

2005 ASSEMBLY BILL 449

June 1, 2005 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Natural Resources.

1 **AN ACT** *to repeal* 281.48 (3) (d) 1. to 4., 281.48 (4m) (b) 2. and 281.48 (4s) (a) 4.
2 and (b); *to renumber* 200.59 (5); *to renumber and amend* 145.245 (3), 281.48
3 (3) (d) (intro.) and 281.49 (1) (a); *to amend* 20.143 (3) (de), 20.370 (3) (ma),
4 20.370 (4) (bL), 20.370 (4) (mq), 29.601 (3) (b), 30.202 (3), 30.2022 (1), 70.375 (4)
5 (o), 94.73 (2) (bg) 2. and (d), 145.10 (1) (c), 145.245 (9) (a), 160.27 (5), 281.17 (3),
6 281.48 (title), 281.48 (2) (b) to (g), 281.48 (2m), 281.48 (3) (e), 281.48 (4g), 281.48
7 (4m) (title) and (a), 281.48 (4m) (b) (intro.), 281.48 (4m) (b) 1., 281.48 (4m) (c),
8 281.48 (4s) (a) (intro.), 281.48 (5) (a) 4., 281.48 (5m) (c), 281.49 (5) (c) 4., 281.58
9 (7) (b) 1., 281.58 (8) (b) 1., 281.77 (1) (b), 283.87 (1), 299.95, 348.15 (3) (bv) and
10 895.48 (2) (c) 2.; and *to create* 66.0821 (5) (c), (d) and (e), 145.20 (2) (i), 145.20
11 (6), 145.245 (11) (f), 196.85 (1m) (c), 200.59 (5) (b), (c) and (d), 281.41 (3), 281.48
12 (2) (bm), 281.48 (4m) (d), 281.48 (4s) (c), 281.48 (5p), 281.49 (10), (11) and (12),
13 281.58 (1) (cv), 281.58 (12) (a) 5. and 283.82 of the statutes; **relating to:** the

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1 management and disposal of septage and municipal sewage sludge, granting
2 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on septage disposal. The bill has the following key provisions.

Septage disposal fees

The current statutes regulate the disposal fees that a municipal sewage system may charge a licensed disposer (septage hauler) to dispose of septage at the system's facilities. This bill makes the following changes to this statute:

Establishes that the septage disposal fees charged by a municipal sewage system must be reasonable and specifies that a municipal sewage system must base these fees on the specified actual costs related to the disposal of the septage.

Establishes a 3-stage process for a licensed disposer to obtain a review of a disputed septage disposal fee by the municipal sewage system, staff at the public service commission (PSC), and then the PSC and specifies the allocation of the PSC's expenses in the 3rd stage.

Requires each municipal sewage system to notify each licensed disposer disposing of septage in the system of any increase in a disposal fee applicable to the licensed disposer at least 60 days prior to imposing the increased disposal fee.

Local assistance program

This bill creates 2 local assistance programs, to be administered by the department of commerce. The programs will provide cost-sharing grants to counties for up to 70% of the local cost of conducting an inventory of existing private sewage systems, and for developing a record-keeping system for information about private sewage systems in each county.

Maintenance of private sewage systems

Under current law, the department of commerce has promulgated rules that establish a maintenance program for new private sewage systems in counties that participate in the Wisconsin fund grant program for private sewage system replacement. One of the conditions for a county to participate in the Wisconsin fund grant program is that the county must adopt and enforce the maintenance program. Under its general authority to regulate private sewage systems, the department of commerce has promulgated rules that set forth maintenance requirements for all private sewage systems. This bill moves the county maintenance program out of the Wisconsin fund grant program and into the general department of commerce duties, and makes all counties responsible for adoption and enforcement of the maintenance program.

ASSEMBLY BILL 449*Clean Water Fund loans*

The current statutes create the clean water fund program, which provides financial assistance to municipalities for the cost of planning, design, and construction of wastewater treatment facilities, and other surface water and groundwater pollution abatement facilities. The program includes various forms of financial assistance, including market interest rate or below market interest rate loans. This bill modifies the clean water fund program to provide zero percent interest rate loans for any portion of a treatment work project that relates to facilities for receiving and capacity for treating septage. This will reduce some of the potential risk incurred by the municipality in providing facilities and capacity for septage disposal, in case the anticipated amount of septage is not received, and will provide an incentive for the municipality to provide these facilities and capacity.

Sewage treatment plant planning

Facilities plans are prepared for each sewage disposal plant. There is not currently a specific requirement to address the issues related to septage disposal, although these issues could be included in the plans under current law. This bill creates a specific requirement to address septage disposal needs in these plans.

Septage and sewage sludge disposal regulations

The disposal of septage on land is regulated under the current statutes. The department of natural resources (DNR) has adopted administrative rules to implement the statutes. This bill makes a number of technical changes to these statutes, and makes several minor substantive changes, such as changing the disposal site license to a site approval, restricting the current exemption from the requirement for a disposal site approval, and clarifying the legal effect of an application for site approval. In addition, this bill provides that local units of government may not prohibit the land disposal of septage or sewage sludge, and places limits on the authority of local units of government to regulate the land disposal of sewage sludge.

Septage servicing and septage land disposal license fees

The bill authorizes the DNR to establish fees for licenses to service private sewage systems in lieu of the current statutorily specified fees. The bill also repeals the current fees for licenses for septage land disposal sites.

Enforcement

The bill draft removes a conflict between 2 current statutes and clarifies that the attorney general enforces violations of septage servicing and disposal violations referred by the DNR. The bill does not affect the authority of DNR to enforce lesser violations of these regulations via issuance of citations.

Deletion of statutory cross-references

The current statutes include many provisions that cross-reference all of the environmental statutes. Fourteen of these provisions include an exception for the septage disposal statute. The exceptions for the septage disposal statute resulted from the renumbering of environmental statutes in the 1995 session of the legislature. The septage disposal statute was not included among the environmental statutes prior to the renumbering, but was moved so as to be grouped with those statutes as part of the renumbering. The exceptions were created as part of the renumbering to avoid making substantive changes in the process of renumbering. This bill deletes these exceptions. A detailed explanation of the consequence of each amendment is included in the bill.

- 1 **SECTION 1.** 20.143 (3) (de) of the statutes is amended to read:
 2 20.143 (3) (de) As a continuing appropriation, the amounts in the schedule for
 3 financial assistance under the private sewage system replacement and

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1 rehabilitation program and for local assistance for inventories and record keeping
2 under s. 145.245.

NOTE: The appropriation for the Wisconsin fund grant program for private sewage system replacement and rehabilitation is modified to allow the department of commerce to fund a local assistance program for inventorying existing private sewage systems and establishing maintenance record keeping. The local assistance programs are established in s. 145.20 (6) (a) and (b), as created by this bill.

3 **SECTION 2.** 20.370 (3) (ma) of the statutes is amended to read:

4 20.370 (3) (ma) *General program operations — state funds.* From the general
5 fund, the amounts in the schedule for regulatory and enforcement operations under
6 chs. 30, 31 and 280 to 299, ~~except s. 281.48,~~ and ss. 44.47, 59.692, 59.693, 61.351,
7 61.354, 62.231, 62.234 and 87.30, for reimbursement of the conservation fund for
8 expenses incurred for actions taken under s. 166.04; for review of environmental
9 impact requirements under ss. 1.11 and 23.40; and for enforcement of the
10 treaty-based, off-reservation rights to fish, hunt and gather held by members of
11 federally recognized American Indian tribes or bands.

