

1       **AN ACT** *to repeal* 281.48 (3) (d) 1. to 4., 281.48 (4m) (b) 2. and 281.48 (4s) (a) 4. and  
2       (b); *to renumber* 200.59 (5); *to renumber and amend* 145.245 (3); *to amend* 20.143  
3       (3) (de), 20.370 (3) (ma), 20.370 (4) (bL), 20.370 (4) (mq), 29.601 (3) (b), 30.202  
4       (3), 30.2022 (1), 70.375 (4) (o), 94.73 (2) (bg) 2. and (d), 145.10 (1) (c), 145.245 (9)  
5       (a), 160.27 (5), 200.21 (11), 281.17 (3), 281.48 (title), 281.48 (2) (b) to (g), 281.48  
6       (2m), 281.48 (3) (d) (intro.), 281.48 (3) (e), 281.48 (4g), 281.48 (4m) (title) and (a),  
7       281.48 (4m) (b) (intro.), 281.48 (4m) (b) 1., 281.48 (4m) (c), 281.48 (4s) (a) (intro.),  
8       281.48 (5) (a) 4., 281.49 (1) (a), 281.49 (5) (c) 4., 281.58 (8) (b) 1., 281.77 (1) (b),  
9       283.87 (1), 299.95 and 895.48 (2) (c) 2.; and *to create* 66.0821 (5) (c), 145.20 (2) (i),  
10       145.20 (6), 145.245 (11) (f), 200.59 (5) (b), 281.41 (3), 281.48 (2) (bm), 281.48 (4m)  
11       (d), 281.48 (4s) (c), 281.48 (5p), 281.49 (5) (e), 281.58 (1) (cv), 281.58 (7) (b) 7.,  
12       281.58 (12) (a) 5. and 283.82 of the statutes; **relating to:** the management and  
13       disposal of septage and municipal sewage sludge and granting rule-making  
14       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 bill draft has the following key provisions.

***Septage disposal fees***

The current statutes regulate the disposal fees that a municipal sewage system may charge a licensed disposer (septage hauler), to dispose septage at the system's facilities. This bill draft makes the following changes to this 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 process for a licensed disposer to file a complaint and obtain a review of a septage disposal fee by the public service commission (PSC).

#### ***Local assistance program***

This bill draft creates 2 local assistance programs, to be administered by the department of commerce. The programs will provide cost-sharing grants to counties for up to 70% of the local cost of conducting an inventory of existing private sewage systems, and for developing a recordkeeping system for information about private sewage systems in each county.

#### ***Maintenance of private sewage systems***

Under current law, the department of commerce has promulgated rules that establish a maintenance program for new private sewage systems in counties that participate in the Wisconsin fund grant program for private sewage system replacement. One of the conditions for a county to participate in the Wisconsin fund grant program is that the county must adopt and enforce the maintenance program. Under its general authority to regulate private sewage systems, the department of commerce has promulgated rules that set forth maintenance requirements for all private sewage systems. This bill draft moves the county maintenance program out of the Wisconsin fund grant program and into the general department of commerce duties, and makes all counties responsible for adoption and enforcement of the maintenance program.

#### ***Clean Water Fund loans***

The current statutes create the clean water fund program, which provides financial assistance to municipalities for the cost of planning, design, and construction of wastewater treatment facilities, and other surface water and groundwater pollution abatement facilities. The program includes various forms of financial assistance, including market interest rate or below market interest rate loans. This bill draft modifies the clean water fund program to provide zero percent interest rate loans for any portion of a treatment work project that relates to facilities for receiving and capacity for treating septage. This will reduce some of the potential risk incurred by the municipality in providing facilities and capacity for septage disposal, in case the anticipated amount of septage is not received, and will provide an incentive for the municipality to provide these facilities and capacity.

***Sewage treatment plant planning***

Facilities plans are prepared for each sewage disposal plant. There is not currently a specific requirement to address the issues related to septage disposal, although these issues could be included in the plans under current law. This bill draft creates a specific requirement to address septage disposal needs in these plans.

