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11/04/2004

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.

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

Most other environmental enforcement actions are referred by the DNR to the attorney general, who may then commence an enforcement action in circuit court. However, there is a conflict in 2 different statutes relating to enforcement of the septic servicing and disposal regulatory statute. The first statute, s. 281.98, provides that a person who violates a provision of ch. 281 (which includes the septic statutes), or any rules or orders issued by DNR under the statutes, may be required to forfeit from \$10 to \$5,000 for each violation. The attorney general enforces these statutes, rules, and orders upon referral by the DNR. The 2nd statute, s. 299.95, provides that the attorney general may enforce most environmental statutes. However, the septic servicing and disposal statute is specifically excluded from the enforcement authority of the attorney general under s. 299.95. This conflict casts doubt on the ability of the attorney general to enforce septic disposal regulations.

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

COMMENT: This bill draft implements the committee's request for a draft proposal authorizing the attorney general to enforce private sewage system servicing regulations under item B. 2., administration and enforcement, in memo no. 1, *suggestions of issues for committee discussion* (October 4, 2004).

1 **SECTION 1.** 299.95 of the statutes is amended to read:

2 **299.95 Enforcement; duty of department of justice; expenses.** The attorney general
3 shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. ~~281.48~~, 285.57, 285.59,
4 and 299.64, and all rules, special orders, licenses, plan approvals, permits, and water quality
5 certifications of the department, except those promulgated or issued under ss. ~~281.48~~, 285.57,
6 285.59, and 299.64 and except as provided in ss. 285.86 and 299.85 (7) (am). The circuit court
7 for Dane county or for any other county where a violation occurred in whole or in part has
8 jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
9 license, plan approval, permit, or certification by injunctive and other relief appropriate for
10 enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this
11 chapter or the rule, special order, license, plan approval, permit or certification prohibits in
12 whole or in part any pollution, a violation is considered a public nuisance. The department
13 of natural resources may enter into agreements with the department of justice to assist with
14 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid to the
15 department of justice under these agreements shall be credited to the appropriation account
16 under s. 20.455 (1) (k).