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Act Proposal Notice:

Title:

Bill 198 - Safeguarding and Sustaining Ontario's Water Act, 2007

EBR Registry Number: 010-0163

Ministry: Ministry of the Environment

Date Proposal loaded to the

Registry: April 03, 2007

Summary of documents linked from this notice

1. [Link to Parliament version of Draft Bill](#)
2. [Compendium to Safeguarding and Sustaining Ontario's Water Act](#)
3. [Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement and supporting background materials](#)

Keyword(s): Aquifers | Drinking Water | Water | Standard **Related Act(s):** Ontario Water Resources Act, R.S.O. 1990 | Safe Drinking Water Act, 2002

Comment Period: 30 days: submissions may be made between April 03, 2007 and May 03, 2007.

Description of Act:

Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement

On December 13, 2005, Premier McGuinty joined the Premier of Québec and the Governors of the eight Great Lake states (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin) in signing the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement.

The Agreement details how the States and Provinces will manage, protect, and conserve the waters of the Great Lakes - St. Lawrence River Basin (Basin) and provide a framework to enact laws protecting the Basin in each Great Lake jurisdiction.

Under the Agreement the parties agreed to:

- Conserve, protect and manage the waters of the Great Lakes Basin in a co-operative manner.
- Implement a ban on new and increased diversions out of the Basin or from one Great Lake watershed to another (with strictly regulated exceptions).
- Strengthen water conservation and efficiency of water use through regional goals and objectives and programs in each jurisdiction.
- Strengthen the scientific basis for sound water management through a collaborative science strategy with regional partners.
- Create a Regional Body to oversee the implementation of the Agreement. The Regional Body is made up of representatives from each state and province that is a party to the Agreement. Premier McGuinty became the chair of the Regional Body on December 13, 2006 and will maintain this role for one year. The Regional Body will be responsible for conducting Regional Reviews of significant water use proposals and issuing a Declaration of

Contact:

All comments on this proposal must be directed to:

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Finding on whether or not the proposal meets the provisions of the Agreement. The Regional Body will also review the water management and conservation programs of Great Lakes states and provinces.

- Ensure public and First Nation ability to comment to the Regional Body on significant proposed water takings and to have those comments considered before the Regional Body issues a declaration of finding.
- Manage Basin water uses based on an environmental standard .

To implement the Agreement, each province and state will pass or modify laws, policies and programs that put in place the new protections for Great Lakes Basin waters. In order to implement the Agreement in Ontario, the proposed Bill would amend the Ontario Water Resources Act (OWRA), as well as make related amendments to the Safe Drinking Water Act, 2002 . The proposed Bill would also rescind the Water Transfer Control Act which was never proclaimed into law.

Comments received by the Ministry of the Environment on the proposed Bill regarding implementation of the Agreement would be shared and discussed with the Ministry of Natural Resources.

Introducing this enabling legislation is the first of several steps required to put in place new regulations and policies to fulfill the terms of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement. Ontario will consult with stakeholders and the public before passing supporting regulations or policies.

Key Components of Bill 198

Below is only a brief description of the key components of the proposed Safeguarding and Sustaining Ontario's Water Act, 2007 (Bill 198 which was introduced in the Legislature on April 3, 2007). For further details, please see the compendium of the proposed Bill attached to this notice or please refer to the text of the draft legislation.

1. Definitions .

The Bill would introduce new terms into the OWRA, including the following: "Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement", "Great Lakes watershed", and "holder". The definition of "well" would be added to section 1(1) to apply to the entire Act.

The Bill would add an interpretive provision to the OWRA to explain that, if water is taken from one of the three basins in Ontario, the portion of water that is not returned to the basin as a result of evaporation, incorporation in a product or any other process, is lost through "consumptive use". Proposed new regulation making authority would support this provision by enabling further clarification of how consumptive use may be estimated.

2. Purpose.

Currently, there is no purpose clause in the OWRA. The Bill would add a purpose clause to the OWRA, indicating that the purpose of the OWRA is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being. This purpose is consistent with the purpose of the Agreement. It should also be noted that this purpose statement is very similar to the current purpose provision of the Water Taking and Transfer Regulation (O. Reg. 387/04, section 1).