***Septage and sewage sludge disposal regulations***

The disposal of septage on land is regulated under the current statutes. The department of natural resources (DNR) has adopted administrative rules to implement the statutes. This bill draft makes a number of technical changes to these statutes, and makes several minor substantive changes, such as changing the disposal site license to a site approval, restricting the current exemption from the requirement for a disposal site approval, and clarifying the legal effect of an application for site approval. In addition, this bill draft provides that local units of government may not prohibit the land disposal of septage or sewage sludge, and places limits on the authority of local units of government to regulate the land disposal of sewage sludge.

***Septage servicing and septage land disposal license fees***

The bill draft authorizes the DNR to establish fees for licenses to service private sewage systems in lieu of the current statutorily specified fees. The bill draft also repeals the current fees for licenses for septage land disposal sites.

***Enforcement***

The bill draft removes a conflict between 2 current statutes and clarifies that the attorney general enforces violations of septage servicing and disposal violations referred by the DNR. The bill draft does not affect the authority of DNR to enforce lesser violations of these regulations via issuance of citations.

***Deletion of statutory cross-references***

The current statutes include many provisions that cross-reference all of the environmental statutes. Fourteen of these provisions includes an exception for the septage disposal statute. The exceptions for the septage disposal statute resulted from the renumbering of environmental statutes in the 1995 session of the legislature. The septage disposal statute was not included among the environmental statutes prior to the renumbering, but was moved so as to be grouped with those statutes as part of the renumbering. The exceptions were created as part of the renumbering to avoid making substantive changes in the process of

renumbering. This bill draft deletes these exceptions. A detailed explanation of the consequence of each amendment is included in the bill draft.

1       **SECTION 1.** 20.143 (3) (de) of the statutes is amended to read:

2       20.143 (3) (de) As a continuing appropriation, the amounts in the schedule for financial  
3       assistance under the private sewage system replacement and rehabilitation program and for  
4       local assistance for inventories and recordkeeping under s. 145.245.

NOTE: The appropriation for the Wisconsin fund grant program for private sewage system replacement and rehabilitation is modified to allow the department of commerce to fund a local assistance program for inventorying existing private sewage systems and establishing maintenance recordkeeping. The local assistance programs are established in s. 145.20 (6) (a) and (b), as created by this bill draft.

5       **SECTION 2.** 20.370 (3) (ma) of the statutes is amended to read:

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

The exemption for septage disposal in this statute was 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 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 the executive branch 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.

This bill draft makes the same amendment in all of the other statutes that contain an exemption for the septage disposal statute.

1           **SECTION 3.** 20.370 (4) (bL) of the statutes is amended to read:

2           20.370 (4) (bL) *Wastewater management -- fees.* From the general fund, all moneys  
3 received under s. 281.17 (3) for the certification of operators of water systems, wastewater  
4 treatment plants and septage servicing vehicles and under s. 281.48 (4s) (a) and ~~(b)~~ (c) for  
5 wastewater management activities.

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

7           20.370 (4) (mq) *General program operations -- environmental fund.* From the  
8 environmental fund, the amounts in the schedule for administration of environmental  
9 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. [For a full explanation of the source of the current exemption in this statute for

septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1       **SECTION 5.** 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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

8       **SECTION 6.** 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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1       **SECTION 7.** 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. The regulation of septage disposal is not any different in concept from the other cited environmental statutes, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

11      **SECTION 8.** 66.0821 (5) (c) of the statutes is created to read:



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

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). If the PSC determines under the specified process that the rates, rules, or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable rates, rules, and practices and may make other just and reasonable orders with respect to the complaint.

The provision created in this SECTION states expressly 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 other than MMSD.

