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January 25, 2006

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 449: Septage Disposal

Assembly Bill 449, related to the management and disposal of septage and municipal sewage sludge, was prepared by the Legislative Council's Special Committee on Septage Disposal. The bill was introduced by the Joint Legislative Council on June 1, 2005, and referred to the Assembly Committee on Natural Resources. On November 29, 2005, that Committee recommended adoption of Assembly Amendments 1 and 2, and of passage as amended, by a vote of 12 to 0. On November 29, 2005, the bill was referred to the Joint Committee on Finance.

CURRENT LAW

Currently, a municipal sewage system must accept and treat septage from a licensed disposer between November 15 and April 15. The sewerage system may, but is not required to, accept and treat septage at other times of the year. Municipal sewage systems do not have to accept septage under certain conditions. Each year a licensed disposer may apply to the municipal sewage system, prior to September 1, for permission to dispose of septage in the sewage system. The municipal sewage system must approve or reject the applications no later than October 1. The municipal sewage system may impose reasonable terms and conditions for septage disposal and may charge fees to a licensed septage hauler to dispose of septage at the system's facilities.

The Department of Commerce regulates installation and maintenance of private sewage systems. Commerce administers the private sewage system replacement or rehabilitation grant program, also known as the Wisconsin fund, to provide financial assistance to home and small business owners, who meet certain income and eligibility criteria, to cover a portion of the cost of repairing or replacing failing private sewage systems. The maximum grant is $7,000, or 60% of the total replacement cost, or the amount determined in Commerce grant funding tables, whichever is

less. The grant program is appropriated $2,999,000 annually from the general fund. Counties that choose to participate in the grant program must: (a) establish a program of inspection and maintenance for all new or replacement private sewage systems constructed in the county after the date on which the county adopts the program; (b) establish a system of user charges and cost recovery, if the county considers this to be appropriate, which may include the cost of the grant application fee and the cost of supervising installation and maintenance; (c) certify that the individual owner eligibility requirements are met; (d) certify that the grant funds will be properly disbursed to eligible owners; and (e) certify that the owners' private sewage systems will be properly installed and maintained. The maintenance program must include inspection or pumping of each system at least once every three years.

The Department of Natural Resources and Department of Administration administer the clean water fund program, which provides financial assistance to municipalities for the planning, design and construction of surface water and groundwater pollution abatement facilities, primarily for municipal wastewater treatment. Financial assistance consists primarily of below market interest rate loans. DNR approves applications, facility plans and construction plans and specifications. DOA provides financial management for the program.

DNR approves plans for water and wastewater treatment facilities. DNR regulates the disposal of septage on land, licenses land disposal sites and collects statutorily-designated fees for licenses to service private sewage systems. The fees are deposited in a program revenue appropriation and used for DNR activities related to administration of septage management activities.

SUMMARY OF BILL

Assembly Bill 449 would make the following changes related to septage disposal.

Municipal Fees for Septage Disposal

Currently, municipal sewage systems may impose terms and conditions for the disposal of septage at the system. One of the conditions is that the municipal sewage system may charge actual and equitable disposal fees based on the volume of septage introduced into the municipal sewage system and calculated at the rate applied to other users of the municipal sewage system, and including the costs of additional facilities or personnel necessary to accept septage at the point of introduction into the municipal sewage system.

The bill would change this condition so that, instead, the municipal sewage system could impose reasonable disposal fees for the disposal of septage introduced into the system by a licensed disposer. The disposal fees could only be based on the following actual costs related to the disposal of the septage, as determined in accordance with a uniform cost accounting system applicable to all services provided by the system: (a) the cost of facilities at the system that receive and store

septage; (b) the cost of any testing of septage conducted by the system; (c) the cost of treating septage by the system, which may vary based on the quantity and type of the septage; and (d) the portion of the system's additional administrative and personnel costs for accepting the septage not reflected in the costs identified in (b) and (c). In determining its actual costs, a municipal sewage system could include any associated cost of capital, debt service, operation, and maintenance, and any other type of cost used by a municipal sewage system in establishing fees for the treatment and disposal of sewage by its customers connected to the system.