3. Reference to the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement and the Precautionary Principle.

The Bill would add a new section to the OWRA to recognize the Agreement and the Agreement's recognition of the Precautionary Principle. This section would recognize that the Great Lakes - St. Lawrence River Basin Sustainable Water Resource Agreement of 2005 is one of the means by which the waters of the Great Lakes - St. Lawrence River Basin are

conserved, protected and managed. The agreement recognizes that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation

4. Prohibiting Inter-Basin Diversions.

Under section 10 of the O. Reg. 387/04, Ontario has, since 1999, banned inter-basin diversions out of Ontario's three water basins (transfers of water out of Ontario's three water basins - Great Lakes - St. Lawrence River Basin, Nelson Basin, and Hudson Bay Basin). The Bill would place that prohibition in legislation. Ontario's inter-basin prohibition is stricter than the Agreement's prohibition on transfers out of the Great Lakes - St. Lawrence River Basin. The existing exceptions to the prohibition in O. Reg. 387/04 for inter-basin transfers would continue, such as:

- Historical inter-basin transfers which commenced prior to January 1, 1998, provided that the amount of water transferred out of a water basin does not exceed the highest amount of water transferred out of the water basin by the undertaking in any year after December 31, 1960 and before January 1, 1998;
- Water taken pursuant to the order of the Lieutenant Governor in Council dated October 12, 1913 respecting the Greater Winnipeg Water District;
- Water in containers of 20 litres or less;
- Water necessary for the operation of a vehicle or vessel in which the water is being transported, including water that is for the use of the people, livestock or poultry in the vehicle or vessel; and
- Water incorporated in products, such as beer or canned fruit.

In addition, the Bill would add a new exception to the inter-basin prohibition for firefighting purposes and other emergency purposes to be consistent with the existing exception in the OWRA from the requirement for a permit. Finally, the OWRA would expressly prohibit the Director from issuing, amending or renewing any permit if the water to be taken under the permit is to be transferred out a water basin unless it meets limited exceptions.

5. Prohibiting the Authorization of New or Increased Intra-Basin Transfers.

The Bill would add a new section to the OWRA that would divide the Great Lakes - St. Lawrence Basin into the following five watersheds, each of which would be delineated in regulation:

- The Lake Superior watershed
- The Lake Huron watershed
- The Lake Erie watershed
- The Lake Ontario watershed
- The St. Lawrence River watershed

The Bill would prohibit a permit from authorizing a new or increased transfer of water in the amount of 379,000 litres per day or greater (the "threshold amount") from one Great Lake watershed to another Great Lake watershed.

6. Exceptions to the Prohibition of New or Increased Intra-Basin Transfers.

The Bill would set out three limited exceptions to this prohibition - these exceptions are consistent with the Agreement.

1. *New or increased transfers where the water is returned to the source watershed*

The Bill would provide an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount if the application is made for a municipal residential drinking water system and the water that is lost through consumptive use is less than 19 million L/day or a lower amount that is prescribed by the regulations.

This exception encourages all municipalities to return flow for their drinking water facilities, which is consistent with the Agreement. To

take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in the exception standard (subsection 34.6 (3)). This would include the requirement that the transferred water be returned to the source Great Lakes watershed, less an allowance for consumptive use.

2. *New or increased transfers where the water is not returned the source watershed*

The Bill would provide an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount if the application is made for a municipal residential drinking water system or for any other purpose and the water that is lost through consumptive use is less than 19 million L/day or a lower amount that is prescribed by the regulations. To take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in the exception standard (subsection 34.6 (3)) except that the water transferred (less the consumptive use) may be returned to another Great Lakes watershed rather than the source watershed provided that the return of water to the source Great Lakes watershed is not feasible, environmentally sound or cost effective. Additionally, the applicant must demonstrate that there is no feasible, cost effective, environmentally sound alternative within the Great Lakes watershed to which the water will be transferred, including conservation of existing water supplies. Ontario must also provide notice to the other Parties to the Agreement prior to the Director making any decision with respect to the proposal.

3. *Large New or Increased Transfers That Require A Review by the Regional Body*

The Bill would provide an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount where the portion of the transfer that is lost through consumptive use is at least 19 million L/day or such lower amount as may be prescribed by the regulations. The proposed section 34.1 would require the Director to refer such applications to the Minister. To take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in the exception standard (subsection 34.6 (3)). This would include the requirement that the transferred water be returned to the source Great Lakes watershed, less an allowance for consumptive use. Additionally, the applicant must demonstrate that there is no feasible, cost effective, environmentally sound alternative within the Great Lakes watershed to which the water will be transferred, including conservation of existing water supplies. Before the Minister makes a decision on the application, the proposal must undergo Regional Review by the Regional Body and the Minister must consider any declaration of finding made by the Regional Body following a Regional Review when deciding the application.

