



2007 SENATE BILL 81

March 6, 2007 – Introduced by Senators MILLER, ERPENBACH, RISSER and LEHMAN, cosponsored by Representatives BLACK, BOYLE, MOLEPSKE, HEBL, BERCEAU, PARISI, HILGENBERG, SINICKI, POCAN, BENEDICT, POPE-ROBERTS and SMITH. Referred to Committee on Environment and Natural Resources.

1 **AN ACT** *to amend* 299.95; and *to create* 15.347 (5), 15.347 (6), 20.370 (2) (cj) and
2 chapter 286 of the statutes; **relating to:** management of greenhouse gases,
3 granting rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

This bill provides for the management of emissions of specified greenhouse gases, including carbon dioxide. Greenhouse gases are gases that trap heat in the atmosphere. The bill treats greenhouse gas emissions from the generation of electricity that is generated outside this state but is used in this state as though the emissions occurred in this state.

Initial requirements

The bill requires the Department of Natural Resources (DNR) to promulgate rules requiring the monitoring and reporting of greenhouse gas emissions by significant sources of those emissions. DNR must phase in the requirements beginning with the types of sources that emit the most greenhouse gases.

The bill requires DNR to determine the level of greenhouse gas emissions in this state in 1990 (including emissions from the generation of all electricity used in this state) and to set a statewide greenhouse gas emission limit for 2020 that is equivalent to the 1990 level. The deadline for setting the limit is January 1, 2009.

The bill requires DNR to identify measures for reducing greenhouse gas emissions that can be implemented before the full planning and rule-making process described below. DNR must then make rules implementing the interim measures, to take effect no later than January 1, 2011.

SENATE BILL 81***Long-term planning and rule making***

The bill requires DNR to approve a plan, no later than January 1, 2010, for achieving reductions of greenhouse gas emissions that are technologically feasible and cost-effective. The bill authorizes DNR to make recommendations concerning various methods of achieving reductions in greenhouse gas emissions, the methods include mandating specific actions to be taken, allowing greenhouse gas emission sources to implement alternative methods to specific actions that would otherwise be mandated, and authorizing the use of what are called market-based compliance mechanisms.

The bill requires DNR to promulgate rules, to take effect no later than January 1, 2013, specifying greenhouse gas emission limits and measures to achieve greenhouse gas emission reductions, in furtherance of achieving the statewide greenhouse gas emission limit. The bill imposes several requirements on DNR relating to the rules, for example, to design the rules in a manner that is equitable and seeks to minimize costs and maximize benefits, to give credit to emission sources that voluntarily reduce emissions before the rules take effect, to ensure that emissions of certain air pollutants do not increase, and to limit the extent to which reductions in emissions in this state are offset by increases in emissions outside the state.

The bill includes specific prerequisites to including market-based compliance mechanisms in the rules. Market-based compliance mechanisms include arrangements under which a source that would otherwise be required to reduce its emissions by a specified amount instead satisfies the requirement by buying emission credits from a source, which may be outside of the state, that reduces its emissions by more than is otherwise required.

Governor's authority

The bill allows the governor to extend deadlines in the bill or in rules promulgated under the bill in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm. Each extension may not exceed one year, but the governor may make additional extensions.

Other provisions

The bill provides civil and criminal penalties for violations of the greenhouse gas management provisions. The penalties are the same as under the current air quality laws.

The bill authorizes DNR to impose fees on greenhouse gas emission sources that are regulated under the bill. The bill also requires state agencies to take actions to reduce their greenhouse gas emissions.

The bill creates two bodies to advise DNR about greenhouse gas management. These are the Greenhouse Gas Management Environmental Justice Council and the Greenhouse Gas Management Economic and Technology Advancement Council.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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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:

1 **SECTION 1.** 15.347 (5) of the statutes is created to read:

2 15.347 (5) GREENHOUSE GAS MANAGEMENT ENVIRONMENTAL JUSTICE COUNCIL.
3 There is created in the department of natural resources a greenhouse gas
4 management environmental justice council consisting of at least 3 members,
5 appointed by the secretary of natural resources from nominations received from
6 environmental justice organizations and community groups, representing
7 communities that have the most significant exposure to air pollutants, including
8 communities with minority populations and communities with low-income
9 populations.