NOTE: This appropriation is the general fund appropriation to DNR for the regulatory and enforcement responsibilities of the agency under all of the environmental statutes within its jurisdiction. There is no apparent reason for maintaining the exception for septage regulation in the cross-reference to s. 281.48.

The exemption for septage disposal in this statute was created as the result of the renumbering of environmental statutes in the 1995 session of the legislature. Prior to that time, most of the environmental statutes under DNR jurisdiction were contained in 2 chapters of the statutes, chs. 144 and 147, 1993 stats. It was a simple matter then to refer to all environmental statutes by reference to these 2 chapters.

The septage disposal statute, although under DNR jurisdiction, was contained in s. 146.20, stats. The reason for this location of the septage disposal statute was that it was originally within department of health jurisdiction, as were all statutes in ch. 146. The responsibility for septage disposal regulation was transferred to the DNR in 1967 as part of the Kellett reorganization of the executive branch of state government.

The septage statute should have been moved to one of the chapters of statutes under DNR jurisdiction in 1967. When the environmental statutes were reorganized in the 1995 legislative session, the legislative council study committee that recommended the reorganization requested a bill that made no substantive changes in the statutes, and merely reorganized them. As a result, although the septage disposal statute was renumbered to place it within the other environmental statutes under DNR jurisdiction, the references to all environmental statutes excluded septage disposal, because the septage disposal statute was not included within those statutes prior to the reorganization.

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This bill makes the same amendment in all of the other statutes that contain an exemption for the septage disposal statute.

1 **SECTION 3.** 20.370 (4) (bL) of the statutes is amended to read:

2 20.370 (4) (bL) *Wastewater management — fees.* From the general fund, all
3 moneys received under s. 281.17 (3) for the certification of operators of water
4 systems, wastewater treatment plants and septage servicing vehicles and under s.
5 281.48 (4s) (a) and ~~(b)~~ (c) for wastewater management activities.

NOTE: The appropriation for the DNR's wastewater management activities funded by license and certification fees is modified to reflect the authority granted under this bill in s. 281.48 (4s) (c) to the DNR to establish septage servicing license fees by rule in lieu of the current statutorily specified fees, and the repeal of the fees for licenses for septage land disposal sites by this bill in its treatment of s. 281.48 (4s) (a) 4. and (b).

6 **SECTION 4.** 20.370 (4) (mq) of the statutes is amended to read:

7 20.370 (4) (mq) *General program operations — environmental fund.* From the
8 environmental fund, the amounts in the schedule for administration of
9 environmental activities under chs. 160, 281 and 283, ~~except s. 281.48.~~

NOTE: This appropriation is the segregated fund appropriation to DNR, from the environmental fund, for the administration of environmental activities under the groundwater statutes and the statutes related to water and sewage. The septage regulatory program is also an environmental statute related to water and sewage. This amendment brings this appropriation into conformance with legislative intent. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

10 **SECTION 5.** 29.601 (3) (b) of the statutes is amended to read:

11 29.601 (3) (b) Paragraph (a) does not apply to authorized drainage and sewage
12 from municipalities and industrial or other wastes discharged from mines or
13 commercial or industrial or ore processing plants or operations, through treatment
14 and disposal facilities installed and operated in accordance with plans submitted to
15 and approved by the department under chs. 281, 285 or 289 to 299, ~~except s. 281.48,~~
16 or in compliance with orders of the department. Any order is subject to modification
17 by subsequent orders.

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NOTE: Section 29.601 (3) (a), stats., provides that no person may deposit “deleterious substances” in waters of the state. Deleterious substances consist of any waste material, and waters of the state include all lakes and streams. Section 29.601 (3) (b), stats., provides an exception to this prohibition for drainage and sewage that is treated and disposed of according to an approval by the DNR. This amendment eliminates the exception for septage disposal, thus treating septage disposal in the same manner as other approved drainage and sewage treatment. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

1 **SECTION 6.** 30.202 (3) of the statutes is amended to read:

2 **30.202 (3) EXEMPTION FROM STATUTES AND RULES.** Dredge spoil disposal activities
3 authorized under sub. (2) are exempt from any prohibition, restriction, requirement,
4 permit, license, approval, authorization, fee, notice, hearing, procedure or penalty
5 specified under s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281
6 to 285 or 289 to 299, ~~except s. 281.48~~, or specified in any rule promulgated, order
7 issued or ordinance adopted under those sections or chapters.

NOTE: Section 30.202 relates to dredge disposal in and near the Mississippi, St. Croix, and Black Rivers by the U.S. corps of engineers. The statute authorizes DNR to enter into a memorandum of understanding with the U.S. corps of engineers regarding dredge spoil disposal. The memorandum of understanding must relate to sites where dredge spoils may be deposited and standards and conditions for using an approved site. Dredge spoil activities pursuant to a memorandum of understanding are exempt from any license, permit, or other requirement under environmental statutes. An exception is provided for septage disposal site approval. This exception serves no purpose, because dredge spoil disposal does not involve septage disposal, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

8 **SECTION 7.** 30.2022 (1) of the statutes is amended to read:

9 **30.2022 (1)** Activities affecting waters of the state, as defined in s. 281.01 (18),
10 that are carried out under the direction and supervision of the department of
11 transportation in connection with highway, bridge, or other transportation project
12 design, location, construction, reconstruction, maintenance, and repair are not
13 subject to the prohibitions or permit or approval requirements specified under s.
14 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or
15 chs. 281 to 285 or 289 to 299, ~~except s. 281.48~~. However, at the earliest practical time

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1 prior to the commencement of these activities, the department of transportation
2 shall notify the department of the location, nature, and extent of the proposed work
3 that may affect the waters of the state.

NOTE: Section 30.2022, stats., sets forth procedures for department of transportation (DOT) activities related to highway, bridge, and other transportation project design that affects navigable waters. The statute provides that such DOT activities are not subject to permit or approval requirements under environmental statutes. The regulation of septage disposal is not any different in concept from the other cited environmental statutes, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

4 **SECTION 8.** 66.0821 (5) (c), (d) and (e) of the statutes are created to read:

5 66.0821 (5) (c) For purposes of this subsection, “user” of a service includes a
6 licensed disposer, as defined in s. 281.49 (1) (b), who disposes of septage at a
7 municipal sewage system under a disposal plan under s. 281.49 (5) and initiates
8 under s. 281.49 (11) (d) a review under par. (a) of a disputed septage disposal fee by
9 the public service commission.

10 (d) If the public service commission determines in a proceeding under par. (a)
11 that a septage disposal fee is unreasonable, the commission shall determine and fix
12 under par. (a) a reasonable fee that conforms with s. 281.49 (5) (c) 4.

13 (e) Notwithstanding par. (a), the public service commission shall bill under s.
14 196.85 (1) any expense of the commission attributable to a proceeding under par. (a)
15 that is initiated under s. 281.49 (11) (d) as follows:

16 1. If the commission determines in the proceeding that one or more septage
17 disposal fees are unreasonable and determines and fixes by order reasonable septage
18 disposal fees that, when combined with any other applicable septage disposal fees,
19 total an amount that is at least 15 percent lower than the total amount of septage
20 disposal fees established by the municipal sewage system for the quantity and type

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1 of septage specified in s. 281.49 (11) (b), the municipal sewage system that is a party
2 to the dispute shall pay the entire amount of the assessment.

3 2. If the commission determines in the proceeding that one or more of the
4 septage disposal fees are unreasonable and determines and fixes by order reasonable
5 fees that, when combined with any other applicable septage disposal fees, total an
6 amount that is not at least 15 percent lower than the total amount of septage disposal
7 fees established by the municipal sewage system for the quantity and type of septage
8 specified in s. 281.49 (11) (b), the licensed disposer that is a party to the dispute shall
9 pay the entire amount of the assessment.

