

CONSENT OF CONGRESS FOR AN INTERSTATE COMPACT
 REGARDING WATER RESOURCES IN THE GREAT LAKES-
 ST. LAWRENCE RIVER BASIN

SEPTEMBER 22, 2008.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 6577]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
 (H.R. 6577) to express the consent and approval of Congress to an
 interstate compact regarding water resources in the Great Lakes-
 St. Lawrence River Basin, having considered the same, reports fa-
 vorably thereon without amendment and recommends that the bill
 do pass.

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PURPOSE AND SUMMARY

H.R. 6577 effectuates the consent and approval of Congress to
 the Great Lakes-St. Lawrence River Basin Water Resources Com-
 pact (“Compact”), which provides a structure for water manage-

ment and protection of the water within the Great Lakes-St. Lawrence River Basin (“Basin”). Generally, the Compact creates an eight-State Council for administering Compact oversight; fosters economic development through sustainable use and responsible water management; develops regional goals and objectives for water conservation and efficiency; strengthens the collection of technical data to improve State decision-making regarding water management; with exceptions, generally bans new diversions of water from the Basin; and provides for public participation regarding Council and State actions.

BACKGROUND AND NEED FOR THE LEGISLATION

In the face of common problems and opportunities that span beyond their individual boundaries, States have historically joined together to address regional and even national issues. The cooperation comes through formal agreements, such as interstate compacts, as well as informal collaborative mechanisms. States are increasingly working together in areas such as economic development, homeland security, environmental protection, natural resources management, and health care.

Interstate compacts are contracts between two or more States to create an agreement adopting a certain standard, to cooperate on a regional or national matter to address common problems, to establish policy, or to promote a common agenda.¹ The structures of the compacts are not mandated by the Federal Government, but instead are State collaborative approaches.² They enable the States to act collectively outside the Federal legislative and regulatory process, thereby reinforcing State sovereignty while developing a fluid self-regulatory system. They often create independent, multi-State governmental authorities, or commissions, that can address issues more effectively than State agencies or when no single State has encompassing jurisdiction.³

Interstate compacts can serve several purposes. They can settle interstate disputes, such as boundary issues.⁴ They can provide for specific emergency response assistance, such as regional fire fighting⁵ and general emergency assistance services.⁶ They can promote economic development.⁷

Before an interstate compact can become effective, it must be approved not only by the requisite number of States as outlined in the compact, but by Congress as well.

The Basin includes the watershed of the Great Lakes and the St. Lawrence River upstream from Trois Rivières, Québec. The Basin includes the waters within the geographic areas surrounding each body of water where water drains toward the Great Lakes and the

¹See Joseph F. Zimmerman, INTERSTATE COOPERATION: COMPACTS AND ADMINISTRATIVE AGREEMENTS 31 (2002).

²For an overview of the efforts of State governments in promoting and creating interstate compacts, see <http://www.csg.org/programs/ncic/resources.aspx>.

³See Zimmerman, at 69–70, 73–74.

⁴See Georgia and South Carolina Boundary Compact, Pub. L. No. 106–79, 113 Stat. 1307 (1999).

⁵See Great Plains Wildland Fire Protection Compact, Pub. L. No. 110–79, 121 Stat. 730 (2007).

⁶See Emergency Management Assistance Compact, Pub. L. No. 104–321, 110 Stat. 3877 (1996).

⁷See Chickasaw Trail Economic Development Compact, Pub. L. No. 105–145, 111 Stat. 2669 (1997).

St. Lawrence River. The States within the Basin include Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.⁸

In 1999, in response to a Canadian company proposing to ship water from Lake Ontario to Asia, and the fear of other attempts to divert water to Arizona and Western Canada, the Great Lakes States began to collaborate on an effort to protect the Basin and limit diversions from it.⁹ The States also viewed protection of the Basin as important to industrial, environmental, and recreational interests.¹⁰ Congress helped by encouraging the States to develop and implement a mechanism to promote water conservation and to regulate the withdrawal and use of the water.¹¹

Pursuant to the encouragement of Congress, on June 18, 2001, the Governors of the Great Lakes States and the Premiers of the Canadian Provinces of Ontario and Québec agreed to the Great Lakes Charter Annex, which outlined protections for the Basin to improve the ecosystem and update the management of the Basin water.¹² The agreement established a working group to develop the agreements to effectuate the purposes of protecting the Basin. The working group consulted with a committee comprised of representatives from industry, agriculture, shipping, municipal governments, environmental organizations, and others. It also met with the United States and Canadian Federal Governments, and the Indian tribes. It held public hearings and sought and received public input. Four years later, the working group drafted and finalized language to protect the Basin.