10 **SECTION 2.** 15.347 (6) of the statutes is created to read:

11 15.347 (6) GREENHOUSE GAS MANAGEMENT ECONOMIC AND TECHNOLOGY
12 ADVANCEMENT COUNCIL. There is created in the department of natural resources a
13 greenhouse gas management economic and technology advancement council
14 consisting of members appointed by the secretary of natural resources.

15 **SECTION 3.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
16 the following amounts for the purposes indicated:

		2007-08	2008-09
17			
18	20.370 Natural resources, department of		
19	(2) AIR AND WASTE		
20	(c) Greenhouse gas management	PR	A
		-0-	-0-

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1 **(6)** “Direct emission reduction action” means an action to reduce greenhouse
2 gas emissions taken by a greenhouse gas emission source at the greenhouse gas
3 emission source.

4 **(7)** “Emission reduction measure” means a program, action, standard, or
5 alternative compliance mechanism authorized under this chapter, applicable to a
6 greenhouse gas emission source or category of greenhouse gas emission sources, that
7 is designed to reduce greenhouse gas emissions or to remove carbon from the
8 atmosphere.

9 **(8)** “Greenhouse gas” means carbon dioxide, methane, nitrous oxide,
10 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

11 **(9)** “Greenhouse gas emission limit” means an authorization by the
12 department to emit up to a specified amount of greenhouse gas, expressed in carbon
13 dioxide equivalents, during a specified year.

14 **(10)** “Greenhouse gas emission source” means a source of greenhouse gas
15 emissions.

16 **(11)** “Market-based compliance mechanism” means any of the following:

17 (a) A system of market-based declining annual aggregate emission limitations
18 for significant sources or categories of significant sources.

19 (b) Greenhouse gas emission exchanges, banking, credits, or other
20 transactions, governed by rules promulgated by the department, that result in the
21 same reduction in greenhouse gas emissions over the same period as direct
22 compliance with a greenhouse gas emission limit or emission reduction measure
23 adopted by the department under this chapter.

24 **(12)** “Significant source” means a greenhouse gas emission source that is
25 identified under s. 286.03.

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1 **(13)** “Statewide greenhouse gas emissions” means the total annual amount of
2 emissions of greenhouse gases in this state plus the total annual amount of emissions
3 of greenhouse gases from the generation of electricity outside this state that is
4 delivered in this state, including transmission and distribution line losses, expressed
5 in tons of carbon dioxide equivalent.

6 **(14)** “Statewide emission limit” means the maximum allowable level of
7 statewide greenhouse gas emissions, determined by the department under s. 286.09
8 (1) (c), expressed in tons of carbon dioxide equivalent.

9 **286.03 Identification of significant sources.** The department shall
10 identify those greenhouse gas emission sources and categories of greenhouse gas
11 emission sources with emissions that are at a level of significance such that their
12 participation in the program under this chapter will enable the department to
13 effectively reduce greenhouse gas emissions and monitor compliance with the
14 statewide emission limit.

15 **286.05 Greenhouse gas emission reporting. (1) RULES.** The department
16 shall promulgate rules that require the annual reporting and verification of
17 greenhouse gas emissions from significant sources and that provide for the
18 monitoring and enforcement of compliance with the reporting and verification
19 requirements.

20 **(2) REQUIREMENTS CONCERNING RULES.** In the rules promulgated under sub. (1),
21 the department shall do all of the following:

22 (a) Phase in the requirements to monitor and report greenhouse gas emissions
23 beginning with the significant sources or categories of significant sources that
24 contribute most to statewide greenhouse gas emissions.

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1 (b) Require the monitoring and reporting of greenhouse gas emissions from the
2 generation of electricity in this state and from the generation of electricity outside
3 this state that is delivered in this state, including transmission and distribution line
4 losses.