A municipal sewage system would be required to establish a procedure to review a septage disposal fee charged by the system that is disputed by a licensed disposer. Upon the request of a licensed disposer, a municipal sewage system would be required to use the procedure to review whether a septage disposal fee charged by the system for the quantity and type of septage specified by the licensed disposer conforms with the requirement to set reasonable disposal fees.

After pursuing the municipal sewage system review of a septage disposal fee, a licensed disposer would be authorized to request the staff of the Public Service Commission (PSC) to informally review the disputed septage disposal fee. If the PSC staff would determine that there is sufficient basis for a dispute regarding the fee and that use of the municipal sewage system review procedure is not likely to resolve the dispute, the PSC staff could agree to review the disputed septage disposal fee. Based on its review, the PSC staff would be authorized to recommend a reasonable septage disposal fee that conforms with the requirement to set reasonable disposal costs. If the PSC staff review does not lead to resolution of the dispute, the licensed disposer would be authorized to make a written request to the PSC for review of the disputed septage disposal fee.

The municipal sewage system would be required to provide information concerning the basis of its septage disposal fees, if requested by a licensed disposer, the PSC or the PSC staff. The municipal sewage system would have to provide any other information requested by the PSC or the PSC staff related to their review of the septage disposal fee.

Currently, 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. The bill would establish that the current PSC complaint process would also apply to the rates for the disposal of septage by a licensed disposer at a municipal sewage system, if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the review process created under the bill. If the PSC would determine in a proceeding that a septage disposal fee is unreasonable, the PSC would determine and fix a reasonable fee that would conform with the requirements related to calculation of actual costs.

The PSC would bill its expenses related to determining a reasonable septage disposal fee as follows: (a) if the PSC would determine in the proceeding that one or more septage disposal fees are unreasonable and fixes by order reasonable septage disposal fees, that when combined with any other applicable septage disposal fees, total an amount at least 15 percent lower than the total amount of septage disposal fees established by the municipal sewage system for the quantity and

type of septage, the municipal sewage system that is a party to the dispute would be required to pay the entire amount of the assessment; (b) if the PSC would determine in the proceeding that one or more septage disposal fees are unreasonable and fixes by order reasonable septage disposal fees, that when combined with any other applicable septage disposal fees, total an amount that is less than 15 percent lower than the total amount of septage disposal fees established by the municipal sewage system for the quantity and type of septage, the licensed disposer that is a party to the dispute would be required to pay the entire amount of the assessment; (c) if the PSC would determine in the proceeding that the septage disposal fees are reasonable, the licensed disposer would be required to pay the entire amount of the assessment; or (d) if the PSC would terminate the proceeding before making a final determination on the reasonableness of the septage disposal fees, the municipal sewage system and the licensed disposer that are parties to the dispute would each pay 50 percent of the assessment, unless the municipal sewage system and the licensed disposer agree to a different allocation of the assessment.

A municipal sewage system would be required to notify each licensed disposer that is approved to dispose 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. The notice would have to include a description of how the system calculated the new disposal fee. This provision would first apply to increases in disposal fees that take effect on the first day of the third month beginning after publication.

Financial Assistance Program

AB 449 would require Commerce to develop a local financial assistance program to provide support 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 related to private sewage systems. The local assistance program for local government inventories of private sewage systems could support: (a) research by the governmental unit that is needed to locate existing private sewage systems; (b) conversion of existing inventories to be compatible with geographic information systems; (c) improvement of data management in governmental units that have completed inventories; and (d) development of mailing lists to contact owners of private sewage systems and other similar projects related to the inventory.

The local assistance program for record-keeping systems could support management of local records related to the location, design, management plan, inspection, maintenance, and servicing of private sewage systems, disposal of septage, sites approved for the land application of septage, and other information associated with private sewage systems and septage regulation and management. Commerce would be required to set priorities for the development of the record-keeping system which would include setting the highest priority on compatible state and local records, compatible state and local information technology systems, consistent use of geographical information systems, and expeditious implementation of the record-keeping system in all governmental units.