The following exceptions apply to the prohibition on new or increased intra-basin transfers:

- A transfer of water that is in a container having a volume of 20 litres or less.
- A transfer of water that occurs when a product other than water is manufactured or produced in a Great Lakes watershed, using water from that Great Lakes watershed, and the product is then transferred out of that Great Lakes watershed.
- A transfer of water that is necessary for the operation of a vehicle, vessel or other form of transport that the water is transferred in, including water that is for the use of people or livestock in or on the vehicle, vessel or other form of transport.

- A transfer of water for the purpose of fire fighting and other emergency purposes.

7. The Exception Standard .

The Bill would enshrine in the OWRA the exception standard (section 34.6 (3)), set out in Article 201 of the Agreement. The exception standard sets out seven criteria that must be met by PTTW applicants for proposals for new transfers or increased transfers in the amount of 379,000 litres per day or greater (the "threshold amount"):

- All water transferred must be returned to the source Great Lakes watershed (less an allowance for consumptive use);
- Need for the water cannot be avoided through water conservation and efficiency;
- Amount of water is limited to reasonable quantities;
- There must be no significant adverse impact to water quantity or quality;
- The proposal must incorporate water conservation and efficiency measures;
- Must ensure compliance with applicable laws including inter-provincial and international agreements including the Boundary Waters Treaty of 1909; and
- Additional criterion may be added by regulation to implement the findings of the cumulative impact assessment provided under article 209 of the Agreement including criteria related to climate change or other significant threats to the Great Lakes - St. Lawrence River Basin.

8. Additional Restrictions and Powers to Regulate New or Increased Transfers

The Bill would impose the following terms and conditions on every permit that authorizes the taking of water from a Great Lakes watershed where the water is to be transferred to another Great Lakes watershed, whether the condition is specified in the permit or not:

- The person who takes water shall not cause or permit a new transfer or an increased transfer where the amount of water transferred, or the increase in the amount of water transferred is the threshold amount (379,000 litres per day or greater) unless the holder first obtains a new permit or an amendment to authorize the new or increased transfer.
- Each permit holder must also comply with any other terms and conditions that are prescribed by regulation and are directed to the holder.

9. Establishing the Baseline Amounts of Water Being Transferred for Existing Water Takings

Where a person is the holder of a permit for an existing water taking, the Bill would give the Director the authority to determine, in accordance with the regulations, the amount of water the person is deemed to be currently transferring. The purpose of this authority is so that a holder of a permit can be advised of the amount of water that can be transferred under the permit, so that it is not considered an increased transfer of water under the OWRA, and therefore, subject to the prohibition and strict exception criteria noted above. This is a transitional provision that would only apply if a request is made by the holder within two years after this section comes into force. The Bill would direct a holder to provide information to the Director so that the Director can make the necessary determination.

10. Giving other Parties to the Agreement Standing to Challenge Certain Decisions In Relation to Water Takings and Transfers.

Under the Agreement, Ontario, Québec, and the eight Great Lake states agree to provide each other with substantially equivalent access to their courts or tribunals to challenge certain decisions in relation to water takings

and transfers. The Bill would provide a reciprocating jurisdiction with the right to bring an application for judicial review of a decision in certain instances.

11. Regulation-Making Authority.

The Bill would add regulation-making authority to the OWRA. Some of the key regulation-making authorities are as follows:

- Regulations that would implement Articles 203 (decision-making standard), 205 (prior notice and comment by Great Lakes jurisdictions for large consumptive uses) and 209 (periodic assessment of cumulative impacts) of the Agreement. For instance, Article 203 provides that a decision-making standard be developed and applied to water takings from the Great Lakes Basin. This regulation-making authority would allow this standard to be enshrined in regulation and then applied to decisions of the permit to take water Director.
- Regulations that would specify how quantities of water shall be determined for the purpose of sections 34 to 34.11.
- Adding a regulation-making authority to require conservation measures.
- Regulations clarifying the terminology used in subsections 34.6(2) and 34.6(3) for the purpose of defining words and expressions used in those subsections (intra-basin transfers).