5 (c) To the extent appropriate and feasible, incorporate methods developed
6 under s. 285.78 for the registration of early reductions of greenhouse gas emissions
7 and avoid significantly altering the reporting or verification program of a significant
8 source that registered reductions of greenhouse gas emissions under s. 285.78 before
9 December 1, 2007, except as necessary to ensure that reporting is complete and
10 verifiable for the purposes of compliance with this chapter.

11 (d) Ensure rigorous and consistent accounting of greenhouse gas emissions and
12 provide for reporting tools and formats that ensure collection of necessary data.

13 (e) Ensure that significant sources maintain comprehensive records of all
14 reported greenhouse gas emissions.

15 **(3) REVIEW REQUIRED.** The department shall do all of the following:

16 (a) Periodically review the requirements in rules promulgated under sub. (1)
17 and update the rules as necessary.

18 (b) Review existing and proposed international, federal, and state greenhouse
19 gas emission reporting programs and make reasonable efforts to promote
20 consistency among the program established under this section and other programs
21 and to streamline reporting requirements on greenhouse gas emission sources.

22 **286.09 Statewide greenhouse gas emission limit.** (1) No later than
23 January 1, 2009, the department shall do all of the following:

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1 (a) Conduct one or more meetings, with public notice and an opportunity for
2 all interested persons to comment, to assist it in determining what the level of
3 statewide greenhouse gas emissions was in 1990.

4 (b) To ensure the most accurate determination feasible under par. (c), evaluate
5 the best available scientific, technological, and economic information on greenhouse
6 gas emissions.

7 (c) At a public meeting determine, based on the information obtained under
8 pars. (a) and (b), what the level of statewide greenhouse gas emissions was in 1990
9 and approve an emission limit to be achieved by 2020 that is equivalent to that level.

10 **(2)** (a) If the department authorizes the use of carbon sequestration projects
11 under this chapter, the department shall treat carbon removed from the atmosphere
12 through an authorized carbon sequestration project as an equivalent reduction in
13 greenhouse gas emissions in determining compliance with the statewide emission
14 limit.

15 (b) If the department authorizes the use of a market-based compliance
16 mechanism under this chapter that results in a reduction in greenhouse gas
17 emissions outside this state, the department shall treat a reduction in greenhouse
18 gas emissions outside this state resulting from the authorized market-based
19 compliance mechanism as though the reduction occurred in this state in determining
20 compliance with the statewide emission limit.

21 **(3)** The statewide emission limit approved under sub. (1) (c) remains in effect
22 after 2020.

23 **(4)** The department shall make recommendations to the legislature, under s.
24 13.172 (2), and to the governor on how to continue reductions in greenhouse gas
25 emissions beyond 2020.

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1 **286.15 Greenhouse gas emissions; early action measures.** (1) On or
2 before June 30, 2008, the department shall publish and make available to the public
3 a list of emission reduction measures that can be implemented before the measures
4 and limits adopted under s. 286.23. The department shall identify emission
5 reduction measures that will achieve the maximum reduction in greenhouse gas
6 emissions from significant sources or categories of significant sources that is
7 technologically feasible and cost-effective, in furtherance of achieving the statewide
8 emission limit.

9 (2) The department shall promulgate rules, to take effect no later than January
10 1, 2011, to implement the measures identified under sub. (1).

11 **286.20 Greenhouse gas emission reduction plan.** (1) PLAN. The
12 department shall prepare and, no later than January 1, 2010, approve a plan for
13 achieving the maximum reduction in greenhouse gas emissions from significant
14 sources or categories of significant sources by 2020 that is technologically feasible
15 and cost-effective. In preparing the plan, the department shall consult with all state
16 agencies with jurisdiction over greenhouse gas emission sources. The department
17 shall consult with the public service commission on the elements of the plan that
18 pertain to energy-related matters, including the generation of electricity, any
19 standards or requirements that are based on the amount of electricity that an electric
20 provider sells to retail customers or members, the provision of reliable and affordable
21 electrical service, petroleum refining, and statewide fuel supplies to ensure that the
22 greenhouse gas emission reduction activities in the plan are complementary and not
23 duplicative and can be implemented in an efficient and cost-effective manner.