Commerce would be authorized to make cost-sharing grants to counties of up to 70 percent of the cost of a project for an inventory or record-keeping system. The local government could provide either cash or in-kind contribution for its share of the project costs. Commerce could fund the acquisition of equipment for managing the inventory and for record keeping and development of the inventory and record-keeping systems, but not the operation of those systems. Commerce would be authorized to allocate up to 10 percent of the funds available each fiscal year under the Wisconsin fund program for local assistance for inventories and record keeping. This would provide an allocation of up to at least $299,900 annually from the $2,999,000 appropriation, or more if funds are carried forward from previous years to increase the total available amount. This would leave at least $2,699,100 annually available for grants to eligible property owners for installing private sewage systems.

Maintenance Program for Private Sewage Systems

AB 449 would move the county maintenance program statute out of the Wisconsin fund program statutes and into the statute related to general Commerce and county duties for private sewage system regulation. This would make the county maintenance program applicable to all counties, rather than only to counties participating in the Wisconsin fund. There are currently five counties that are not participating in the Wisconsin fund (Ashland, Bayfield, Crawford, Douglas and Florence).

The bill would retain the current requirement that the county maintenance program must require inspection or pumping of the private sewage system at least once every three years. However, this provision would be limited to private sewage systems that do not have a maintenance plan under Commerce rules. The bill would require Commerce to determine the private sewage systems to which the maintenance program applies. At a minimum, the maintenance program would apply to all new or replacement private sewage systems constructed after the date on which the county adopts the maintenance program. Commerce would be authorized to promulgate a rule that would apply the maintenance program to private sewage systems constructed on or before the date on which the county adopts the maintenance program.

Commerce would be required to determine the private sewage systems to which the maintenance program applies in counties that do not meet the conditions for eligibility under the Wisconsin fund program. The maintenance program in counties that are not eligible under the Wisconsin fund would begin on January 1, 2008.

Currently, inspections of private sewage systems must be performed by a master plumber, journeyman plumber or restricted plumber licensed by Commerce, a person licensed by DNR to service septic tanks, or a state or local government employee designated by Commerce. AB 449 would authorize Commerce to promulgate rules to determine other persons who are qualified to undertake required inspection, maintenance or repairs of private sewage systems.

Clean Water Fund Loans

The current clean water fund program can be used to fund the planning, design and construction of wastewater treatment facilities. This has included funding for the portion of a sewage treatment plant project that provides receiving, storage, and treatment of septage. However, the statutes do not expressly state this. The bill would include specific language that eligible projects include projects or capacity for the receiving, storage, and treatment of septage.

Most financial assistance under the current clean water fund program is provided as loans with an interest rate of 55% of the market interest rate. The bill would create a zero percent interest rate for the portion of a clean water fund loan for receiving and storing septage and capacity for treating septage. The bill would retain the current interest rates for other portions of the project.

Under the current clean water fund program, the amount of reserve capacity for a project eligible for financial assistance is limited to that future capacity required to serve the users of the project expected to exist within the service area of the project 10 years after the project is estimated to become operational. The bill would add to the allowable reserve capacity an amount needed to provide septage disposal for property located outside of the sewer service area of the project for septage that is reasonably likely to be disposed of in the project.

Sewage Disposal Plant Planning

Currently, facilities plans are prepared for each sewage disposal facility. AB 449 would create a requirement that facilities plans for sewage disposal plants, or for an extension of an existing sewage disposal plant that increases the capacity of the existing plant by at least 20 percent, must address the need for, and include plans for, the disposal of septage. Under this provision, the septage service area would be defined as the area containing private sewage systems served or anticipated to be served by a sewage disposal plant during the planning period. The owner of the facility would be required to address all of the following in the facility plan: (a) the amount of septage produced throughout the septage service area and the expected increase in septage production during the planning period; (b) the capacity for the disposal of septage during the planning period on land within the septage service area, in the sewage disposal plant, and by other available methods; (c) the location of private sewage systems within the septage service area, and the distances required to haul septage for disposal either on land or in the sewage disposal plant; and (d) the potential for contracts with private sewage system owners, licensed disposers or municipalities to assure delivery of septage to the sewage disposal plant.

In addressing all of the required items in the facility plan, the owner would be required only to use data or other information that has been previously collected by the owner or by others, and would not be required to conduct new research. The bill specifies that the information required to be addressed in the facility plan must be considered in the decision-making process, but does not require construction of facilities for the handling or disposal of septage.