12. Other Amendments to Streamline the Permit to Take Water Process.

The Bill would continue the existing prohibition, that a person shall not take more than 50,000 litres of water on any day, unless a permit has been granted by the Director for the taking. To support commitments in the Agreement, the Bill would amend the existing exemption for watering of livestock and for domestic use that is currently in the OWRA.

Under the existing OWRA, a permit is not required for a water taking for a domestic purpose so long as the water taking is not by a municipality or a company public utility. The exemption for domestic use is very similar, and applies for a taking of water for domestic purposes, other than by a municipal drinking water system within the meaning of the Safe Drinking Water Act, 2002, or by a company public utility, long as the taking is always less than 379,000 litres/day or such lower amount as may be prescribed by regulation.

Under the existing OWRA, a permit is not required for a water taking to water livestock so long as the water is not taken into storage. This exemption would be replaced with a new exemption that would exempt water takings for watering livestock (where the water is not taken into storage), so long as the water taking is always less than 379,000 litres/day. Unlike the domestic use exemption, there would be no authority to lower this amount by regulation.

For both the domestic and water livestock exemptions, a regulation-making authority would be added to permit for the averaging of the 379,000 litres/day amount over a period of days to be specified in the regulation.

Water takings for firefighting or other emergency purposes would also be exempt from the requirement to obtain a permit. Currently section 34 only exempts firefighting.

Currently, under section 34 of the OWRA, water takings that commenced on or before March 29, 1961 are not required to obtain a Permit to Take Water. The Bill would provide the Lieutenant Governor in Council (LGIC) with authority to make a regulation to require such historical water takings to obtain a PTTW. Historical water takings would not be required to obtain a permit unless the LGIC exercises this proposed regulation-making authority. Such a regulation may be general or particular in its application, for instance it may require only a specific class of grandfathered water takers to obtain a permit by a specified date. Historical water takers would be deemed to be in compliance so long as they applied for a permit by the date specified in the

regulation.

To improve the effectiveness of the PTTW program and to clarify and update existing statutory authorities in relation to the PTTW program, the Bill would:

- Clarify the Director's authority to issue, amend, renew or revoke a permit
- Clarify the Director's authority to require an application in a manner and form approved by the Director, including conducting tests such as a pumping test.
- Provide that if a PTTW expires and a person applies for a renewal of the PTTW 90 days before the expiry of an existing PTTW (or other time specified by the Director), the PTTW that has expired would be allowed to continue until the Director makes a determination on the application. The PTTW would only be allowed to continue for a period of up to one year, after which time the PTTW would expire if the Director does not renew within that period.
- Clarify the authority of the Director to impose terms and conditions in a permit as the Director considers necessary for the purposes of the OWRA, including:
 - limiting the amount of water taken;
 - limiting the rate at which water may be taken;
 - governing the manner in which water may be taken;
 - governing the return, after use, of water taken, including governing the manner in which water may be returned; governing the quantity of water that may be returned; governing the quality of water returned; and governing the location or area to which water may be returned, including restricting the amount of water that may be returned to a location or area that is different from the location or area from which it was taken;
 - governing the monitoring and reporting of the amount of water taken under the permit, including amounts of water that are returned; the rate at which water is taken; the use of water taken, and the effects of water takings, including their effects on water quantity and quality;
 - governing the keeping of records with respect to monitoring and reporting;
 - requiring reports to be made to the Director, to other persons or both;
 - governing the use and conservation of water taken, including measures to promote the efficient use of the water and reduce the consumptive use of the water;
 - requiring the holder to restrict the amount of water taken, in the circumstances specified in the permit;
 - requiring the permit holder to implement specified measures to prevent the water taking from causing interference with other water takings, and to remedy any interference with other water takings that is caused by the water taking; and
 - requiring the permit holder to use specified laboratories or testing methods.
- Provide that a PTTW cannot be transferred to another person without the written consent of the Director.
- Add a new provincial officer order power to the OWRA, allowing an officer to issue an order to any person who is taking water to monitor and report to the provincial officer on the amount of water the person is taking, if the means used has a capacity to take water that exceeds 50,000 litres per day.