10 3. If the commission determines in the proceeding that the septage disposal fees
11 are reasonable, the licensed disposer that is a party to the dispute shall pay the entire
12 amount of the assessment.

13 4. If the commission terminates the proceeding before making a final
14 determination on the reasonableness of the septage disposal fees, the municipal
15 sewage system and the licensed disposer that are parties to the dispute shall each
16 pay 50 percent of the assessment, unless the municipal sewage system and the
17 licensed disposer agree to a different allocation of the assessment.

NOTE: Under existing s. 66.0821 (5), a “user of a service” of a municipal sewer system may file a complaint with the PSC that the rates, rules, and practices of the system are unreasonable or unjustly discriminatory. This statute applies to municipal sewer systems that are a municipal utility or a metropolitan sewerage district other than the Milwaukee metropolitan sewerage district (MMSD).

This provision establishes that the complaint process in s. 66.0821 (5) also applies to the rates for the disposal of septage by a licensed disposer at a municipal sewage system subject to sub. (5) if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the bill.

This provision specifies the allocation of the PSC’s expenses under the formal complaint process. This allocation policy is intended to encourage settlement of a dispute over a septage disposal fee prior to the dispute reaching the PSC.

18 **SECTION 9.** 70.375 (4) (o) of the statutes is amended to read:

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1 70.375 (4) (o) Actual and necessary reclamation and restoration costs
2 associated with a mine in this state, including payments for future reclamation and
3 postmining costs which are required by law or by department of natural resources
4 order and fees and charges under chs. 281, 285 or 289 to 299, ~~except s. 281.48~~, not
5 otherwise deductible under this section. Any refunds of escrowed or reserve fund
6 payments allowed as a deduction under this paragraph shall be taxed as net proceeds
7 at the average effective tax rate for the years the deduction was taken.

NOTE: Section 70.375, stats., relates to the net proceeds occupation tax on mining of metallic minerals. The statute lists deductions that are allowable to a mining company in calculating the net proceeds of the mining operation. Section 70.375 (4) (o), stats., allows deduction for reclamation and restoration costs that are required under any of the environmental statutes. If septage disposal is part of the costs of reclamation or restoration of a metallic mine, there is no reason why those costs should not be deductible in the same manner as any other costs required under environmental statutes, and the exception for septage disposal is therefore deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

8 **SECTION 10.** 94.73 (2) (bg) 2. and (d) of the statutes are amended to read:

9 94.73 (2) (bg) 2. Containment, removal, treatment or monitoring of
10 environmental contamination caused by the discharge if the containment, removal,
11 treatment or monitoring complies with chs. 281 to 285 and 289 to 299, ~~except s.~~
12 ~~281.48~~.

13 (d) Soil or water removed from a discharge site as part of a corrective action may
14 only be spread on land if that spreading on land is in compliance with chs. 281 to 285
15 and 289 to 299, ~~except s. 281.48~~, and if the department has given its written
16 authorization.

NOTE: Section 94.73 establishes the agricultural chemical cleanup program. The statute includes provisions regarding corrective action orders, which may require containment, removal, treatment, transportation, storage, land application, and disposal of contaminated materials, which must be in accordance with environmental statutes. Agricultural chemical cleanup actions do not involve septage disposal, so this exemption serves no purpose. If septage disposal is part of any agricultural chemical cleanup activity in the future, it should be treated in the same manner as other environmental

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statutes. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

1 **SECTION 11.** 145.10 (1) (c) of the statutes is amended to read:

2 145.10 (1) (c) Falsified information on an inspection form under s. ~~145.245 (3)~~
3 145.20 (5).

4 **SECTION 12.** 145.20 (2) (i) of the statutes is created to read:

5 145.20 (2) (i) Adopt and enforce the maintenance program under sub. (5).

NOTE: This provision adds to the list of county duties for the private sewage system regulatory program a reference to the maintenance program that is modified and expanded in the next SECTION of the bill that renumbers and amends s. 145.245 (3).

6 **SECTION 13.** 145.20 (6) of the statutes is created to read:

7 145.20 (6) LOCAL ASSISTANCE PROGRAMS. (a) The department shall develop a
8 local assistance program to provide support for each governmental unit that
9 undertakes an inventory of private sewage systems within the jurisdiction of the
10 governmental unit. The local assistance program may support research by a
11 governmental unit that is necessary to locate existing private sewage systems,
12 conversion of existing inventories to be compatible with geographic information
13 systems, improvement of data management in governmental units that have
14 completed inventories, and development of mailing lists to contact owners of private
15 sewage systems and other similar projects related to the inventory.

16 (b) The department shall develop a local assistance program for each
17 governmental unit to develop systems to manage the local records related to the
18 location, design, management plan, inspection, maintenance, and servicing of
19 private sewage systems, disposal of septage, sites approved for the land application
20 of septage, and other information associated with private sewage systems and
21 septage regulation and management. The department shall set priorities for the
22 development of the record-keeping system, which shall set the highest priority on

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1 compatible state and local records, compatible state and local information
2 technology systems, consistent use of geographical information systems, and
3 expeditious implementation of the record-keeping system in all governmental units.

4 (c) The department may make cost-sharing grants to governmental units of up
5 to 70 percent of the cost of a project under par. (a) or (b), and may accept either a cash
6 or in-kind contribution from the governmental unit. Through the local assistance
7 programs under pars. (a) and (b), the department may fund the acquisition of
8 equipment for managing the inventory and for record keeping and development of
9 the inventory and record-keeping systems, but not the operation of those systems.

NOTE: This provision creates local assistance programs, administered by the department of commerce, to provide assistance to counties (and to cities and villages in Milwaukee county) to develop inventories of existing private sewage systems, and to develop record-keeping systems for information regarding private sewage systems. Funding for the local assistance is from the Wisconsin fund grant program, in s. 145.245 (11) (f), as created by this bill.

10 **SECTION 14.** 145.245 (3) of the statutes is renumbered 145.20 (5) and amended
11 to read:

12 145.20 (5) MAINTENANCE. (a) The department shall establish a maintenance
13 program to be administered by governmental units responsible for the regulation of
14 private sewage systems. The department shall determine the private sewage
15 systems to which the maintenance program applies. At a minimum the maintenance
16 program is applicable to all new or replacement private sewage systems constructed
17 in a governmental unit after the date on which the governmental unit adopts this
18 program. The department may apply the maintenance program by rule to private
19 sewage systems constructed in a governmental unit responsible for the regulation
20 of private sewage systems on or before the date on which the governmental unit
21 adopts the program. The department shall determine the private sewage systems
22 to which the maintenance program applies in governmental units that do not meet

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1 the conditions for eligibility under s. 145.245 (9), except that the maintenance
2 program in these governmental units does not commence until January 1, 2008.

3 (b) The maintenance program shall include a requirement of inspection or
4 pumping of the private sewage system at least once every 3 years if the private
5 sewage system does not have a maintenance plan as prescribed by rule by the
6 department. Inspections may be conducted by a master plumber, journeyman
7 plumber or restricted plumber licensed under this chapter, a person licensed under
8 s. 281.48 or by an employee of the state or governmental unit designated by the
9 department, and the department may determine by rule other persons who are
10 qualified to undertake required inspection, maintenance, or repairs. The
11 department shall specify the methods to establish the required frequency of
12 inspection, maintenance, and pumping for each type of private sewage system that
13 does not have a maintenance plan and shall periodically update the methods.