4           **SECTION 9.** 70.375 (4) (o) of the statutes is amended to read:

5           70.375 (4) (o) Actual and necessary reclamation and restoration costs associated with  
6   a mine in this state, including payments for future reclamation and postmining costs which are  
7   required by law or by department of natural resources order and fees and charges under chs.  
8   281, 285 or 289 to 299, except s. 281.48, not otherwise deductible under this section. Any  
9   refunds of escrowed or reserve fund payments allowed as a deduction under this paragraph  
10   shall be taxed as net proceeds at the average effective tax rate for the years the deduction was  
11   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 disposal is therefore deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1       **SECTION 10.** 94.73 (2) (bg) 2. and (d) of the statutes are amended to read:

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

5       (d) Soil or water removed from a discharge site as part of a corrective action may only  
6       be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to  
7       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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

8       **SECTION 11.** 145.10 (1) (c) of the statutes is amended to read:

9       145.10 **(1)** (c) Falsified information on an inspection form under s. ~~145.245(3)~~ 145.20  
10       (5).

11       **SECTION 12.** 145.20 (2) (i) of the statutes is created to read:

12       145.20 **(2)** (i) Adopt and enforce the maintenance program under sub. (5).

**NOTE:** This provision adds to the list of county duties for the private sewage system regulatory program a reference to the maintenance program that is modified and expanded in the next SECTION of the bill draft.

1           **SECTION 13.** 145.20 (6) of the statutes is created to read:

2           145.20 **(6)** (a) The department shall develop a local assistance program to provide  
3 support for each governmental unit that undertakes an inventory of private sewage systems  
4 within the jurisdiction of the governmental unit. The local assistance program may support  
5 research by a governmental unit that is necessary to locate existing private sewage systems,  
6 conversion of existing inventories to be compatible with geographic information systems,  
7 improvement of data management in governmental units that have completed inventories, and  
8 development of mailing lists to contact owners of private sewage systems and other similar  
9 projects related to the inventory.

10           (b) The department shall develop a local assistance program for each governmental unit  
11 to develop systems to manage the local records related to the location, design, management  
12 plan, inspection, maintenance, and servicing of private sewage systems, disposal of septage,  
13 sites approved for the land application of septage, and other information associated with  
14 private sewage systems and septage regulation and management. The department shall set  
15 priorities for the development of the recordkeeping system, which shall set the highest priority  
16 on compatible state and local records, compatible state and local information technology  
17 systems, consistent use of geographical information systems and expeditious implementation  
18 of the recordkeeping system in all governmental units.

19           (c) The department may make cost-sharing grants to governmental units of up to 70%  
20 of the cost of a project under pars. (a) and (b), and may accept either a cash or in-kind  
21 contribution from the governmental unit. The local assistance programs under pars. (a) and  
22 (b) may fund the acquisition of equipment for managing the inventory and for recordkeeping  
23 and development of the inventory and recordkeeping systems, but not the operation of those  
24 systems.

**NOTE:** This provision creates local assistance programs, administered by the department of commerce, to provide assistance to counties (and to cities and villages in Milwaukee county) to develop inventories of existing private sewage systems, and to develop recordkeeping systems for information regarding private sewage systems. Funding for the local assistance is from the Wisconsin fund grant program, in s. 145.245 (11) (f), as created by this bill draft.

1           **SECTION 14.** 145.245 (3) of the statutes is renumbered 145.20 (5) and amended to read:

2           145.20 (5) MAINTENANCE. (a) The department shall establish a maintenance program  
3 to be administered by governmental units responsible for the regulation of private sewage  
4 systems. The department shall determine the private sewage systems to which the  
5 maintenance program applies. At a minimum the maintenance program is applicable to all  
6 new or replacement private sewage systems constructed in a governmental unit after the date  
7 on which the governmental unit adopts this the program under s. 145.245. The department  
8 may apply the maintenance program by rule to private sewage systems constructed in a  
9 governmental unit responsible for the regulation of private sewage systems on or before the  
10 date on which the governmental unit adopts the program under s. 145. 245. The department  
11 shall determine the private sewage systems to which the maintenance program applies in  
12 governmental units that do not adopt the program under s. 145.245, except that the  
13 maintenance program in these governmental units does not commence until January 1, 2008.

