal capability registered under**
17 **IC 14-25-7-15(c)(3) is deemed the existing withdrawal**
18 **approval amount for section 4.12.2.a.i of the compact.**
- 19 **(2) A consumptive use attributable to a facility described in**
20 **IC 14-25-7-15(a)(1).**
- 21 **(3) A facility that diverts water outside the basin.**
- 22 **(b) The department shall make each determination required**
23 **under subsection (a) following an investigation. Before completing**
24 **the investigation, the department shall:**
- 25 **(1) inform the owner of the facility of the amount of any**
26 **proposed baseline; and**
- 27 **(2) provide the owner with a period of at least thirty (30) days**
28 **to offer documentation the owner believes would properly**
29 **modify the proposed baseline amount.**
- 30 **(c) The department shall provide notice under IC 4-21.5-3-5 of**
31 **a status determination under this section to the owner of the**
32 **facility for which the determination is made.**
- 33 **(d) The owner of a facility for which a status determination is**
34 **made under this section is the only person with standing to seek**
35 **administrative review of the determination.**
- 36 **Sec. 13. (a) As used in this section, "product":**
- 37 **(1) refers to a product, regardless of whether the product is**
38 **distributed inside or outside the basin, that:**

- 1 **(A) is produced in the Indiana portion of the basin; and**
 2 **(B) is packaged and intended for intermediate or end-use**
 3 **consumers; and**
 4 **(C) includes water:**
 5 **(i) withdrawn from the basin; and**
 6 **(ii) packaged in containers with a capacity of not more**
 7 **than five and seven-tenths (5.7) gallons.**
 8 **(b) Any incorporation of water into a product:**
 9 **(1) is a consumptive use; and**
 10 **(2) does not constitute a diversion for purposes of the**
 11 **compact.**
 12 SECTION 6. IC 34-30-2-56.5 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2008]: **Sec. 56.5. IC 14-25-15-1 (Section 2.8**
 15 **concerning a person acting under the Great Lakes—St. Lawrence**
 16 **River Basin Water Resources Compact)."**
 17 Renumber all SECTIONS consecutively.
 (Reference is to HB 1060 as introduced.)

and when so amended that said bill do pass.

Representative Dvorak