14 (c) The department of natural resources may suspend or revoke a license issued
15 under s. 281.48 or a certificate issued under s. 281.17 (3) to the operator of a septage
16 servicing vehicle if the department of natural resources finds that the licensee or
17 operator falsified information on inspection forms. The department of commerce
18 may suspend or revoke the license of a plumber licensed under this chapter if the
19 department finds that the plumber falsified information on inspection forms.

NOTE: The department of commerce administers the private sewage system replacement or rehabilitation grant program under s. 145.245, stats. The program is referred to as the Wisconsin fund. This program pays for part of the cost of replacing or rehabilitating failing private sewage systems for eligible individuals and small business owners.

A county must adopt a resolution in which the county agrees to administer the grant program in accordance with state law. One eligibility requirement is that the county where the property is located must adopt and enforce a maintenance program for private sewage systems that are newly installed or replaced after the date that the county adopts the resolution. The maintenance program ensures that inspection and pumping of private sewage systems is done as required. The department of commerce has established the maintenance requirements by administrative rule in s. Comm. 87.60.

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This bill moves the county maintenance program statute out of the Wisconsin fund program and into the general department of commerce and county duties for private sewage system regulation, thus making it applicable to all counties. The bill retains the requirement in the current statute that requires inspection or pumping out the contents of a private sewage system at least once every 3 years, but limits this provision to private sewage systems that do not have a maintenance program under current department of commerce rules. The bill directs the department of commerce to specify by rule methods to establish requirements for periodic maintenance of these systems, which will continue to allow counties to adopt more frequent maintenance requirements for these systems. The bill authorizes the department to designate which credentialed professionals may undertake the required inspection, maintenance, or repairs, in addition to those authorized under the current statute.

The current statute requires that the county maintenance program must apply to private sewage systems that are newly installed or replaced after the date that the county adopts the Wisconsin fund grant program. The bill maintains this provision, without change, for counties that participate in the Wisconsin fund grant program. The bill requires the department of commerce to determine which other private sewage systems are subject to the maintenance program, whether or not the county participates in the Wisconsin fund program.

1 **SECTION 15.** 145.245 (9) (a) of the statutes is amended to read:

2 145.245 **(9)** (a) Adopt and administer the maintenance program established
3 under ~~sub. (3)~~ s. 145.20 (5);

4 **SECTION 16.** 145.245 (11) (f) of the statutes is created to read:

5 145.245 **(11)** (f) The department may allocate up to 10 percent of the funds
6 available under this subsection each fiscal year for local assistance for inventories
7 and record keeping under s. 145.20 (6).

NOTE: This provision allows the department of commerce to allocate up to 10% of the funding available each fiscal year under the Wisconsin fund grant program for repair and replacement of private sewage systems for the inventory and record-keeping programs under s. 145.20 (6), as created by this bill.

8 **SECTION 17.** 160.27 (5) of the statutes is amended to read:

9 160.27 **(5)** Notwithstanding subs. (1) to (3), a regulatory agency may develop
10 and operate a system for monitoring and sampling groundwater to determine
11 compliance with this chapter. This section does not affect the authority of the
12 department to require groundwater monitoring by owners or operators of solid or
13 hazardous waste facilities, water systems or wastewater systems under chs. 280 to
14 285 or 289 to 299, ~~except s. 281.48.~~

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NOTE: The groundwater law in s. 160.27 requires the DNR to develop and operate a system for monitoring and sampling groundwater to determine when groundwater standards are exceeded. Section 160.27 (5) clarifies that the groundwater monitoring and sampling system is in addition to, and does not displace, any groundwater monitoring required by the DNR for solid and hazardous waste facilities, water systems, or wastewater systems that are regulated under environmental statutes. The statute should include groundwater monitoring required at septage disposal sites, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

1 **SECTION 18.** 196.85 (1m) (c) of the statutes is created to read:

2 196.85 **(1m)** (c) For the purpose of direct assessment under sub. (1) of expenses
3 incurred by the commission in connection with its activities under s. 66.0821 (5) (a)
4 or 200.59 (5) (a) that are initiated under s. 281.49 (11) (d), the term “sewerage system”
5 includes a licensed disposer as defined in s. 281.49 (1) (b).

NOTE: This provision authorizes the PSC to assess a licensed disposer for the PSC's expenses in formally reviewing a dispute over a septage disposal fee charged by a municipal sewage system in conformance with the allocation of the PSC's expenses under s. 66.0821 (5) or 200.59, as affected by this bill.

6 **SECTION 19.** 200.59 (5) of the statutes is renumbered 200.59 (5) (a).

7 **SECTION 20.** 200.59 (5) (b), (c) and (d) of the statutes are created to read:

8 200.59 **(5)** (b) For purposes of this subsection, “user” includes a licensed
9 disposer, as defined in s. 281.49 (1) (b), who disposes of septage in the district's
10 facilities under a disposal plan under s. 281.49 (5) and initiates under s. 281.49 (11)
11 (d) a review under par. (a) of a disputed septage disposal fee by the public service
12 commission.

13 (c) If the public service commission determines in a proceeding under par. (a)
14 that a septage disposal fee is unreasonable, the public service commission shall
15 determine and fix under par. (a) a reasonable fee that conforms with s. 281.49 (5) (c)
16 4.

17 (d) Notwithstanding the statutes referenced in par. (a) governing a proceeding
18 under par. (a), the public service commission shall allocate its assessment under s.

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1 196.85 (1) for any expense of the public service commission for a proceeding under
2 par. (a) that is initiated under s. 281.49 (11) (d) as specified in s. 66.0821 (5) (e).

NOTE: Under existing s. 200.59 (5), a “user” of a service provided by the MMSD may file a complaint with the PSC that the rates, rules, and practices of the district are unreasonable or unjustly discriminatory.

The above 2 SECTIONS establish that this complaint process also applies to the district’s rates for the disposal of septage by a licensed disposer if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the bill.

3 **SECTION 21.** 281.17 (3) of the statutes is amended to read:

4 281.17 (3) The department shall promulgate rules establishing an examining
5 program for the certification of operators of water systems, wastewater treatment
6 plants and septage servicing vehicles operated under a license issued under s. 281.48
7 (3), setting such standards as the department finds necessary to accomplish the
8 purposes of this chapter and chs. 285 and 289 to 299, including requirements for
9 continuing education. The department may charge applicants a fee for certification.
10 All moneys collected under this subsection for the certification of operators of water
11 systems, wastewater treatment plants and septage servicing vehicles shall be
12 credited to the appropriation under s. 20.370 (4) (bL). No person may operate a water
13 systems, wastewater treatment plant or septage servicing vehicle without a valid
14 certificate issued under this subsection. The department may suspend or revoke a
15 certificate issued under this subsection for a violation of any statute or rule relating
16 to the operation of a water system or wastewater treatment plant or to septage
17 servicing, for failure to fulfill the continuing education requirements or as provided
18 under s. ~~145.245 (3)~~ 145.20 (5). The owner of any wastewater treatment plant shall
19 be, or shall employ, an operator certified under this subsection who shall be
20 responsible for plant operations, unless the department by rule provides otherwise.
21 In this subsection, “wastewater treatment plant” means a system or plant used to

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1 treat industrial wastewater, domestic wastewater or any combination of industrial
2 wastewater and domestic wastewater.

3 **SECTION 22.** 281.41 (3) of the statutes is created to read:

4 281.41 (3) (a) In this subsection, “septage service area” means the area
5 containing private sewage systems served or anticipated to be served by a sewage
6 disposal plant during the planning period.