On December 13, 2005, the Great Lakes Governors and Premiers of the Canadian provinces of Ontario and Québec signed agreements consisting of the language drafted by the working group.¹³ The agreements are to be implemented in Ontario and Québec through Provincial laws, and in the United States through the Compact. The Compact will thus be an important supplement to the protections currently provided under Federal law and the laws of the various affected States.

On July 9, 2008, the final Great Lakes State governor approved the Compact.¹⁴ On July 23, 2008, Rep. James Oberstar introduced H.R. 6577, a bill granting congressional approval to the Compact.¹⁵

⁸The region also includes the Canadian provinces of Ontario and Québec. The provinces are not part of the Compact because the Compact is among the States; however, they are part of an agreement between the States and the provinces to protect the water basin.

⁹Dennis Cauchon, *Great Lakes Compact at the Center of Great Debate*, USA TODAY, Dec. 12, 2006.

¹⁰Kari Lydersen, *Great Lakes' Lower Water Levels Propel a Cascade of Hardships*, WASH. POST, Jan. 27, 2008, at A4.

¹¹See Section 504 of the Water Resources Development Act of 2000 (WRDA), which amended Section 1109(b) of the Water Resources Development Act of 1986 (42 U.S.C. 1962d-20(b)). The 2000 amendment, included in S. 2796, "... encourage[d] the Great Lakes States, in consultation with the Provinces of Ontario and Québec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin." Section 504, though not included in the House version of the Act, H.R. 4411, was agreed to by the House in conference. The WRDA of 2000 became Pub. L. No. 106-541.

¹²The Associated Press, *Great Lakes leaders agree to set water diversion limits in 3 years*, GRAND RAPIDS PRESS, June 19, 2001, at A5.

¹³James Janega, *States OK stopper for the Great Lakes; Pact would outlaw increased diversions*, CHI. TRIB., Dec. 13, 2005.

¹⁴Tina Lam, *Michigan governor signs water protection pact*, DET. FREE PRESS, July 9, 2008. For more information, see <http://www.cglg.org/projects/water/CompactImplementation.asp>.

¹⁵That same day, Senator Carl Levin introduced S.J. Res. 45, legislation similar to H.R. 6577.

A section-by-section of the Compact follows:

Art. 1. Short Title, Definitions, Purposes and Duration. Section 1.1 provides the short title of the Compact as the “Great Lakes-St. Lawrence River Basin Water Resources Compact.” Section 1.2 also provides definitions for the Compact and any supplemental or concurring legislation. Section 1.3 lists the findings and purposes of the Compact, which underscore the importance of the resource to the region, the principles of the Compact, and the commitment to cooperative management of the resource for the long-term benefit of the Basin.¹⁶

Art. 2. Organization. Sections 2.1 and 2.2 provide for the organization and administration of the Great Lakes-St. Lawrence River Basin Water Resources Council, which shall consist of the Governors of the Parties ex officio. This article reiterates the spirit of cooperation among the States and the several agencies in the respective States.

Art. 3. General Powers and Duties. Article 3 establishes the Council as the oversight mechanism serving to coordinate and facilitate the exercise of the authority of the States over Basin waters. Sections 3.2 and 3.3 detail Council powers and rules and regulations.

Art. 4. Water Management and Regulation. Article 4 creates the regulatory framework for the water management systems of the Compact:

Section 4.1. Describes the inventory, registration, and reporting requirements for withdrawals in the Basin.

Section 4.2. Provides the framework for water conservation and efficiency programs with responsibilities for program development, review and evolution.

Section 4.8. Generally prohibits any new or increased diversions.

Section 4.9. Details the conditions and requirements for consideration and approval of an exception to the general diversion prohibition.

Section 4.10. Provides for the management and regulation of Basin uses, and confirms the authority of the respective jurisdictions to regulate the in-Basin uses of the resource at their discretion.