Septage and Sewage Sludge Disposal Regulations

The bill would make changes and updates to DNR definitions of septic tanks, soil absorption fields, holding tanks, grease traps and privies. A "grease trap" would be renamed "grease interceptor" and would mean a receptacle designed to intercept and retain grease or fatty substances (instead of the current definition of a watertight tank for the collection of grease present in sewage and other wastes, and from which grease may be skimmed from the surface of liquid waste for disposal). A "privy" would be redefined as an enclosed nonportable toilet into which human wastes not carried by water are deposited to a subsurface storage chamber that may or may not be watertight (instead of the current definition of a cavity in the ground or a portable above-ground device constructed for toilet uses which receives human excrement either to be partially absorbed directly by the surrounding soil or stored for decomposition and periodic removal). (An example of a privy is an outhouse, whereas a portable toilet such as used at outdoor festivals is considered a holding tank.) The terms "septage" and "servicing" would refer to components of a private sewage system, in addition to septic tanks, soil absorption field, holding tanks, grease interceptors, and privies. A "septic tank" would be redefined as a watertight enclosure used for storage and anaerobic decomposition of human excrement, or domestic or industrial wastewater (instead of the current definition of a septic toilet, chemical closet and any other watertight enclosure used for storage and decomposition of human excrement, domestic or industrial wastes. The definition of "soil absorption field" would mean an area or cavity in the ground which receives the liquid discharge of a septic tank or similar component of a private sewage system (and would delete the reference to a similar wastewater treatment device).

AB 449 would create, in the DNR septage disposal statute, a cross-reference definition of "private sewage system" to the definition currently used in the Commerce statute for private sewage system regulation. Currently, the DNR septage disposal statute uses the term "private sewage system" but does not define it. The Commerce statute defines "private sewage system" as a sewage treatment and disposal system serving a single structure with a septic tank and soil absorption field located on the same parcel as the structure. The term also includes an alternative sewage system approved by Commerce including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure. The system can be owned by the property owner or by a special purpose district.

Currently, DNR may require a license for any location where septage is stored or disposed of on land. The bill would change the site license to a site approval. Further, the licensure or approval of "stored" septage would be deleted. Storage of septage is currently regulated by DNR under approval of sewage disposal facility plans.

Currently, a county may regulate the disposal of septage on land, with the approval of DNR. The site criteria and disposal procedures in a county ordinance must be identical to the corresponding portions of DNR rules. A county may require an annual license for each septage land disposal site, but may not require a license for septage disposal in a licensed solid waste disposal facility. The county may establish a schedule of fees for a license. The bill would change

the county site license to a site approval, and would remove the prohibition against requiring a license for septage disposal in a licensed solid waste disposal facility.

Currently, a site is exempt from the site license requirement if: (a) the septage is removed from a septic tank, soil absorption field, holding tank, grease trap, or privy which is located on the same parcel where the septage is disposed of; (b) no more than 3,000 gallons of septage per week are disposed of on the property; and (c) the person complies with all regulations in removing and disposing of the septage. The bill would limit the exemption from the site approval so that it only applies to farmers, as follows: (a) the farmer would have to own or lease the disposal location; (b) the exemption would only apply to septage removed from a septic tank located on the same parcel where the septage is disposed of, and not for septage removed from a soil absorption field, holding tank, grease trap or privy; and (c) the 3,000 gallon per week limit for disposal of septage without a site license would be repealed. While the DNR statute does not include a definition of farm or farmer, the DNR administrative rules related to servicing septic or holding tanks in NR 113, defines farmer as "a person who owns or leases a contiguous parcel of land of 40 acres or more that the person is using for agricultural purposes."

Currently, a person who services (pumps the contents from) a private sewage system is required to obtain a septage servicing license unless the person is a farmer and does all of the following: (a) removes septage from a septage system that is located on the same parcel where the septage is disposed of; (b) disposes of no more than 3,000 gallons per week; (c) complies with all regulations related to servicing a private sewage system; and (d) has sufficient land that is suitable for septage disposal. The bill would narrow the exemption for farmers so that the license exemption would only be available to a farmer who removes septage from a septic tank located on the same parcel where the septage is disposed of, and not for septage removed from a soil absorption field, holding tank, grease trap or privy.