7 (b) If an owner proposes a sewage disposal plant or an extension of an existing
8 sewage disposal plant that increases the capacity of the existing plant by at least 20
9 percent, the department shall require that owner, in preparing a plan under this
10 section, to address the need for, and include plans for, the disposal of septage, as
11 defined in s. 281.48 (2) (d). The department shall require an owner to address all of
12 the following under this paragraph:

13 1. The amount of septage produced throughout the septage service area and the
14 expected increase in septage production during the planning period.

15 2. The capacity for the disposal of septage during the planning period on land
16 within the septage service area, in the sewage disposal plant, and by other available
17 methods.

18 3. The location of private sewage systems within the septage service area, and
19 the distances required to haul septage for disposal either on land or in the sewage
20 disposal plant.

21 4. The potential for contracts with private sewage system owners, licensed
22 disposers, as defined in s. 281.49 (1) (b), or municipalities to assure delivery of
23 septage to the sewage disposal plant.

24 (c) In addressing the need for the disposal of septage and the information
25 required under par. (b), the owner is required only to use data or other information

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1 that has previously been collected, whether by the owner or by others, and the owner
2 is not required to conduct new research.

3 (d) The information required under par. (b) is for the purpose of assuring that
4 septage disposal needs are considered in the decision-making process for sewage
5 disposal plant planning, but par. (b) does not require construction of facilities for the
6 handling or disposal of septage.

NOTE: Facilities plans are prepared for each sewage disposal plant. There currently is not a specific requirement to address the issues related to septage disposal, although these issues could be included in the plans under current law. This bill creates a specific requirement to address septage disposal needs in these plans. The new planning requirement applies to new sewage disposal plants or expansions that increase sewage disposal plant capacity by at least 20 percent. The plans will address such issues as the amount of land and sewage treatment plant capacity available for septage disposal, the location of land disposal sites and sewage disposal plants in relation to the sources of septage, and other related issues. This analysis is for the purpose of assuring that information regarding septage disposal needs is considered in the decision-making process for sewage treatment plant construction and expansion. The bill specifies only that the information must be considered in the decision-making process, and does not require the construction of facilities for handling or disposal of septage.

7 **SECTION 23.** 281.48 (title) of the statutes is amended to read:

8 **281.48 (title) Servicing septic tanks, soil absorption fields, holding**
9 **tanks, grease traps interceptors and privies.**

10 **SECTION 24.** 281.48 (2) (b) to (g) of the statutes are amended to read:

11 281.48 (2) (b) “Grease trap interceptor” means a watertight tank for the
12 collection of grease present in sewage and other wastes, and from which grease may
13 be skimmed from the surface of liquid waste for disposal receptacle designed to
14 intercept and retain grease or fatty substances.

15 (c) “Privy” means ~~a cavity in the ground or a portable above-ground device~~
16 ~~constructed for toilet uses which receives human excrement either to be partially~~
17 ~~absorbed directly by the surrounding soil or stored for decomposition and periodic~~
18 ~~removal~~ an enclosed nonportable toilet into which human wastes not carried by

ASSEMBLY BILL 449**SECTION 24**

1 water are deposited to a subsurface storage chamber that may or may not be
2 watertight.

3 (d) “Septage” means the scum, liquid, sludge or other waste in a septic tank,
4 soil absorption field, holding tank, grease trap ~~or~~ interceptor, privy, or other
5 component of a private sewage system.

6 (e) “Septic tank” means ~~and includes a septic toilet, chemical closet and any~~
7 ~~other~~ watertight enclosure used for storage and anaerobic decomposition of human
8 excrement, or domestic or industrial wastes wastewater.

9 (f) “Servicing” means removing septage from a septic tank, soil absorption field,
10 holding tank, grease trap ~~or~~ interceptor, privy, or other component of a private
11 sewage system and disposing of the septage.

12 (g) “Soil absorption field” means an area or cavity in the ground which receives
13 the liquid discharge of a septic tank or similar ~~wastewater treatment device~~
14 component of a private sewage system.

NOTE: The definitions in this SECTION are amended to clarify and update the text
of the definitions.

15 **SECTION 25.** 281.48 (2) (bm) of the statutes is created to read:

16 281.48 (2) (bm) “Private sewage system” has the meaning given in s. 145.01
17 (12).

NOTE: The term “private sewage system” is used in current s. 281.48 but is not
defined. The cross-referenced definition is the definition used in the statutes under
department of commerce jurisdiction for private sewage system regulation.

18 **SECTION 26.** 281.48 (2m) of the statutes is amended to read:

19 281.48 (2m) POWERS OF THE DEPARTMENT. The department ~~shall have~~ has
20 general supervision and control of servicing septic tanks, soil absorption fields,
21 holding tanks, grease traps ~~and~~ interceptors, privies, and other components of
22 private sewage systems.

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1 **SECTION 27.** 281.48 (3) (d) (intro.) of the statutes is renumbered 281.48 (3) (d)
2 and amended to read:

3 281.48 **(3)** (d) (intro.) A farmer who disposes of septage on land is exempt from
4 the licensing requirement under par. (a) if all of the ~~following~~ conditions in sub. (4m)
5 (b) apply.

NOTE: The current statutes require a person who services (i.e., pumps the contents from) a private sewage system to obtain a license, with one exception. Under the current statutes, a farmer who services a private sewage system is not required to obtain a license if the farmer does all of the following: removes septage from a private sewage system that is located on the same parcel where the septage is disposed of, disposes of no more than 3,000 gallons per week, complies with all regulations related to servicing a private sewage system, and has sufficient land that is suitable for septage disposal. This bill draft narrows the exemption for farmers so that the license exemption is available only to a farmer who services a septic tank, and not to a farmer who services a holding tank or other private sewage system. This bill also states explicitly that the farmer must pump and dispose of the septic tank waste on property that the farmer owns or leases, to make this provision conform to legislative intent.

6 **SECTION 28.** 281.48 (3) (d) 1. to 4. of the statutes are repealed.

7 **SECTION 29.** 281.48 (3) (e) of the statutes is amended to read:

8 281.48 **(3)** (e) *Operator certification.* No person, except for a farmer exempted
9 from licensing under par. (d), may service a ~~septage~~ private sewage system or operate
10 a septage servicing vehicle unless the person is certified as an operator of a septage
11 servicing vehicle under s. 281.17 (3).

12 **SECTION 30.** 281.48 (4g) of the statutes is amended to read:

13 281.48 **(4g)** RULES ON SERVICING. The department shall promulgate rules
14 relating to servicing septic tanks, soil absorption fields, holding tanks, grease traps
15 and interceptors, privies, and other components of private sewage systems in order
16 to protect the public health against unsanitary and unhealthful practices and
17 conditions, and to protect the surface waters and groundwaters of the state from
18 contamination by septage. The rules shall comply with ch. 160. The rules shall apply
19 to all septage disposal, whether undertaken pursuant to a license or ~~registration~~ a

ASSEMBLY BILL 449**SECTION 30**

1 license exemption under sub. (3). The rules shall require each person with a license
2 under sub. (3) to maintain records of the location of sites private sewage systems
3 serviced and the volume of septage disposed of and location of ~~septage disposed that~~
4 disposal.