24 (2) CONTENTS. In the plan, the department shall identify and make
25 recommendations concerning any direct emission reduction actions, alternative

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1 compliance mechanisms, market-based compliance mechanisms, and monetary and
2 nonmonetary incentives for significant sources and categories of significant sources
3 that the department determines are necessary or desirable to facilitate achievement
4 by 2020 of the maximum reduction in greenhouse gas emissions that is
5 technologically feasible and cost-effective.

6 **(3) PREPARATION.** In preparing the plan under this section, the department
7 shall do all of the following:

8 (a) Consider relevant information relating to greenhouse gas emission
9 reduction programs of local governmental units, other states, and other countries,
10 including the northeastern states, Canada, and the European Union.

11 (b) Evaluate the total potential costs and economic and noneconomic benefits
12 of the plan to this state's economy, environment, and public health, using the best
13 available economic models, techniques for estimating greenhouse gas emissions, and
14 other scientific methods.

15 (c) Take into account the relative contribution of each greenhouse gas emission
16 source or category of greenhouse gas emission sources to statewide greenhouse gas
17 emissions and the potential for adverse effects on small businesses and recommend
18 a threshold of greenhouse gas emissions below which requirements for reductions in
19 greenhouse gas emissions will not apply.

20 (d) Identify opportunities for emission reduction measures from voluntary
21 actions that can be verified and made enforceable, including carbon sequestration
22 projects and best management practices.

23 **(4) PUBLIC MEETINGS.** The department shall conduct a series of public meetings
24 to give interested persons an opportunity to comment on the plan under this section.
25 The board shall conduct some of the public meetings in areas of the state that have

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1 the most significant exposure to air pollutants, including communities with minority
2 populations and communities with low-income populations.

3 (5) UPDATES. The department shall update the plan under this section at least
4 once every 5 years.

5 **286.23 Emission limits and reduction measures.** (1) RULES. The
6 department shall promulgate rules, to take effect no later than January 1, 2013,
7 containing greenhouse gas emission limits and emission reduction measures to
8 achieve the maximum reduction in greenhouse gas emissions that is technologically
9 feasible and cost-effective, in furtherance of achieving the statewide emission limit.

10 (2) REQUIREMENTS CONCERNING RULE PROMULGATION. In promulgating rules
11 under this section, the department shall to the extent feasible do all of the following:

12 (a) Design the rules, including any distribution of allowances, in a manner that
13 is equitable, seeks to minimize costs and maximize total benefits in this state, and
14 encourages early action to reduce greenhouse gas emissions.

15 (b) Ensure that activities undertaken to comply with the rules will not have a
16 disproportionate impact on communities with low-income populations.

17 (c) Ensure that entities that have voluntarily reduced their greenhouse gas
18 emissions before the rules take effect receive appropriate credit for those reductions.

19 (d) Ensure that activities undertaken to comply with the rules complement,
20 and do not interfere with, efforts under ch. 285 to achieve and maintain compliance
21 with ambient air quality standards and to reduce emissions of hazardous air
22 contaminants.

23 (e) Ensure that the rules result in reductions of greenhouse gas emissions that
24 are permanent, quantifiable, verifiable, and enforceable.

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1 (f) Ensure that any provision authorizing use of an alternative compliance
2 mechanism results in a reduction of greenhouse gas emissions that occurs over the
3 same period and in the same amount as any specific action that would otherwise be
4 required under this section.

5 (g) Consider the cost-effectiveness of the rules.

6 (h) Consider overall societal benefits, including reductions in other air
7 pollutants, diversification of energy sources, and other benefits to the economy, the
8 environment, and public health.

9 (i) Minimize the administrative burden of implementing and complying with
10 the rules.

11 (j) Minimize the extent to which reductions in emissions of greenhouse gases
12 within this state are offset by increases in emissions of greenhouse gases outside the
13 state.

14 (k) Consider the significance of the contribution of each greenhouse gas
15 emission source or category of greenhouse gas emission sources to statewide
16 emissions of greenhouse gases.

17 (L) Rely upon the best available economic and scientific information.

18 (m) Rely upon the department's assessment of existing and projected
19 technological capabilities.

