

1 **AN ACT to amend** 20.370 (3) (ma), 20.370 (4) (mq), 29.601 (3) (b), 30.202 (3),
2 30.2022 (1), 70.375 (4) (o), 94.73 (2) (bg) 2. and (d), 160.27 (5), 281.77 (1) (b),
3 283.87 (1) and 895.48 (2) (c) 2. of the statutes; **relating to:** deleting statutory
4 exemptions for septage disposal regulations.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on septage disposal.

COMMENT: This bill draft was prepared at the direction of chair Ainsworth. This bill draft relates to the special committee's discussion of the issue of enforcement of septage disposal statutes by the district attorney. The special committee discussed whether the current statute, s. 299.95, stats., should be changed to provide for enforcement of the septage disposal statute by the attorney general. The current enforcement statute excludes the septage disposal statute [s. 281.48, stats.] from enforcement by the attorney general. A separate bill draft prepared for the special committee amends that statute so that the attorney general would enforce septage disposal statutes and rules.

The statutes amended in this bill draft are similar to the amendment of s. 299.95, stats. Each of the statutes in this bill draft contains an exception for the septage disposal statute. This bill draft deletes all of those exceptions. Explanatory notes have been included to describe the consequences of eliminating each exemption.

All of these exemptions for septage disposal were 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 department of natural resources (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 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 draft 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.

The purpose of this draft is to allow the special committee on septage disposal to review all of these exceptions and to determine whether they should be retained or eliminated.

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

2 20.370 (3) (ma) *General program operations — state funds.* From the general fund,
3 the amounts in the schedule for regulatory and enforcement operations under chs. 30, 31 and
4 280 to 299, except s. ~~281.48~~, and ss. 44.47, 59.692, 59.693, 61.351, 61.354, 62.231, 62.234
5 and 87.30, for reimbursement of the conservation fund for expenses incurred for actions taken
6 under s. 166.04; for review of environmental impact requirements under ss. 1.11 and 23.40;
7 and for enforcement of the treaty-based, off-reservation rights to fish, hunt and gather held
8 by members of 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.

9 **SECTION 2.** 20.370 (4) (mq) of the statutes is amended to read:

10 20.370 (4) (mq) *General program operations — environmental fund.* From the
11 environmental fund, the amounts in the schedule for administration of environmental
12 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.

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

2 29.601 (3) (b) Paragraph (a) does not apply to authorized drainage and sewage from
3 municipalities and industrial or other wastes discharged from mines or commercial or
4 industrial or ore processing plants or operations, through treatment and disposal facilities
5 installed and operated in accordance with plans submitted to and approved by the department
6 under chs. 281, 285 or 289 to 299, ~~except s. 281.48,~~ or in compliance with orders of the
7 department. Any order is subject to modification by subsequent orders.

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 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.

8 **SECTION 4.** 30.202 (3) of the statutes is amended to read:

9 30.202 (3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities
10 authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit,
11 license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s.
12 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281 to 285 or 289 to 299, ~~except~~
13 ~~s. 281.48,~~ or specified in any rule promulgated, order issued or ordinance adopted under those
14 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.

1 **SECTION 5.** 30.2022 (1) of the statutes is amended to read:

2 30.2022 **(1)** Activities affecting waters of the state, as defined in s. 281.01 (18), that are
3 carried out under the direction and supervision of the department of transportation in
4 connection with highway, bridge, or other transportation project design, location,
5 construction, reconstruction, maintenance, and repair are not subject to the prohibitions or
6 permit or approval requirements specified under s. 29.601, 30.11, 30.12, 30.123, 30.19,
7 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or chs. 281 to 285 or 289 to 299, ~~except s.~~
8 ~~281.48~~. However, at the earliest practical time prior to the commencement of these activities,
9 the department of transportation shall notify the department of the location, nature, and extent
10 of the proposed work 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. Septage disposal is not any different from the other environmental statutes, and the exception is therefore eliminated.

11 **SECTION 6.** 70.375 (4) (o) of the statutes is amended to read:

12 70.375 **(4)** (o) Actual and necessary reclamation and restoration costs associated with
13 a mine in this state, including payments for future reclamation and postmining costs which are
14 required by law or by department of natural resources order and fees and charges under chs.
15 281, 285 or 289 to 299, ~~except s. 281.48~~, not otherwise deductible under this section. Any

1 refunds of escrowed or reserve fund payments allowed as a deduction under this paragraph
2 shall be taxed as net proceeds at the average effective tax rate for the years the deduction was
3 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 is therefore deleted.

4 **SECTION 7.** 94.73 (2) (bg) 2. and (d) of the statutes are amended to read:

5 94.73 (2) (bg) 2. Containment, removal, treatment or monitoring of environmental
6 contamination caused by the discharge if the containment, removal, treatment or monitoring
7 complies with chs. 281 to 285 and 289 to 299, ~~except s. 281.48.~~

8 (d) Soil or water removed from a discharge site as part of a corrective action may only
9 be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to
10 299, ~~except s. 281.48,~~ and if the department has given its written 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 statutes.

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

12 160.27 (5) Notwithstanding subs. (1) to (3), a regulatory agency may develop and
13 operate a system for monitoring and sampling groundwater to determine compliance with this

1 chapter. This section does not affect the authority of the department to require groundwater
2 monitoring by owners or operators of solid or hazardous waste facilities, water systems or
3 wastewater systems under chs. 280 to 285 or 289 to 299, ~~except s. 281.48.~~

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 septage disposal sites, and the exception is therefore eliminated.

4 **SECTION 9.** 281.77 (1) (b) of the statutes is amended to read:

5 281.77 (1) (b) “Regulated activity” means an activity for which the department may
6 issue an order under chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48,~~ if the activity is
7 conducted in violation of chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48,~~ or in violation
8 of licenses, permits or special orders issued or rules promulgated under chs. 285 or 289 to 299
9 or this chapter, ~~except s. 281.48.~~

NOTE: Section 281.77, stats., relates to damage to water supplies, and 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.

10 **SECTION 10.** 283.87 (1) of the statutes is amended to read:

11 283.87 (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who
12 violates this chapter or any provision of s. 29.601 or chs. 30, 31, 281, 285 or 289 to 299, ~~except~~
13 ~~s. 281.48,~~ relating to water quality the department may recover the cost of removing,

1 terminating or remedying the adverse effects upon the water environment resulting from the
2 unlawful discharge or deposit of pollutants into the waters of the state, including the cost of
3 replacing fish or other wildlife destroyed by the discharge or deposit. All moneys recovered
4 under this section shall be deposited 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.

5 **SECTION 11.** 895.48 (2) (c) 2. of the statutes is amended to read:

6 895.48 (2) (c) 2. Who would be liable for the discharge under chs. 281 to 285 or 289
7 to 299, ~~except s. 281.48~~, or any rule promulgated or permit or order issued under chs. 281 to
8 285 or 289 to 299, ~~except s. 281.48~~;

NOTE: Section 895.48 (2), stats., creates 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.

9 (END)