14           (b) The maintenance program shall include a requirement of inspection or pumping of  
15 the private sewage system at least once every 3 years if the private sewage system does not  
16 have a maintenance plan as prescribed by rule by the department. Inspections may be  
17 conducted by a master plumber, journeyman plumber or restricted plumber licensed under this  
18 chapter, a person licensed under s. 281.48 or by an employee of the state or governmental unit  
19 designated by the department, and the department may determine by rule other persons who  
20 are qualified to undertake the required inspection, maintenance, or repairs. The department

1 shall specify the methods to establish the required frequency of inspection, maintenance, and  
2 pumping for each type of private sewage system that does not have a maintenance plan and  
3 shall periodically update the methods.

4 (c) The department of natural resources may suspend or revoke a license issued under  
5 s. 281.48 or a certificate issued under s. 281.17 (3) to the operator of a septage servicing  
6 vehicle if the department of natural resources finds that the licensee or operator falsified  
7 information on inspection forms. The department of commerce may suspend or revoke the  
8 license of a plumber licensed under this chapter if the department finds that the plumber  
9 falsified information on inspection forms.

**NOTE:** The department of commerce administers the private sewage system replacement or rehabilitation grant program under s. 145.245, stats. The program is referred to as the Wisconsin fund. This program pays for part of the cost of replacing or rehabilitating failing private sewage systems for eligible individuals and small business owners.

A county must adopt a resolution in which the county agrees to administer the grant program in accordance with state law. One eligibility requirement is that the county where the property is located must adopt and enforce a maintenance program for private sewage systems that are newly installed or replaced after the date that the county adopts the resolution. The maintenance program ensures that inspection and pumping of private sewage systems is done as required. The department of commerce has established the maintenance requirements by administrative rule in s. Comm. 87.60.

This bill draft moves the county maintenance program statute out of the Wisconsin fund program and into the general department of commerce and county duties for private sewage system regulation, thus making it applicable to all counties. The draft retains the requirement in the current statute that requires inspection or pumping out the contents of a private sewage system at least once every 3 years, but limits this provision to private sewage systems that do not have a maintenance program under current department of commerce rules. The bill draft directs the department of commerce to specify by rule methods to establish requirements for periodic maintenance of these systems, which will continue to allow counties to adopt more frequent maintenance requirements for these systems. The bill draft authorizes the department

to designate which credentialed professionals may undertake the required inspection, maintenance, or repairs, in addition to those authorized under the current statute.

The current statute requires that the county maintenance program must apply to private sewage systems that are newly installed or replaced after the date that the county adopts the Wisconsin fund grant program. The bill draft maintains this provision, without change, for counties that participate in the Wisconsin fund grant program. The bill draft requires the department of commerce to determine which other private sewage systems are subject to the maintenance program, whether or not the county participates in the Wisconsin fund program.

1       **SECTION 15.** 145.245 (9) (a) of the statutes is amended to read:

2       145.245 **(9)** (a) Adopt and administer the maintenance program established under sub.  
3       ~~(3)~~ s. 145.20 (5);

4       **SECTION 16.** 145.245 (11) (f) of the statutes is created to read:

5       145.245 **(11)** (f) The department may allocate up to 10% of the funds available under  
6       this subsection each fiscal year for local assistance for inventories and recordkeeping under  
7       s. 145.20 (6).

**NOTE:** This provision allows the department of commerce to allocate up to 10% of the funding available each fiscal year under the Wisconsin fund grant program for repair and replacement of private sewage systems for the inventory and recordkeeping programs under s. 145.20 (6), as created by this bill draft.