The bill would require that a person who seeks a site approval for septage disposal must submit an application to DNR at least seven days prior to using the site. After DNR receives the application, the Department would be authorized to enter and inspect the site if the Department determines that an inspection is necessary. Seven days after the applicant submits the application, the applicant could use the site unless DNR notifies the applicant that the site may not be used. Current statutes do not include an application or approval timeline. Current administrative rules in NR 113 contain a provision requiring a septage hauler to notify DNR at least seven days prior to using a septage disposal field, but do not specify the consequence if DNR does not respond within the seven days.

AB 449 would require DNR to oversee, set technical standards for, and regulate the application of sewage sludge to land. DNR would also be required to develop a model land application ordinance for sewage sludge that is consistent with rules promulgated by DNR.

The bill would provide that no city, village, town, or county may prohibit, through zoning or any other means, the application of sewage sludge to land if that application complies with DNR

standards and rules. Further, no city, village, town, or county would be allowed to regulate the application of sewage sludge to land, except by enacting the model ordinance developed by DNR under the bill.

DNR Septage Servicing and Septage Land Disposal License Fees

The bill would repeal the statutory fees for licenses for septage land disposal sites. The bill would retain the statutory septage servicing license fees, and, in addition, authorize DNR to establish, by rule, fees for a septage servicing license that would be in lieu of the statutory fees. If DNR would promulgate rules with alternative fees, the fees would have to be an amount necessary to meet the costs incurred by the Department in administering and enforcing licenses, approvals, and other program requirements under the septage servicing statute. Any fees established under such a rule would have to be a fixed amount for each licensee, a variable amount for each licensee based on the number of vehicles used by a licensee for servicing, or a combination of these amounts. Currently, the statutory fee for a septage servicing license is $50 per vehicle used for servicing for a state resident or $100 per vehicle for a nonresident, and the term of the license is two years.

Enforcement

Currently, DNR may issue a citation to collect a forfeiture for a violation of regulations related to the servicing of private sewage systems or the disposal of septage. The district attorney enforces citations issued by DNR.

There is currently a conflict between two different statutes related to enforcement of the septage servicing and disposal regulatory statute for environmental enforcement actions when DNR does not issue a citation. The first statute is s. 281.98, which provides that a person who violates a provision of chapter 281 (which includes the septage statutes), or any rules or orders issued by DNR under ch. 281, may be required to forfeit between $10 and $5,000 for each violation. The Attorney General enforces these statutes upon referral from DNR. The second statute is s. 299.95, which provides that the Attorney General may enforce most environmental statutes. However, s. 299.95 specifically excludes the septage servicing and disposal statute (s. 281.48) from the enforcement authority of the Attorney General.

The bill deletes the exception in s. 299.95 for enforcement of the septage regulations by the Attorney General. Under the bill, DNR could continue to issue citations for septage servicing and disposal violations as under current law, with enforcement by the district attorney. DNR would also have the option of referring cases generally involving more serious violations to the Attorney General for enforcement.

Statutory Cross-References

The statutes include many provisions that cross-reference all of the environmental statutes. Fourteen of the provisions include an exception for the septage disposal statute, which resulted from the renumbering of environmental statutes in the 1995 session of the Legislature. Prior to the 1995 renumbering of the environmental statutes, the septage disposal statute was not included among the environmental statutes, but was moved to be grouped with the environmental statutes after the renumbering. The exceptions for the septage disposal statute were created to avoid making substantive changes in the process of renumbering. The bill deletes these exceptions.

SUMMARY OF AMENDMENTS

Assembly Amendment 1

The bill would change a cross-reference in a DNR Water Division program revenue appropriation to reflect provision of authority to DNR to establish septage servicing licensing fees in rule in lieu of the current statutorily specified fees. AA 1 would make the same cross-reference change in a DNR Enforcement and Science Division program revenue appropriation that was created in 2005 Wisconsin Act 25. AA 1 would also incorporate a change that was made by Act 25 in the Water Division appropriation for septage servicing to reflect the creation of the Enforcement and Science Division program revenue appropriation.