13. **Other Legislative Amendments**

Safe Drinking Water Act, 2002

If a person has applied for a new or increased transfer, and it has been authorized under a permit, the Bill would give the Director additional authority to amend other types of approvals that may be relevant to the proposed new or increased transfer. The Bill would give the Director the

authority to amend a sewage works approval (under the OWRA) that relates to a works that returns the transferred water, or a type of approval under Part V of the Safe Drinking Water Act, 2002, that relates to a drinking water system that transfers water between Great Lakes watersheds, or any other instrument that may be prescribed by regulation.

Water Transfer Control Act

The Bill would rescind the Water Transfer Control Act which was never proclaimed into law. This Act is no longer required as a result of the provisions of the proposed Bill.

Water Conservation Charges

The Bill also proposes to amend the Ontario Water Resources Act to allow regulations to be made establishing and governing charges to promote the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose in the administration of this or any other Act. This proposed authority includes,

- Prescribing who would be required to pay the charges, but that a charge cannot be imposed on a person unless the person uses water for industrial or commercial purposes;
- Prescribing the methods for determining the amount of the charges (including charging by permitted or actual volume withdrawn, setting rates, charging different rates for different users);
- Prescribe when charges are to be paid;
- Governing the refund of charges; and,
- Providing for consequences for the failure to pay a charge, including requiring the payment of interest, late payment penalties and the suspensions of or refusal to issue a permit until the charge is paid.

Purpose of Act:

The government is proposing to strengthen the management, protection and conservation of water resources in Ontario.

The government has developed a legislative framework as part of fulfilling its commitment to implement the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement ensuring the protection and conservation of the waters of the Great Lakes-St. Lawrence River Basin.

Legislative amendments are proposed to modernize and update provisions of the *Ontario Water Resources Act* that govern and regulate water takings across Ontario.

Based on comments received on the White Paper on Watershed-based Source Protection Planning, both from the Environmental Registry Notice and consultation sessions, the Ministry is proposing legislative amendments to the *Ontario Water Resources Act* to enable a water conservation charge.

The proposed Bill would amend the *Ontario Water Resources Act* and other legislation as necessary to implement the above proposals.

Other Information:

The Great Lakes St. Lawrence River Sustainable Water Resources Agreement was subject to extensive public consultation across Ontario prior to its signing, including EBR posting of Agreement drafts, public meetings, engagement of Ontario First Nations and involvement of a multi-stakeholder Annex Advisory Panel. This input was instrumental to Ontario in seeking stronger protection for Great Lakes Basin waters through the negotiation of the Agreement.

Ontario is pursuing a collaborative approach to implementing the Agreement under the leadership of the Ministry of the Environment and the Ministry of Natural Resources and the involvement of other provincial ministries. Ontario also continues to engage its multi-stakeholder Annex Advisory Panel and is pursuing further engagement of Ontario First Nations on implementation.

This notice contains a link to the Ministry of Natural Resources Great Lakes Agreement website which provides access to the Agreement and additional materials related to its implementation in Ontario.

The government has posted a Water Conservation Charges Proposal, which lays out the details of a proposed charge including:

- the key assumptions underlying the proposed framework;
- the sectors that would be charged and those exempted;
- proposed charge rates for sectors included in the first phase of implementation; and
- how the charge would be implemented.

For more information, please refer to the following EBR registry notices:

1. EBR Proposal Notice for the proposed amendments to the Ontario Water Resources Act (EBR Registry number: AA07E0001)
2. EBR Decision Notice for the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement (EBR Registry number: PB04E6018)
3. EBR Notice for the White Paper on Watershed-based Source Protection (PA04E0003)
4. EBR Proposal Notice for the Water Conservation Charges Proposal (EBR Registry number: 010-0162)

Public Consultation:

This proposal has been posted for a 30 day public review and comment period starting April 03, 2007. If you have any questions, or would like to submit your comments, please do so by May 03, 2007 to the individual listed under "Contact". Additionally, you may submit your comments on-line.

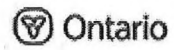
All comments received prior to May 03, 2007 will be considered as part of the decision-making process by the Ministry of the Environment if they are submitted in writing or electronically using the form provided in this notice and reference EBR Registry number 010-0163.

Please Note: All comments and submissions received will become part of the public record. You will not receive a formal response to your comment, however, relevant comments received as part of the public participation process for this proposal will be considered by the decision under for this proposal.

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