8       **SECTION 17.** 160.27 (5) of the statutes is amended to read:

9       160.27 **(5)** Notwithstanding subs. (1) to (3), a regulatory agency may develop and  
10       operate a system for monitoring and sampling groundwater to determine compliance with this  
11       chapter. This section does not affect the authority of the department to require groundwater  
12       monitoring by owners or operators of solid or hazardous waste facilities, water systems or  
13       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 groundwater monitoring required at septage disposal sites, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1       **SECTION 18.** 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 19.** 200.59 (5) of the statutes is renumbered 200.59 (5) (a).

7       **SECTION 20.** 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).

**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. If the PSC determines under the specified process that the rates, rules, or practices complained of are unreasonable or unjustly discriminatory, it shall determine and by order fix reasonable rates, rules, and practices and shall make other orders with respect to the complaint as may be just and reasonable.

The PSC has determined that 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 [see s. 200.21 (11), Stats.]. The preceding 3 SECTIONS establish that the complaint process in s. 200.59 (5) also

applies to the district's rates, rules, and practices for the disposal of septage by a licensed disposer.

1       **SECTION 21.** 281.17 (3) of the statutes is amended to read:

2       281.17 (3) The department shall promulgate rules establishing an examining program  
3       for the certification of operators of water systems, wastewater treatment plants and septage  
4       servicing vehicles operated under a license issued under s. 281.48 (3), setting such standards  
5       as the department finds necessary to accomplish the purposes of this chapter and chs. 285 and  
6       289 to 299, including requirements for continuing education. The department may charge  
7       applicants a fee for certification. All moneys collected under this subsection for the  
8       certification of operators of water systems, wastewater treatment plants and septage servicing  
9       vehicles shall be credited to the appropriation under s. 20.370 (4) (bL). No person may operate  
10      a water systems, wastewater treatment plant or septage servicing vehicle without a valid  
11      certificate issued under this subsection. The department may suspend or revoke a certificate  
12      issued under this subsection for a violation of any statute or rule relating to the operation of  
13      a water system or wastewater treatment plant or to septage servicing, for failure to fulfill the  
14      continuing education requirements or as provided under s. ~~445.245 (3)~~ 145.20 (5). The owner  
15      of any wastewater treatment plant shall be, or shall employ, an operator certified under this  
16      subsection who shall be responsible for plant operations, unless the department by rule  
17      provides otherwise. In this subsection, "wastewater treatment plant" means a system or plant  
18      used to treat industrial wastewater, domestic wastewater or any combination of industrial  
19      wastewater and domestic wastewater.

20      **SECTION 22.** 281.41 (3) of the statutes is created to read:

21      281.41 (3) (a) If an owner proposes a sewage disposal plant or an extension of an  
22      existing sewage disposal plant that increases the capacity of the existing plant by at least 20



1 percent, the department shall require that owner, in preparing a plan under this section, to  
2 address the need for and include plans for the disposal of septage, as defined in s. 281.48 (1)

3 (d). The plan contents required under this paragraph shall address all of the following:

4 1. The amount of septage produced throughout the septage service area and the  
5 expected increase in septage production during the planning period.

6 2. The capacity for the disposal of septage during the planning period on land within  
7 the septage service area, in the sewage disposal plant, and by other available methods.

8 3. The location of private sewage systems within the septage service area, and the  
9 distances required to haul septage for disposal either on land or in the sewage disposal plant.

10 4. The potential for contracts with private sewage system owners, licensed disposers,  
11 as defined in s. 281.49 (1) (b), or municipalities to assure delivery of septage to the sewage  
12 disposal plant.

13 (b) In addressing the need for and the plan contents required under par. (a), the owner  
14 is required only to use data or other information that has previously been collected, whether  
15 by the owner or by others, and the owner is not required to conduct new research.

16 (c) The contents of the plan required under par. (a) is for the purpose of assuring that  
17 septage disposal needs are considered in the decision-making process for sewage disposal  
18 plant planning, but par. (a) does not require construction of facilities for the handling or  
19 disposal of septage.

20 (d) In this subsection, “septage service area” means the area containing private sewage  
21 systems served or anticipated to be served by a sewage disposal plant during the planning  
22 period.