The bill would create a local financial assistance program in Commerce to provide support to local governments to develop inventories of existing private sewage systems and to develop record-keeping systems for information related to private sewage systems. AA 1 would, in addition, authorize Commerce to make grants under the local assistance program to provide funds to nonprofit, nongovernmental organizations for the development of software to support the inventory and record-keeping activities of local governments under the bill. Commerce could make a grant under the AA 1 provision only if the Department determines that all of the following occur: (a) the organization requests a grant and has adequate plans to develop the software; (b) the organization has adequate controls in place to manage the grant funds; (c) sufficient governmental units are likely to use the software to justify the development costs; and (d) the availability of the software will contribute to coordinated and compatible maintenance programs in governmental units on a regional or statewide basis.

Currently, the Wisconsin fund requires that grants provided under the program must be used for the rehabilitation or replacement of the private sewage system, unless the grant is for an experimental private sewage system. The bill would authorize Commerce to use up to 10 percent of available funds under the program for the local assistance program created in the bill. AA 1 would add a cross-reference in the existing Wisconsin fund program to clarify that funds granted under the 10 percent set aside created under the bill may be used for the local assistance program instead of for the rehabilitation or replacement of a private sewage system.

Currently, when a county regulates the disposal of septage on land, the county may establish a schedule of fees for a license. AA 1 would add a requirement that the county may only charge fees for a site approval if DNR determines that the fees are no more than is necessary to fund the county septage disposal regulatory program.

The bill would provide that no city, village, town, or county may prohibit, through zoning or any other means, the application of sewage sludge to land if that application complies with DNR standards and rules. AA 1 would expand this provision so that a city, village, town or county may not regulate, in addition to may not prohibit, the application of sewage sludge to land if the disposal complies with DNR standards and rules.

The bill would create a provision in the clean water fund program that would provide a 0% interest rate for the portion of a loan for septage receiving and storage facilities and capacity for treating septage. AA 1 would eliminate a conflict between the current statutory interest rate of 55% of market interest and the authorization for a 0% interest rate.

The bill would prohibit a city, village, town or county from regulating the application of sewage sludge to land, unless the regulation is done under the model ordinance that would be promulgated by DNR administrative rule. AA 1 would allow a city, village, town or county to regulate the application of sewage sludge to land, and would eliminate the requirement that DNR develop a model ordinance. Under the amendment, the local government could regulate the application of sewage sludge to land if the regulation is identical to DNR regulations.

Assembly Amendment 2

The bill would create a local assistance program for inventories of private sewage systems and record keeping and authorize Commerce to allocate up to 10 percent of the funds available each fiscal year under the Wisconsin fund program for the program. AA 2 would delete the entire local assistance program and the authorization to use the Wisconsin fund appropriation for this purpose.

Reconciliation of Amendments

The Assembly Committee on Natural Resources adopted both AA 1 and AA 2, but there is a conflict between the two amendments. While AA 1 would, among other things, authorize Commerce to make a grant under the local assistance program to a nonprofit organization for software development and clarifies a cross reference between the local assistance program and the Wisconsin fund appropriation, AA 2 would delete the local assistance program under the bill (but not the related AA 1 provisions). If both amendments are adopted, the two provisions would need to be reconciled.

FISCAL EFFECT

Department of Commerce

The Commerce fiscal estimate states that activities under the bill could be absorbed within current resources. Commerce would have to allocate time to develop administrative rules for the maintenance program to be administered by all counties. The Department would have to develop rules for the local assistance program created by the bill, administer the program and provide grants to local governments. However, while AA 1 would expand eligible grant activities (but not funds), AA 2 would delete the local assistance program created under the bill.

Commerce estimates that, while the bill does not specifically require counties to conduct an inventory of private sewage systems, the Department anticipates that the maintenance program requirements to be promulgated in administrative rule would require each county to conduct an inventory of private sewage systems located within its jurisdiction. Commerce anticipates that a complete inventory would result in an increase in the number of replacement private sewage systems, with a corresponding increase in the number of plan reviews conducted by the Department. Commerce charges fees for private sewage system plan reviews.

