

1 **AN ACT** *to renumber* 200.59 (5); *to amend* 200.21 (11) and 281.49 (5) (c) 4.; and *to*
2 *create* 15.347 (20), 66.0821 (5) (c), 200.59 (5) (b), 281.49 (5) (e), (f) and (g) and
3 281.49 (5m) of the statutes; **relating to:** septage disposal fees charged by municipal
4 sewage systems, creating the disposal fee council, and granting rule-making
5 authority.

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

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

The current statutes regulate the disposal fee that a municipal sewage system may charge a licensed disposer, or septage hauler, to dispose septage at the system's facilities. This bill draft makes the following changes to the statute:

- Establishes that the septage disposal fees charged by a municipal sewage system must be reasonable and modifies the factors that a municipal sewage system may consider in the setting of these fees.
- Establishes a limit on municipal sewage system septage disposal fees. This limit is 150% of the fees that the system typically charges its customers connected to its system that discharge a comparable amount and strength of sewage to the system.
- Establishes a process for a licensed disposer to obtain a review of a septage disposal fee by the [department of natural resources] [public service commission].

COMMENT: This bill draft implements the committee's drafting instructions under item A., 2., cost of disposal, in memo no. 1, *suggestions of issues for committee discussion* (October 4, 2004). The draft contains 2 alternative processes for a septage hauler to obtain a review of a septage disposal fee. Alternative #1 is based upon the committee's drafting instructions. This alternative establishes the review process in the department of natural resources (DNR). Alternative #2 is based upon expanding the applicability of the current process for the

public service commission (PSC) review of complaints about rates, rules, and practices of municipal sewage systems under ss. 66.0821 (5) and 200.59 (5) to also apply to municipal sewage systems' septage disposal fees.

1 **SECTION 1.** 15.347 (20) of the statutes is created to read:

2 15.347 **(20)** DISPOSAL FEE COUNCIL. There is created a disposal fee council consisting
3 of the following members appointed by the secretary of natural resources for 3-year terms:

4 (a) A licensed disposer, as defined in s. 281.49 (1) (b).

5 (b) A representative of a municipal sewage system.

6 (c) A representative of a governmental unit responsible for the regulation of private
7 sewage systems who performs one or more of the governmental unit duties under s. 145.20
8 (2) or a representative of a county responsible for the regulation of the disposal of septage on
9 land who performs one or more of the county duties under s. 281.48 (5m).

COMMENT: This provision is part of the alternative #1 process for review of septage disposal fees. The operation of the council, including the selection of officers and the required frequency of meetings, is governed by the general provisions in s. 15.09, which are applicable to all councils in the executive branch of state government.

NOTE: The disposal fee council's responsibilities are specified in s. 281.49 (5m) (b), as created by this draft.

10 **SECTION 2.** 66.0821 (5) (c) of the statutes is created to read:

11 66.0821 **(5)** (c) For purposes of this subsection, a user of a service includes a licensed
12 disposer, as defined in s. 281.49 (1) (b), who disposes septage at a municipal sewer system
13 under a disposal plan under s. 281.49 (5).

COMMENT: This provision is part of the alternative #2 process for review of septage disposal fees.

NOTE: Under existing s. 66.0821 (5), a "user of a service" of a municipal sewer system may file a complaint with the PSC that the rates, rules, and practices of the system are unreasonable or unjustly discriminatory. This statute applies to municipal sewer systems that are

a municipal utility or a metropolitan sewerage district other than the Milwaukee metropolitan sewerage district (MMSD).

This provision clarifies that the complaint process in s. 66.0821 (5) also applies to the rates, rules, and practices for the disposal of septage by a licensed disposer at a municipal sewage system subject to sub. (5).

1 **SECTION 3.** 200.21 (11) of the statutes is amended to read:

2 200.21 **(11)** “Sewerage system” means all facilities of the district for collection,
3 transportation, storage, pumping, treatment and final disposition of sewage. “Sewerage
4 Except as provided in s. 200.59 (5), “sewerage system” does not include any private sewage
5 system, as defined in s. 145.01 (12), or any local sewer.

6 **SECTION 4.** 200.59 (5) of the statutes is renumbered 200.59 (5) (a).

7 **SECTION 5.** 200.59 (5) (b) of the statutes is created to read:

8 200.59 **(5)** (b) For purposes of this subsection, a user includes a licensed disposer, as
9 defined in s. 281.49 (1) (b), who disposes septage in the commission’s facilities under a
10 disposal plan under s. 281.49 (5).

COMMENT: The preceding 3 SECTIONS are part of the alternative #2 process for review of septage disposal fees.

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

The PSC has determined that the predecessor version of s. 200.59 (5) does not apply to the rates for the disposal of septage at a MMSD facility because of the exclusion of “private sewage systems” from the definition of “sewerage system” in the statutes governing MMSD. The above 3 SECTIONS establish that this complaint process also applies to the district’s rates, rules, and practices for the disposal of septage by a licensed disposer.

11 **SECTION 6.** 281.49 (5) (c) 4. of the statutes is amended to read:

12 281.49 **(5)** (c) 4. ~~Actual and equitable~~ Reasonable disposal fees based on the volume
13 ~~of septage introduced into the municipal sewage system and calculated at the rate applied to~~

1 other users of the municipal sewage system, and including the costs of additional facilities or
2 personnel necessary to accept septage at the point of introduction into the municipal sewage
3 system factors in par. (e). Disposal fees established under this subdivision are subject to the
4 limit specified in par. (f).