**NOTE:** Facilities plans are prepared for each sewage disposal plant.  
There currently is not a specific requirement to address the issues related  
to septage disposal, although these issues could be included in the plans

under current law. This bill draft creates a specific requirement to address septage disposal needs in these plans. The new planning requirement applies to new sewage disposal plants or expansions that increase sewage disposal plant capacity by at least 20 percent. The plans will address such issues as the amount of land and sewage treatment plant capacity available for septage disposal, the location of land disposal sites and sewage disposal plants in relation to the sources of septage, and other related issues. This analysis is for the purpose of assuring that information regarding septage disposal needs is considered in the decision-making process for sewage treatment plant construction and expansion. The bill draft only specifies that the information must be considered in the decision-making process, and does not require the construction of facilities for handling or disposal of septage.

1       **SECTION 23.** 281.48 (title) of the statutes is amended to read:

2       **281.48 (title) Servicing septic tanks, soil absorption fields, holding tanks, grease**  
3       **traps interceptors and privies.**

4       **SECTION 24.** 281.48 (2) (b) to (g) of the statutes are amended to read:

5       281.48 (2) (b) “Grease trap interceptor” means a watertight tank for the collection of  
6       grease present in sewage and other wastes, and from which grease may be skimmed from the  
7       surface of liquid waste for disposal receptacle designed to intercept and retain grease or fatty  
8       substances.

9       (c) “Privy” means a cavity in the ground or a portable above-ground device constructed  
10      for toilet uses which receives human excrement either to be partially absorbed directly by the  
11      surrounding soil or stored for decomposition and periodic removal an enclosed nonportable  
12      toilet into which nonwater-carried human wastes are deposited to a subsurface storage  
13      chamber that may or may not be watertight.

14      (d) “Septage” means the scum, liquid, sludge or other waste in a septic tank, soil  
15      absorption field, holding tank, grease trap or interceptor, privy, or other component of a private  
16      sewage system.

1 (e) "Septic tank" means ~~and includes a septic toilet, chemical closet and any other~~  
2 watertight enclosure used for storage and anaerobic decomposition of human excrement, or  
3 domestic or industrial wastes wastewater.

4 (f) "Servicing" means removing septage from a septic tank, soil absorption field,  
5 holding tank, grease ~~trap or~~ interceptor, privy, or other component of a private sewage system  
6 and disposing of the septage.

7 (g) "Soil absorption field" means an area or cavity in the ground which receives the  
8 liquid discharge of a septic tank or similar ~~wastewater treatment device~~ component of a private  
9 sewage system.

NOTE: The definitions in this SECTION are amended to clarify and update  
the text of the definitions.

10 **SECTION 25.** 281.48 (2) (bm) of the statutes is created to read:

11 281.48 (2) (bm) "Private sewage system" has the meaning given in s. 145.01 (12).

NOTE: The term "private sewage system" is used in current s. 281.48 but  
is not defined. The cross-referenced definition is the definition used in  
the statutes under department of commerce jurisdiction for private  
sewage system regulation.

12 **SECTION 26.** 281.48 (2m) of the statutes is amended to read:

13 281.48 (2m) POWERS OF THE DEPARTMENT. The department ~~shall have~~ has general  
14 supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease  
15 ~~traps and~~ interceptors, privies, and other components of private sewage systems.

16 **SECTION 27.** 281.48 (3) (d) (intro.) of the statutes is amended to read:

17 281.48 (3) (d) (intro.) A farmer who disposes of septage on land is exempt from the  
18 licensing requirement under par. (a) if all of the following conditions in sub. (4m) (b) apply.