It is likely that when all counties are implementing the maintenance program required under the bill, the five counties that currently do not participate in the Wisconsin fund program may have an increased incentive to participate and provide the opportunity for eligible residents to obtain grants to replace existing failing private sewage systems (Ashland, Bayfield, Crawford, Douglas and Florence counties). It is also likely that if development of an inventory of private sewage systems increases the number of replacement systems that would be installed, applications for Wisconsin Fund grants would increase.

The bill would authorize Commerce to allocate up to 10 percent of the funds available under the Wisconsin fund for local assistance for inventories and record keeping on the effective date of the bill. Although AA 2 would delete the local assistance program and allocation of the program funds, if AA 2 were not adopted, and if the bill would go into effect before June 30, 2006, Commerce would be authorized to allocate funds in 2005-06 for the local assistance program. However, Commerce awarded almost $3.1 million for 2005-06 awards in August, 2005, under the current Wisconsin Fund program. (The awarded amount is greater than the $2,999,000 appropriation because of the carryover amount remaining from 2004-05.) There is less than $20,000 remaining in the appropriation account after making 2005-06 awards. It is likely that, under the bill, a small amount could be awarded for local assistance in 2005-06 but the main local assistance program could not begin until 2006-07. Funds were sufficient under current law in 2005-06 to fully fund eligible applications (except for applications for small commercial establishments, which are limited to 10% of the available funds, and were prorated to 72% of the eligible grant amount). However, if the local assistance program had been in effect at the beginning of 2005-06, and if Commerce had allocated 10% of the available funds for the local assistance

program created in the bill, grants for private sewage system replacement and rehabilitation would have been prorated to approximately 90% of the eligible grant amount.

Department of Natural Resources

The DNR fiscal estimate states that the provision to reduce the interest rate from 55% of market rate to 0% for the portion of clean water fund loans for the planning, construction, and capacity provided for septage generated in the planning area, would reduce loan repayment revenue to the clean water fund. Local governments, as clean water fund program borrowers, would have decreased costs in the form of lower loan payments, which would equal the amount of reduced loan repayment revenue. While data is not readily available regarding the amount of septage disposal capacity that would be included in future clean water fund loans, DNR estimates that up to approximately 5% of the annual $150,000,000 in total clean water fund loans (up to approximately $7,500,000) could potentially be issued at the zero percent interest rate under the bill for septage disposal capacity.

DNR's fiscal estimate states that since loan repayments are used to fund new loans, the annual reduction in loan repayments would mean there would be less funds available in future years to fund new loans, unless the Department would request new general obligation bonding authority (with debt service paid from the general fund) each year in order to maintain the current levels of loans. DNR and DOA officials have since clarified that, since the first loans made under the bill would likely be closed in 2006-07, the annual reduction in loan repayments would begin in 2006-07 or 2007-08.

While DNR's fiscal estimate states that the reduced state revenue would be $1,515,500 annually, DNR and DOA program administrators have since indicated that the amount shown in the fiscal estimate should more accurately be characterized as the present value of the subsidy provided in one year's worth of loans at a 0% interest rate instead of at 55% of the market interest rate under current law. While the current clean water fund program market interest rate is 4.3%, the program uses a 6% interest rate for planning purposes (representing a longer-term average rate). The state subsidy under the program is the difference between the debt service (principal and interest) that the state pays for the revenue bonds to finance the state loan and the amount the municipality pays back into the fund. The "present value subsidy" is a term unique to the clean water fund program and represents the cost, in today's dollars, to provide 20 years of subsidy for a loan under the program. In each biennial budget, a present value subsidy limit is established for the clean water fund program, and equals $109.6 million under 2005 Act 25 for the 2005-07 biennium.

If approximately $7.5 million in clean water fund loans would be made at an interest rate of 0% instead of 3.3% (55% of 6%), the loan repayments would decrease by approximately $140,000 annually. If approximately $7.5 million in such loans would be made every year, the $140,000 loan repayment revenue decrease would be cumulative. For example, the loan repayment decrease would total $280,000 in year two, $420,000 in year three, and so on until the annual loan repayment decrease would equal approximately $2.8 million in and after year 20. At current interest rates the

subsidy would be lower (approximately $98,000 in the first year). This reduction in state revenues would require the state to issue additional general obligation bonds to fund the state subsidy on these loans. While authorized bonding is expected to be adequate in the 2005-07 biennium, the bill could increase bond issuance by up to $420,000 in 2007-09. Associated GPR debt service would be approximately $33,000 GPR annually for 20 years (this amount would increase each subsequent biennia as the required state subsidy increases).