5 **SECTION 31.** 281.48 (4m) (title) and (a) of the statutes are amended to read:

6 281.48 **(4m)** (title) ~~SITE LICENSES~~ APPROVALS. (a) The department may require
7 a soil test and ~~a license shall require a site approval~~ for any location where septage
8 is stored or disposed of on land, ~~except that the department may not require a soil~~
9 ~~test and a license for septage disposal in a licensed solid waste disposal facility.~~ In
10 determining whether to require a license for a site, the department shall consider the
11 ~~septage disposal needs of different areas of the state.~~

NOTE: “Stored” is deleted because storage of septage is regulated under s. 281.41 rather than s. 281.48. The site license for land disposal of septage is changed to a site approval. This change allows the DNR to continue its present practice of reviewing applications for septage disposal and approving them based on the paperwork submitted. A site license, as in the current statute, implies a more thorough review of each application. The exception for septage disposal in a solid waste disposal facility is eliminated so that the hauler must notify the DNR that the septage will be taken to a landfill and the DNR may simply approve the septage disposal if it is consistent with the landfill’s plan of operation.

12 **SECTION 32.** 281.48 (4m) (b) (intro.) of the statutes is amended to read:

13 281.48 **(4m)** (b) (intro.) Notwithstanding par. (a), the department may not
14 require a license site approval for a location where septage is disposed of on land if
15 the person who disposes of the septage is a farmer who owns or leases that location
16 and if:

NOTE: The current statute contains an exemption from the requirement for a site license for any place where septage is disposed of on land. DNR may not currently require a site license (changed in this bill to a site approval) for a location where septage is removed from a private sewage system and disposed of on the same parcel where the private sewage system is located. This bill limits the exception from the requirement for a site approval so that it applies only to farmers. In addition, this bill narrows the exception in other respects in the following 2 SECTIONS, as explained in the notes. This bill also states explicitly that the farmer must pump and dispose of the septic tank waste

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on property that the farmer owns or leases, to make this provision conform to legislative intent.

1 **SECTION 33.** 281.48 (4m) (b) 1. of the statutes is amended to read:

2 281.48 **(4m)** (b) 1. The septage is removed from a septic tank, ~~soil absorption~~
3 ~~field, holding tank, grease trap or privy~~ which is located on the same parcel where
4 the septage is disposed of; and

NOTE: This bill narrows the exception from site approval so that it applies only to septage removed from a septic tank. The main effect of this change is either to require the contents of a holding tank or other private sewage system to be taken to a sewage treatment plant or, if the holding tank or other waste is disposed of on the same parcel where the holding tank or other private sewage system is located, the disposal site must have a site approval.

5 **SECTION 34.** 281.48 (4m) (b) 2. of the statutes is repealed.

NOTE: The repeal of s. 281.48 (4m) (b) 2. deletes the 3,000 gallon per week limit for disposal of septage without a site approval on the same parcel where the private sewage system is located. This limit is no longer necessary due to the elimination of holding tanks from the types of private sewage systems for which the site approval exemption is provided. Septic tanks, which may continue to be pumped and the septage disposed of on the same parcel, do not produce large volumes of septage.

6 **SECTION 35.** 281.48 (4m) (c) of the statutes is amended to read:

7 281.48 **(4m)** (c) If a location is exempt from licensing site approval under par.
8 (b), the department may require the person who services the septic tank, ~~soil~~
9 ~~absorption field, holding tank, grease trap or privy~~ to register the disposal site with
10 ~~the department and~~ to provide the department with information to show that
11 sufficient land area is available for disposal.

12 **SECTION 36.** 281.48 (4m) (d) of the statutes is created to read:

13 281.48 **(4m)** (d) A person seeking a site approval under par. (a) shall submit
14 an application to the department at least 7 days prior to using the site. Upon
15 receiving an application for site approval, the department may enter and inspect the
16 site if the department determines that an inspection is necessary. Commencing 7

ASSEMBLY BILL 449**SECTION 36**

1 days after submitting the application, the applicant may use the site unless the
2 department notifies the applicant that the site may not be used.

NOTE: The procedure for a septage hauler to obtain a site license (changed to a site approval in this bill) is set out by the DNR in administrative rules in ch. NR 113. The rules contain a provision requiring the hauler to notify the DNR at least 7 days prior to using a field for septage disposal. The rules do not clearly state the consequence if DNR does not respond within the 7 days. This bill provides that the hauler may commence using the site after providing notice to the DNR and the 7 days have elapsed. The hauler may then continue using the site unless the DNR subsequently determines that the site may not be used and so notifies the hauler.

3 **SECTION 37.** 281.48 (4s) (a) (intro.) of the statutes is amended to read:

4 281.48 (4s) (a) (intro.) The Except as provided in par. (c), the department shall
5 collect the following fees:

6 **SECTION 38.** 281.48 (4s) (a) 4. and (b) of the statutes are repealed.

NOTE: This SECTION repeals the fees for licenses for septage land disposal sites (changed to a site approved in this bill). Currently, the DNR does not collect these fees.

7 **SECTION 39.** 281.48 (4s) (c) of the statutes is created to read:

8 281.48 (4s) (c) In lieu of the fees specified in par. (a), the department may
9 establish by rule fees for a license under sub. (3) (a) necessary to meet the costs
10 incurred by the department in administering and enforcing licenses, approvals, and
11 other program requirements under this section. The fees established under this
12 paragraph shall be a fixed amount for each licensee, a variable amount for each
13 licensee based on the number of vehicles used by a licensee for servicing, or a
14 combination of these amounts.

NOTE: This SECTION authorizes the DNR to establish by rule new fees for septage servicing licensees, in lieu of the current statutorily specified fees, subject to the conditions in this provision.

15 **SECTION 40.** 281.48 (5) (a) 4. of the statutes is amended to read:

16 281.48 (5) (a) 4. Violated any provisions of this section or any rule prescribed
17 by the department or falsified information on inspection forms under s. 145.245 (3)
18 145.20 (5).

ASSEMBLY BILL 449**SECTION 41**

1 **SECTION 41.** 281.48 (5m) (c) of the statutes is amended to read:

2 281.48 **(5m)** (c) The site criteria and disposal procedures in a county ordinance
3 shall be identical to the corresponding portions of rules promulgated by the
4 department under this section. The county shall require the person engaged in
5 septage disposal to submit the results of a soil test conducted by a soil tester certified
6 under s. 145.045 and to obtain ~~an annual license~~ a site approval for each location
7 where the person disposes of septage on land, ~~except that the county may not require~~
8 ~~a license for septage disposal in a licensed solid waste disposal facility.~~ The county
9 shall maintain records of soil tests, site ~~licenses~~ approvals, county inspections and
10 enforcement actions under this subsection. A county may not require licensing or
11 registration for any person or vehicle engaged in septage disposal. The county may
12 establish a schedule of fees for site ~~licenses~~ approvals under this paragraph. The
13 county may require a bond or other method of demonstrating the financial ability to
14 comply with the septage disposal ordinance. The county shall provide for the
15 enforcement of the septage disposal ordinance by penalties identical to those in s.
16 281.98.

17 **SECTION 42.** 281.48 (5p) of the statutes is created to read:

18 281.48 **(5p)** No city, village, town, or county may prohibit, through zoning or
19 any other means, the disposal of septage on land if that disposal complies with this
20 section and rules promulgated under this section or with an ordinance adopted under
21 sub. (5m) (a) or (b).

NOTE: This provides that a city, village, town, or county may not prohibit septage disposal on land if the disposal conforms with the statutes and DNR rules or with a septage land disposal ordinance adopted by a county, city, village, or town under s. 281.48 (5m) (a) or (b).

22 **SECTION 43.** 281.49 (1) (a) of the statutes is renumbered 281.49 (1) (m) and
23 amended to read:

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1 281.49 (1) (m) “Septage” means the scum, liquid, sludge or other waste from
2 a septic tank, soil absorption field, holding tank or privy. This term does not include
3 the waste from a grease trap interceptor.