NOTE: The current statutes require a person who services (i.e., pumps  
the contents from) a private sewage system to obtain a license, with one  
exception. Under the current statutes, a farmer who services a private

sewage system is not required to obtain a license if the farmer does all of the following: removes septage from a private sewage system that is located on the same parcel where the septage is disposed, disposes of no more than 3,000 gallons per week, complies with all regulations related to servicing a private sewage system, and has sufficient land that is suitable for septage disposal. This bill draft narrows the exemption for farmers so that the license exemption is available only to a farmer who services a septic tank, and not to a farmer who services a holding tank or other private sewage system. This bill draft also states explicitly that the farmer must pump and dispose of the septic tank waste on property that the farmer owns or leases, to make this provision conform to legislative intent.

1       **SECTION 28.** 281.48 (3) (d) 1. to 4. of the statutes are repealed.

2       **SECTION 29.** 281.48 (3) (e) of the statutes is amended to read:

3       281.48 (3) (e) *Operator certification.* No person, except for a farmer exempted from  
4       licensing under par. (d), may service a septage private sewage system or operate a septage  
5       servicing vehicle unless the person is certified as an operator of a septage servicing vehicle  
6       under s. 281.17 (3).

7       **SECTION 30.** 281.48 (4g) of the statutes is amended to read:

8       281.48 (4g) **RULES ON SERVICING.** The department shall promulgate rules relating to  
9       servicing septic tanks, soil absorption fields, holding tanks, grease traps and interceptors,  
10      privies, and other components of private sewage systems in order to protect the public health  
11      against unsanitary and unhealthful practices and conditions, and to protect the surface waters  
12      and groundwaters of the state from contamination by septage. The rules shall comply with  
13      ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license  
14      or ~~registration~~ a license exception under sub. (3). The rules shall require each person with a  
15      license under sub. (3) to maintain records of the location of ~~sites~~ private sewage systems  
16      serviced and the volume of septage disposed of and location of ~~septage disposed~~ that disposal.

17      **SECTION 31.** 281.48 (4m) (title) and (a) of the statutes are amended to read:

1           281.48 (4m) (title) ~~SITE LICENSES~~ APPROVALS. (a) The department may require a soil  
2   test and a license shall require a site approval for any location where septage is stored or  
3   disposed of on land, ~~except that the department may not require a soil test and a license for~~  
4   septage disposal in a licensed solid waste disposal facility. ~~In determining whether to require~~  
5   a license for a site, ~~the department shall consider the septage disposal needs of different areas~~  
6   of the state.

NOTE: "Stored" is deleted because storage of septage is regulated under s. 281.41 rather than s. 281.48. The site license for land disposal of septage is changed to a site approval. This change allows the DNR to continue its present practice of reviewing applications for septage disposal and approving them based on the paperwork submitted. A site license, as in the current statute, implies a more thorough review of each application. The exception for septage disposal in a solid waste disposal facility is eliminated so that the hauler must notify the DNR that the septage will be taken to a landfill and the DNR may simply approve the septage disposal if it is consistent with the landfill's plan of operation.

7           **SECTION 32.** 281.48 (4m) (b) (intro.) of the statutes is amended to read:

8           281.48 (4m) (b) (intro.) Notwithstanding par. (a), the department may not require a  
9   license site approval for a location where septage is disposed of on land if the person who  
10 disposes of the septage is a farmer who owns or leases that location and if:

NOTE: The current statute contains an exemption from the requirement for a site license for any place where septage is disposed on land. DNR may not currently require a site license (changed in this draft to a site approval) for a location where septage is removed from a private sewage system and disposed on the same parcel where the private sewage system is located. This bill draft limits the exception from the requirement for a site approval so that it applies only to farmers. In addition, this bill draft narrows the exception in other respects in the following 2 SECTIONS, as explained in the notes. This bill draft also states explicitly that the farmer must pump and dispose of the septic tank waste on property that the farmer owns or leases, to make this provision conform to legislative intent.

11           **SECTION 33.** 281.48 (4m) (b) 1. of the statutes is amended to read:

1           281.48 (4m) (b) 1. The septage is removed from a septic tank, ~~soil absorption field,~~  
2     ~~holding tank, grease trap or privy~~ which is located on the same parcel where the septage is  
3     disposed of; and

NOTE: This bill draft narrows the exception from site approval so that it applies only to septage removed from a septic tank. The main effect of this change is either to require the contents of a holding tank or other private sewage system to be taken to a sewage treatment plant or, if the holding tank or other waste is disposed on the same parcel where the holding tank or other private sewage system is located, the disposal site must have a site approval.