20 (n) Consult with the public service commission concerning the rules that affect
21 providers of electricity and natural gas in order to minimize duplicative or
22 inconsistent regulatory requirements.

23 **(3) MARKET-BASED COMPLIANCE MECHANISMS.** (a) Subject to pars. (b) to (d) and
24 sub. (2), in the rules promulgated under this section, the department may authorize
25 the use of market-based compliance mechanisms.

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1 (b) Before including market-based compliance mechanisms in the rules
2 promulgated under this section, the department shall to the extent feasible do all of
3 the following:

4 1. Consider the potential for direct, indirect, and cumulative impacts on
5 emissions from using market-based compliance mechanisms, including localized
6 impacts in communities already adversely affected by air pollution.

7 2. Design the market-based compliance mechanisms to prevent any increase
8 in emissions of hazardous air contaminants or pollutants for which ambient air
9 quality standards have been established under s. 285.21.

10 3. Maximize additional environmental benefits and economic benefits in this
11 state, as the department determines is appropriate.

12 (c) If the department provides for the use of market-based compliance
13 mechanisms in the rules promulgated under this section, the department shall
14 specify in the rules how the market-based compliance mechanisms may be used by
15 entities subject to greenhouse gas emission limits and mandatory emission reporting
16 requirements to achieve compliance with their greenhouse gas emission limits.

17 (d) In furtherance of achieving the statewide emission limit, the department
18 may promulgate a rule that establishes a system of market-based declining annual
19 aggregate greenhouse gas emission limits for significant sources or categories of
20 significant sources, applicable from January 1, 2013, to December 31, 2020, that the
21 department determines will achieve the maximum reduction in greenhouse gas
22 emissions that is technologically feasible and cost-effective, in the aggregate, from
23 those significant sources or categories of significant sources, but only if the
24 department complies with pars. (b) and (c) and ensures that the reduction is in

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1 addition to any greenhouse gas emission reduction otherwise required by law and
2 any greenhouse gas emission reduction that would otherwise occur.

3 **286.25 Voluntary reductions.** (1) The department shall adopt
4 methodologies for the quantification of greenhouse gas emission reductions from
5 voluntary actions. Notwithstanding s. 227.10 (1), the department is not required to
6 adopt the methodologies by rule.

7 (2) The department shall promulgate rules for verifying and enforcing
8 greenhouse gas emission reductions from voluntary actions that the department
9 authorizes to be used to comply with greenhouse gas emission limits.

10 **286.27 Authority of the governor.** (1) Notwithstanding the dates specified
11 in ss. 286.09 (1) (intro.) and (3), 286.15 (1), 286.20 (1), and 286.23 (1) in the event of
12 extraordinary circumstances, catastrophic events, or threat of significant economic
13 harm, the governor may adjust a deadline in s. 286.09 (1), 286.15 (1), 286.20 (1), or
14 286.23 (1), or in a rule promulgated under this chapter, to the earliest feasible date
15 after the deadline, subject to sub. (2).

16 (2) The governor may not adjust a deadline by more than one year at a time,
17 but the governor may make successive adjustments of the same deadline as long as
18 the adjustments comply with sub. (1).

19 (3) No more than 10 days after making an adjustment under sub. (1), the
20 governor shall provide written notification of the adjustment to the chief clerk of each
21 house of the legislature and to the revisor of statutes for publication in the Wisconsin
22 administrative register.

23 **286.31 Councils.** (1) The greenhouse gas management environmental justice
24 council shall advise the department in developing the plan under s. 286.20 and in any
25 other matter in the implementation of this chapter.

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1 **(2)** The greenhouse gas management economic and technology advancement
2 council shall advise the department on activities that will facilitate investment in
3 and implementation of technological research and development opportunities,
4 including identifying new technologies; research; demonstration projects; funding
5 opportunities; developing state, national, and international partnerships and
6 technology transfer opportunities; and identifying and assessing research and
7 advanced technology investment and incentive opportunities that will assist in the
8 reduction of greenhouse gas emissions. The council may also advise the department
9 on state, regional, national, and international economic and technological
10 developments related to greenhouse gas emission reductions.