4 **SECTION 44.** 281.49 (5) (c) 4. of the statutes is amended to read:

5 281.49 (5) (c) 4. ~~Actual and equitable~~ Reasonable disposal fees based on the
6 volume of septage introduced into the municipal sewage system and calculated at the
7 rate applied to other users of the municipal sewage system, and including the costs
8 of additional facilities or personnel necessary to accept septage at the point of
9 introduction into the municipal sewage system that meet the requirements in sub.
10 (10).

11 **SECTION 45.** 281.49 (10), (11) and (12) of the statutes are created to read:

12 281.49 (10) (a) Disposal fees established by a municipal sewage system under
13 sub. (5) (c) 4. for the disposal of septage introduced into the system by a licensed
14 disposer may be based on only the following actual costs related to the disposal of the
15 septage, as determined in accordance with a uniform cost accounting system
16 applicable to all services provided by the system:

- 17 1. The cost of facilities at the system that receive and store septage.
- 18 2. The cost of any testing of septage conducted by the system.
- 19 3. The cost of treating septage by the system. This cost may vary based on the
20 quantity and type of the septage.
- 21 4. The portion of the system’s additional administrative and personnel costs for
22 accepting the septage not reflected in the costs identified in subds. 2. and 3.

23 (b) In determining its actual costs under par. (a) 1. to 4., a municipal sewage
24 system may include any associated cost of capital, debt service, operation, and
25 maintenance, and any other type of cost used by a municipal sewage system in

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1 establishing fees for the treatment and disposal of sewage by its customers connected
2 to the system.

3 **(11) REVIEW OF SEPTAGE DISPOSAL FEES.** (a) Each municipal sewage system shall
4 establish a procedure to review a septage disposal fee charged by the system that is
5 disputed by a licensed disposer.

6 (b) Upon the request of a licensed disposer, a municipal sewage system shall
7 use the procedure established by the system under par. (a) to review whether a
8 septage disposal fee charged by the system for the quantity and type of septage
9 specified by the licensed disposer conforms with sub. (5) (c) 4.

10 (c) After pursuing the review of a septage disposal fee under par. (b), a licensed
11 disposer may request the staff of the public service commission to informally review
12 the disputed septage disposal fee. If the staff determine that there is sufficient basis
13 for a dispute regarding the fee and that use of the procedure under par. (b) is not
14 likely to resolve the dispute, the staff may agree to review the disputed septage
15 disposal fee. Based on its review, the staff may recommend a reasonable septage
16 disposal fee that conforms with sub. (5) (c) 4.

17 (d) If the use of the procedure under par. (c) does not lead to resolution of the
18 dispute, the licensed disposer requesting the review under par. (c) may make a
19 written request to the public service commission for review of the disputed septage
20 disposal fee under s. 66.0821 (5) or 200.59 (5).

21 (e) Upon the request of a licensed disposer, or the public service commission or
22 its staff, a municipal sewage system shall provide information to the requester
23 concerning the basis of its septage disposal fees. A municipal sewage system shall
24 provide to the public service commission or its staff any other information that the
25 commission or its staff requests related to a review under par. (c) or (d).

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1 **(12)** NOTICE OF SEPTAGE DISPOSAL INCREASES. Each municipal sewage system
2 shall notify each licensed disposer currently approved under sub. (5) (b) to dispose
3 of septage in the system of any increase in a disposal fee applicable to the licensed
4 disposer at least 60 days prior to imposing the increased disposal fee. The notice
5 shall include a description of how the system calculated the new disposal fee.

NOTE: The treatment of s. 281.49 (5) (c) 4. and (10), (11), and (12) in this SECTION and the preceding SECTION modify the requirements for fees that a municipal sewage system may charge for the disposal of septage introduced into the system by a licensed disposer, create a process for the review of a septage disposal fee charged by a municipal sewage system that is disputed by a licensed disposer, and requires each municipal sewage system to notify licensed disposers who dispose of septage in the system of any increase in the disposal fee applicable to the licensed disposer prior to imposing the increased disposal fee.

6 **SECTION 46.** 281.58 (1) (cv) of the statutes is created to read:

7 281.58 (1) (cv) “Septage” has the meaning given in s. 281.48 (2) (d).

8 **SECTION 47.** 281.58 (7) (b) 1. of the statutes is amended to read:

9 281.58 (7) (b) 1. Projects that the department determines are necessary to
10 prevent a municipality from significantly exceeding an effluent limitation contained
11 in a permit issued under ch. 283, including projects or capacity for the receiving,
12 storage, and treatment of septage.

NOTE: The current statutes create the clean water fund program, which provides financial assistance to municipalities for the cost of planning, design, and construction of wastewater treatment facilities, and other surface and groundwater pollution abatement facilities. The program includes various forms of financial assistance, including market interest rate or below market interest rate loans.

The current clean water fund program can be used as a source of funding for a portion of a sewage treatment plant project that provides receiving, storage, and treatment of septage. However, this is not expressly stated in the statute. This bill adds an explicit statement that such facilities for septage are eligible for financial assistance under the clean water fund program.

13 **SECTION 48.** 281.58 (8) (b) 1. of the statutes is amended to read:

14 281.58 (8) (b) 1. Except as provided in subd. 2. and par. (k), the amount of
15 reserve capacity for a project eligible for financial assistance through a method
16 specified under sub. (6) (b) is limited to that future capacity required to serve the

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1 users of the project expected to exist within the sewer service area of the project and
2 that future capacity required to serve the need expected to exist outside of the sewer
3 service area of the project for septage that is reasonably likely to be disposed of in the
4 project 10 years after the project is estimated to become operational. The
5 department, in consultation with the demographic services center in the department
6 of administration under s. 16.96, shall promulgate rules defining procedures for
7 projecting population used in determining the amount of reserve capacity.

NOTE: The current clean water fund program places a limit on the allowable reserve capacity of a sewage treatment plant in order to qualify for below market rate loans and certain other financial assistance. Reserve capacity is the extra capacity to treat wastewater beyond present needs. The current statutory limit is the capacity to treat wastewater from users within the service area for no more than 10 years after completion of the project. This bill adds to the allowable reserve capacity an amount needed to provide septage disposal for property located outside of the sewer service area for that 10-year period if the septage is reasonably likely to be taken to the sewage treatment plant.

8 **SECTION 49.** 281.58 (12) (a) 5. of the statutes is created to read:

9 281.58 (12) (a) 5. The interest rate for the portion of a project that provides
10 facilities for receiving and storing septage and capacity for treating septage is zero
11 percent.

NOTE: This bill creates a zero percent interest rate for the portion of a clean water fund loan for septage receiving and storing facilities and capacity for septage treatment. This interest rate applies even though the rest of the project has a different interest rate or method of financial assistance. The purpose of the zero percent interest rate is to provide an incentive for a municipality to add facilities and capacity for septage disposal, and to reduce the risk for the municipality of providing that capacity, but then not receiving the expected amount of septage. Even though the interest rate is zero, the municipality will need to repay the clean water fund loan, so the municipality will still have an incentive to build cost-effective projects and to market the septage disposal service.