COMMENT: Based on information provided by staff at the PSC and the municipal environmental group, municipal sewage systems presently charge a variety of types of disposal fees for the disposal of septage at their facilities. These fees include fees based on:

- The volume of the septage (measured as \$/1,000 gallons disposed).
- The strength of the septage (measured as \$/amount or concentration of a component of the septage, such as biochemical oxygen demand (BOD) or total suspended solids (TSS)).
- Administrative or handling expenses (measured as \$/discharge, \$/year or \$/truck/year).
- Laboratory fees (measured as \$/test or \$/month).

5 **SECTION 7.** 281.49 (5) (e), (f) and (g) of the statutes are created to read:

6 281.49 (5) (e) Except as provided under par. (g), a municipal sewage system shall base
7 its disposal fees under par. (c) 4. for septage introduced into the system by a licensed disposer
8 on the following factors:

- 9 1. The portion of the cost attributable to the septage of facilities at the system that
10 receive and hold septage.
- 11 2. The cost of any testing of the septage conducted by the system.
- 12 3. The cost of treating the septage by the system based on the volume and strength of
13 the septage.
- 14 4. The portion of the system's reasonable additional administrative and personnel costs
15 for accepting the septage not reflected in the costs identified in subds. 2. and 3.

1 (f) Except as provided under par. (g), a municipal sewage system may not charge a
2 licensed disposer under par. (c) 4. a total amount of disposal fees, expressed on a per load basis,
3 that exceeds 150% of the sum of all of the following charges:

4 1. The volume charges for the disposal of a comparable amount and strength of sewage
5 that the system charges customers connected to its system.

6 2. The amount of any fixed, periodic service charge, as adjusted under par. (h), that the
7 system charges customers with comparable strength of sewage connected to its system, via
8 the size of the customer meter most frequently used by these customers or other comparable
9 measure of wastewater discharges, prorated in proportion to [] days divided by 30 days.

10 (g) The department may by rule interpret, modify, or delete a factor on the list of factors
11 in par. (e), add a factor to this list, or interpret or modify the method of calculating the limit
12 on septage disposal fees in par. (f) to ensure that septage disposal fees established under par.
13 (c) 4. are reasonable.

14 (h) 1. If a municipal sewage system charges customers connected to its system a fixed
15 charge on a monthly basis, then for purposes of par. (f) 2., the fixed, periodic service charge
16 shall be the applicable fixed monthly service charge.

17 2. If a municipal sewage system charges customers connected to its system a fixed
18 charge on a basis other than monthly, then for purposes of par. (f) 2., the fixed, periodic service
19 charge shall be the applicable fixed charge multiplied by the ratio of 30 divided by the period
20 of the service charge measured in days. For purposes of this subdivision, a quarter of a year
21 shall be 90 days and a half of a year shall be 180 days.

COMMENT: The committee's instructions were for a limit on septage disposal fees equal to 150% of the typical fee that a municipal sewage system charges its customers connected to its system that discharge a comparable amount and strength of sewage to the system. The fee charged connected customers typically has 2 components. One

component is a volume-based charge that may vary by the strength of the wastewater, typically measured by the amount of parameters such as BOD and TSS. The 2nd component is a fixed charge that varies by the size of the water or wastewater meter used by the customer or other measure of relative wastewater discharges, such as the number of water consuming appliances at the customer's premises. Different municipal sewage systems use different periods for their fixed charge, such as a monthly or bi-monthly fixed charge.

The limit in par. (f) in this provision reflects both of these charges. The prorating factor in the 2nd component was included to reflect that a licensed disposer does not continuously discharge to the municipal sewage system. If the committee pursues the development of a limit on disposal fees based on the approach in this draft, it will need to assign the number of days in the bracketed text in this provision.

The 150% figure used in this disposal fee limit is based on the committee's discussion and may need to be adjusted to reflect the range of municipal sewage system treatment costs.

See memo no. 2, *example application of the limit in WLC: 0054/1 on septage disposal fees charged by municipal sewage systems* (November 9, 2004), for an example of the application of the limit on septage disposal fees in par. (f).

1 **SECTION 8.** 281.49 (5m) of the statutes is created to read:

2 281.49 **(5m)** REVIEW OF DISPOSAL FEES. (a) A license disposer may file a written
3 complaint with the department alleging that the disposal fee charged by a municipal sewage
4 system does not comply with sub. (5) (c) 4. The department shall conduct an investigation
5 and shall review written findings submitted by the municipal sewage system, which describes
6 how the disposal fee satisfies sub. (5) (c) 4. The department shall determine whether the fee
7 is reasonable based on the factors in sub. (5) (e) and complies with the limit in sub. (5) (f) and
8 shall issue a written decision. If the department determines that the fee does not comply with
9 sub. (5) (c) 4., it shall determine and by order specify a reasonable fee that applies for up to
10 one year. Section 227.42 does not apply to the department's decision under this subsection.

(b) The complainant or the municipal sewage system may appeal the department's decision under par. (a) to the secretary of natural resources within 30 days after the department issues its decision. The septage disposal fee council shall advise the secretary as to whether the department's decision should be affirmed or overturned. If the secretary determines that the fee does not comply with sub. (5) (c) 4., the secretary shall determine and by order specify a reasonable fee that applies for up to one year.

COMMENT: This provision is part of the alternative #1 process for review of septage disposal fees. The disposal fee council is created in SECTION 1. As drafted, the secretary's decision under sub. (2) may be reviewed in a contested case hearing if the conditions in s. 227.42 (1) are met.

(END)