DNR's fiscal estimate also states that the provision to repeal the statutory fees for licenses for septage land disposal sites would not have a fiscal effect. DNR indicates it has never charged the fee for the site license because not charging a fee encourages haulers to make arrangements to have extra septage land disposal sites for contingencies. Thus, the provision in the bill would not result in a revenue loss.

DNR's fiscal estimate did not discuss any potential revenue increase or decrease related to the provision that would allow DNR to promulgate rules for septage servicing license fees that would be assessed instead of the fees in statute. DNR officials have since indicated that the Department has not decided whether, or when, to pursue administrative rule changes related to establishing different fees under the bill. They note that any fiscal impacts would be analyzed in that rule-making process, which would include opportunities for public comment and legislative review.

Public Service Commission

The PSC fiscal estimate states that the provisions to increase PSC review of disputed local septage disposal fees would increase PSC staff workload that could not be absorbed by existing staff. PSC indicates that under existing PSC responsibilities related to sewage issues, the Commission usually receives approximately 10 to 20 complaints a year, of which three to five become formal Commission proceedings. The PSC estimates that if only one percent of the approximately 1,000 licensed septage disposers seek a review, the resulting 10 complaints would represent a doubling of PSC workload related to septage. The PSC estimates that it would incur ongoing annual costs of $53,900 for one engineer position. The bill would authorize PSC to bill its expenses related to the fees to the municipal sewage system, licensed septage disposer or both, depending on what the PSC's determination is related to the reasonableness of the septage disposal fee. However, the bill would not provide additional expenditure authority to the Commission for its costs related to expanded sewerage system reviews.

Local Costs

Counties would incur costs associated with implementing a private sewage system maintenance program that meets minimum standards that would be promulgated in Commerce administrative rules. Currently, all but four counties and two Milwaukee County cities have a maintenance program of some type (Ashland, Barron, Bayfield and Douglas counties, and the Cities of Milwaukee and Oak Creek). Barron County has agreed to restart administering a maintenance

program. Commerce estimates that 30 counties do not currently administer a maintenance program that would meet the minimum standards expected to be specified in the rules.

Although up to 70% (up to approximately $299,900 annually) of certain county costs related to developing the inventory and record keeping could be funded through the local assistance program under the bill (but deleted under AA 2), counties would be responsible for 30% or more of these costs. Commerce's fiscal estimate indicates that the costs of establishing and maintaining an inventory would likely exceed the amount of financial assistance funds available under the bill. However, information is not available about the estimated total cost for all counties to implement inventory and record keeping programs. While some counties have begun to implement some level of inventory and record keeping program, the type and degree of implementation varies among counties.

Counties would be responsible for paying 100% of costs related to the maintenance program that are not included in the inventory and record keeping program, such as enforcing maintenance requirements at private sewage systems. Counties currently assess sanitary permit fees for installation of a private sewage system that are statutorily set at a minimum of $61 ($20 of which is remitted to Commerce), and the portion of the fee retained by the county is used for the administration of private sewage system programs. The bill would retain this fee structure. Commerce officials indicate that most counties charge sanitary permit fees in excess of the $61 minimum fee, but information is not readily available about the amount of fee charged by various counties. Commerce officials also indicate that some counties also charge separate fees related to their maintenance reporting program under the counties' general authority to regulate private sewage systems. It is possible that if local costs would increase due to maintenance program requirements in the bill, and would not be reimbursed under the local assistance program created in the bill, local governments might choose to increase fees to recover their costs.

Commerce anticipates that, while the bill does not specifically require counties to conduct an inventory of private sewage systems, the maintenance program requirements to be promulgated in rule would require each county to conduct an inventory of private sewage systems located within its jurisdiction. Counties currently have varying levels of implementation of inventory and record keeping systems. Several counties have begun to inventory private sewage systems, and thus would likely incur fewer additional costs under the bill than counties that have not begun to inventory systems.

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