12 **SECTION 50.** 281.77 (1) (b) of the statutes is amended to read:

13 281.77 (1) (b) “Regulated activity” means an activity for which the department
14 may issue an order under chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48,~~ if
15 the activity is conducted in violation of chs. 285 or 289 to 299 or this chapter, ~~except~~

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1 ~~s. 281.48~~, or in violation of licenses, permits or special orders issued or rules
2 promulgated under chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48.~~

NOTE: Section 281.77, stats., relates to damage to water supplies. This statute authorizes the DNR to conduct a hearing and order the owner or operator of a “regulated activity” that has damaged private water supplies to treat the water, repair the private water supply or replace the private water supply. Section 281.77 (1) (b) defines “regulated activity” as any activity under environmental statutes for which the DNR may issue an order if the activity is conducted in violation of the environmental statutes. A violation of septage disposal regulations should be treated in the same manner as any other violation of an environmental statute. Therefore, the exception for septage disposal is deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

3 **SECTION 51.** 283.82 of the statutes is created to read:

4 **283.82 Land application of sewage sludge. (1)** The department shall
5 oversee, set technical standards for, and regulate the application of sewage sludge
6 to land.

7 **(2)** No city, village, town, or county may prohibit, through zoning or any other
8 means, the application of sewage sludge to land if that application complies with this
9 section and rules promulgated under this section.

10 **(3)** A city, village, town, or county may not regulate the application of sewage
11 sludge to land, except that the city, village, town, or county may enact the model
12 ordinance developed under sub. (4).

13 **(4)** The department shall develop a model land application ordinance for
14 sewage sludge. The model ordinance shall be consistent with rules promulgated
15 under this section.

NOTE: This provision directs the DNR to set standards for and to regulate the application of sewage sludge to land, and to develop a model land application ordinance for sewage sludge. Further, this provision states that a city, village, town, or county may not prohibit the land application of sludge if the land application complies with the standards promulgated by DNR, and not regulate the land application of sewage sludge except by enacting the model ordinance developed by the DNR.

16 **SECTION 52.** 283.87 (1) of the statutes is amended to read:

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1 283.87 (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who
2 violates this chapter or any provision of s. 29.601 or chs. 30, 31, 281, 285 or 289 to
3 299, ~~except s. 281.48~~, relating to water quality the department may recover the cost
4 of removing, terminating or remedying the adverse effects upon the water
5 environment resulting from the unlawful discharge or deposit of pollutants into the
6 waters of the state, including the cost of replacing fish or other wildlife destroyed by
7 the discharge or deposit. All moneys recovered under this section shall be deposited
8 into the environmental fund.

NOTE: Section 283.87 authorizes the DNR to recover costs in a legal action against a person who violates environmental statutes relating to water quality. Under this statute, the DNR may recover the cost of removing, terminating, or remedying adverse effects on the water environment resulting from unlawful discharge or deposit of pollutants into the waters of the state. The costs recovered can include the costs of replacing fish or other wildlife destroyed by the discharge. Any moneys recovered are placed in the environmental fund. The violation of septage disposal regulations should be treated in the same manner as the violation of the environmental statutes relating to water quality. Therefore, the exception for septage disposal is eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

9 **SECTION 53.** 299.95 of the statutes is amended to read:

10 **299.95 Enforcement; duty of department of justice; expenses.** The
11 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
12 ss. ~~281.48~~, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
13 approvals, permits, and water quality certifications of the department, except those
14 promulgated or issued under ss. ~~281.48~~, 285.57, 285.59, and 299.64 and except as
15 provided in ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for
16 any other county where a violation occurred in whole or in part has jurisdiction to
17 enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
18 license, plan approval, permit, or certification by injunctive and other relief
19 appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285

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1 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit
2 or certification prohibits in whole or in part any pollution, a violation is considered
3 a public nuisance. The department of natural resources may enter into agreements
4 with the department of justice to assist with the administration of chs. 281 to 285 and
5 289 to 295 and this chapter. Any funds paid to the department of justice under these
6 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

NOTE: Under current law, the DNR may issue a citation to collect a forfeiture for a violation of regulations governing the servicing of private sewage systems, or the disposal of septage. The person receiving the citation usually pleads no contest and pays the forfeiture amount, which ends the matter. The person receiving the citation has the option of pleading not guilty and requesting a jury trial. The district attorney is responsible for enforcing citations issued by the DNR.

For most other environmental enforcement actions, when the DNR does not issue a citation, the DNR refers the violation to the attorney general, who may then commence an enforcement action in circuit court. However, there is a conflict in 2 different statutes relating to enforcement of the septage servicing and disposal regulatory statute. The first statute, s. 281.98, provides that a person who violates a provision of ch. 281 (which includes the septage statutes), or any rules or orders issued by DNR under the statutes, may be required to forfeit from \$10 to \$5,000 for each violation. The attorney general enforces these statutes, rules, and orders upon referral by the DNR. The 2nd statute, s. 299.95, provides that the attorney general may enforce most environmental statutes. However, the septage servicing and disposal statute is specifically excluded from the enforcement authority of the attorney general under s. 299.95. This conflict casts doubt on the ability of the attorney general to enforce septage disposal regulations.

This bill retains the authority of DNR to issue citations for septage servicing and disposal violations, with enforcement by the district attorney. This bill deletes the exception in s. 299.95 for enforcement of these septage regulations by the attorney general. With this change, the DNR can continue to issue citations for violations of these regulations (generally for lesser violations), and will have the option of referring cases involving more serious violations to the attorney general for enforcement.

The bill does not affect the enforcement of the separate requirement for the certification of operators of septage servicing vehicles. The DNR enforces this requirement by either revoking the certification or referring the violation to the attorney general for enforcement.

7 **SECTION 54.** 348.15 (3) (bv) of the statutes is amended to read:

8 348.15 (3) (bv) In the case of a vehicle or combination of vehicles used primarily
9 for the transportation of septage, as defined in s. 281.49 (1) (a) ~~(m)~~, the gross weight
10 imposed on the highway by the wheels of any one axle may not exceed 21,500 pounds
11 or, for 2 axles 8 or less feet apart, 37,000 pounds or, for groups of 3 or more consecutive
12 axles more than 9 feet apart, a weight of 4,000 pounds more than is shown in par. (c)

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1 or, for groups of 4 or more consecutive axles more than 10 feet apart, a weight of 6,000
2 pounds more than is shown in par. (c) or, for groups of 5 or more consecutive axles
3 more than 14 feet apart, a weight of 7,000 pounds more than is shown in par. (c), but
4 not to exceed 80,000 pounds. This paragraph does not apply to the national system
5 of interstate and defense highways, except for that portion of USH 51 between
6 Wausau and STH 78 and that portion of STH 78 between USH 51 and the I 90/94
7 interchange near Portage upon their federal designation as I 39.

8 **SECTION 55.** 895.48 (2) (c) 2. of the statutes is amended to read:

9 895.48 (2) (c) 2. Who would be liable for the discharge under chs. 281 to 285 or
10 289 to 299, ~~except s. 281.48~~, or any rule promulgated or permit or order issued under
11 chs. 281 to 285 or 289 to 299, ~~except s. 281.48~~;

NOTE: Section 895.48 (2), stats., creates an exemption from civil liability for certain actions taken by a person who provides assistance or advice regarding an emergency involving the discharge of a hazardous substance. In s. 895.48 (2) (c), the statute provides that the civil liability exemption does not extend to a person who would be liable for the discharge of hazardous substances under environmental statutes. A person who discharges hazardous substances in violation of septage disposal statutes should be treated the same as a person who violates other environmental statutes. Therefore, the exception for septage disposal is deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill that amends s. 20.370 (3) (ma).]

12 **SECTION 56. Initial applicability.** The treatment of section 281.49 (12) of the
13 statutes first applies to increases in disposal fees that take effect on the first day of
14 the 3rd month beginning after publication.

NOTE: This provision specifies the initial applicability of the requirement in s. 281.49 (12), as created by this bill, that each municipal sewage system must notify licensed disposers of septage in the system of any increase in a disposal fee applicable to the license disposer prior to imposing the increased disposal fee.

15

(END)