11 **286.35 Fees.** **(1)** The department may promulgate rules establishing a
12 schedule of fees for greenhouse gas emission sources regulated under this chapter.
13 The department shall design the fee schedule to ensure that the amount of the fees
14 is not more than is reasonably necessary to fund the operation of the program under
15 this chapter.

16 **(2)** Any fees collected under sub. (1) shall be credited to the appropriation
17 account under s. 20.370 (2) (cj).

18 **286.37 Other duties of the department.** **(1)** The department shall
19 determine the carbon dioxide equivalents of greenhouse gases based on the best
20 available scientific information, including information from the Intergovernmental
21 Panel on Climate Change.

22 **(2)** The department shall consult with other states, the federal government,
23 and other countries to identify the most effective strategies and methods to reduce
24 greenhouse gas emissions, manage greenhouse gas control programs, and facilitate

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1 the development of integrated and cost-effective regional, national, and
2 international greenhouse gas emission reduction programs.

3 (3) The department shall ensure, to the extent feasible, that the rules,
4 programs, mechanisms, and incentives under its jurisdiction for the reduction of
5 greenhouse gas emissions direct public and private investment toward communities
6 with the most disadvantaged populations. The department shall provide the
7 opportunity for small businesses, schools, organizations that provide affordable
8 housing, and other community institutions to participate in and benefit from
9 statewide efforts to reduce greenhouse gas emissions.

10 **286.39 Duty of other state agencies.** Each state agency, as defined in s.
11 20.001 (1), and the University of Wisconsin Hospitals and Clinics Authority, the
12 Wisconsin Housing and Economic Development Authority, and the Wisconsin Health
13 and Educational Facilities Authority shall take actions to reduce their greenhouse
14 gas emissions.

15 **286.50 Penalties.** (1) Any person who violates this chapter or any rule
16 promulgated, permit issued, or order issued under this chapter shall forfeit not less
17 than \$10 or more than \$25,000 for each violation. Each day of continued violation
18 is a separate offense.

19 (2) (a) Except as provided in par. (b), any person who intentionally commits an
20 act that violates, or fails to perform an act required by, this chapter or any rule
21 promulgated, permit issued, or order issued under this chapter shall be fined not
22 more than \$25,000 per day of violation or imprisoned for not more than 6 months or
23 both.

24 (b) If the conviction under par. (a) is for a violation committed after another
25 conviction under par. (a), the person is guilty of a Class I felony, except that,

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1 notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be
2 fined not more than \$50,000 per day of violation.

3 **SECTION 6.** 299.95 of the statutes is amended to read:

4 **299.95 Enforcement; duty of department of justice; expenses.** The
5 attorney general shall enforce chs. 281 to ~~285~~ 286 and 289 to 295 and this chapter,
6 except ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
7 approvals, permits, and water quality certifications of the department, except those
8 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
9 in ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for any other
10 county where a violation occurred in whole or in part has jurisdiction to enforce chs.
11 281 to ~~285~~ 286 and 289 to 295 or this chapter or the rule, special order, license, plan
12 approval, permit, or certification by injunctive and other relief appropriate for
13 enforcement. For purposes of this proceeding where chs. 281 to ~~285~~ 286 and 289 to
14 295 or this chapter or the rule, special order, license, plan approval, permit or
15 certification prohibits in whole or in part any pollution, a violation is considered a
16 public nuisance. The department of natural resources may enter into agreements
17 with the department of justice to assist with the administration of chs. 281 to ~~285~~ 286
18 and 289 to 295 and this chapter. Any funds paid to the department of justice under
19 these agreements shall be credited to the appropriation account under s. 20.455 (1)
20 (k).

21 **SECTION 7. Nonstatutory provisions.**

22 (1) SUBMISSION OF PROPOSED RULES. The department of natural resources shall
23 submit in proposed form the rules required under section 286.05 (1) of the statutes,

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SECTION 7

1 as created by this act, to the legislative council staff under section 227.15 (1) of the
2 statutes no later than June 30, 2008.

3 (END)