Section 4.11. Provides for a decision-making standard for the proposals subject to management and regulation outlined in Section 4.10.¹⁷

¹⁶The Committee does not interpret the Compact to create or establish that the waters of the Basin in its natural state are a commodity under any international trade agreement, law, or treaty.

¹⁷The Committee understands Section 4.11.2 to require that a withdrawal or consumptive use of Great Lakes water will be implemented so as to ensure that the withdrawal or consumptive use will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water-dependent natural resources of either the Basin considered as a whole or the applicable source watershed considered as a whole. The Committee understands that the States may take into consideration, when evaluating whether a proposed withdrawal or consumptive use is reasonable as provided in Section 4.11.5, those impacts of a withdrawal or consumptive use on the quantity or quality of waters and water dependent natural resources that have only localized impacts which are not of import to the Basin or source watershed considered as a whole. The Committee understands Section 4.11.2 to require States, when determining whether there will be significant individual or cumulative adverse impacts, a) to consider the impacts incurred in a particular tributary or stream reach where those impacts are impor-

Section 4.12. Provides for additional provisions that further define the applicability of Article 4.¹⁸

Section 4.14. Recognizes the Supreme Court decree of Wisconsin et al. v. Illinois et al.¹⁹

Section 4.15. Establishes regular Basin-wide review assessment of the totality of water withdrawals.

Art. 5. Tribal Consultation. Article 5 establishes procedures for tribal participation regarding proposal reviews and communication with the Council.

Art. 6. Public Participation. Article 6 establishes public participation procedures for Council actions and State action reviews of certain applications.

Art. 7. Dispute Resolution and Enforcement. Article 7 provides a framework for dispute resolution among the Parties and persons aggrieved by the Parties or Council.

Art. 8. Additional Provisions. Article 8 reiterates that the Compact does not limit or diminish rights validly established as of the effective date of the Compact, nor affect common law water rights of the respective Parties. The Compact does not create any property rights, nor does it create or diminish treaty rights, nor require breach of confidentiality rights or obligations. The Compact contains a standard severability clause, and generally, once effective, the Compact remains in force and binding upon each Party unless terminated by a majority vote of the Parties.

Art. 9. Effectuation. Article 9 provides for the effectuation of the Compact only upon ratification through concurring legislation by each jurisdiction and consent by Congress.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 6577.

COMMITTEE CONSIDERATION

On July 30, 2008, the Committee met in open session and ordered the bill, H.R. 6577, favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 6577.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings

tant to either the Basin or the applicable source watershed as a whole, and b) to make a judgment of the nature, degree, scope, and materiality of the impacts and the regional importance of those impacts to the Basin and the applicable source watershed.

¹⁸The Committee understands Section 4.12.1 to provide for a minimum standard, but that Section 4.12.10 allows States to adopt more stringent standards for assessing permissible impacts than the standard set forth in the Compact.

¹⁹388 U.S. 426 (1967) (the Supreme Court enjoined Illinois from withdrawing more than a stated number of cubic feet of water per second from Lake Michigan).

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 6577, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 11, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6577, a bill to express the consent and approval of Congress to an interstate compact regarding water resources in the Great Lakes-St. Lawrence River Basin.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tyler Kruzich, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure.

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 6577—A bill to express the consent and approval of Congress to an interstate compact regarding water resources in the Great Lakes-St. Lawrence River Basin.

H.R. 6577 would provide Congressional consent and approval to an interstate compact regarding water resources in the Great Lakes-St. Lawrence River Basin. The compact—entered into by Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin, and Pennsylvania, as well as the Canadian provinces of Ontario and Quebec—would ban new diversions of water from the basin, subject to certain limited exceptions. No Federal funds would be used to approve or implement the compact. Thus, CBO estimates that enacting H.R. 6577 would have no impact on the Federal budget.

H.R. 6577 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Tyler Kruzich, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 6577 provides Congressional consent to the Great Lakes-St. Lawrence River Basin Water Resources Compact, which is an interstate compact regarding water resources in the Great Lakes-St. Lawrence River Basin.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 10, clause 3 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6577 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Consent of Congress. Section 1 sets forth Congressional approval of the Great Lakes-St. Lawrence River Basin Water Resources Compact. Section 1 also includes the entire text of the compact.

Sec. 2. Right to Alter, Amend, or Appeal. Section 2 indicates that Congress expressly reserves the right to alter, amend, or repeal this Act.