4           **SECTION 34.** 281.48 (4m) (b) 2. of the statutes is repealed.

NOTE: The repeal of s. 281.48 (4m) (b) 2. deletes the 3,000 gallon per week limit for disposal of septage without a site approval on the same parcel where the private sewage system is located. This limit is no longer necessary due to the elimination of holding tanks from the types of private sewage systems for which the site approval exemption is provided. Septic tanks, which may continue to be pumped and the septage disposed on the same parcel, do not produce large volumes of septage.

5           **SECTION 35.** 281.48 (4m) (c) of the statutes is amended to read:

6           281.48 (4m) (c) If a location is exempt from ~~licensing~~ site approval under par. (b), the  
7     department may require the person who services the septic tank, ~~soil absorption field, holding~~  
8     ~~tank, grease trap or privy to register the disposal site with the department and provide the~~  
9     department with information to show that sufficient land area is available for disposal.

10          **SECTION 36.** 281.48 (4m) (d) of the statutes is created to read:

11          281.48 (4m) (d) A person seeking a site approval under par. (a) shall submit an  
12     application to the department at least 7 days prior to using the site. Upon receiving an  
13     application for site approval, the department may enter and inspect the site if the department  
14     determines such an inspection is necessary. Commencing 7 days after submitting the

1 application, the applicant may use the site unless the department notifies the applicant that the  
2 site may not be used.

**NOTE:** The procedure for a septage hauler to obtain a site license (changed to a site approval in this bill draft) is set out by the DNR in administrative rules in ch. NR 113. The rules contain a provision requiring the hauler to notify the DNR at least 7 days prior to using a field for septage disposal. The rules do not clearly state the consequence if DNR does not respond within the 7 days. This bill draft provides that the hauler may commence using the site after providing notice to the DNR and the 7 days have elapsed. The hauler may then continue using the site unless the DNR subsequently determines that the site may not be used and so notifies the hauler.

3 **SECTION 37.** 281.48 (4s) (a) (intro.) of the statutes is amended to read:

4 281.48 (4s) (a) (intro.) The Except as provided in par. (c), the department shall collect  
5 the following fees:

6 **SECTION 38.** 281.48 (4s) (a) 4. and (b) of the statutes are repealed.

**NOTE:** This SECTION repeals the fees for licenses for septage land disposal sites. Currently, the DNR does not collect these fees.

7 **SECTION 39.** 281.48 (4s) (c) of the statutes is created to read:

8 281.48 (4s) (c) In lieu of the fees specified in par. (a), the department may establish by  
9 rule fees for a license under sub. (3) (a) necessary to meet the costs incurred by the department  
10 in administering and enforcing licenses, approvals, and other program requirements under this  
11 section. The fees established under this paragraph shall be a fixed amount for each licensee,  
12 a variable amount for each licensee based on the number of vehicles used by a licensee for  
13 servicing, or a combination of these amounts.

**NOTE:** This SECTION authorizes the DNR to establish by rule new fees for septage servicing licensees, in lieu of the current statutorily specified fees, subject to the conditions in this provision.

14 **SECTION 40.** 281.48 (5) (a) 4. of the statutes is amended to read:



1           281.48 (5) (a) 4. Violated any provisions of this section or any rule prescribed by the  
2 department or falsified information on inspection forms under s. 145.245 (3) 145.20 (5).

3           **SECTION 41.** 281.48 (5p) of the statutes is created to read:

4           281.48 (5p) No city, village, town, or county may prohibit, through zoning or any other  
5 means, the disposal of septage on land if that disposal complies with this section and rules  
6 promulgated under this section or with an ordinance adopted under sub. (5m) (a).

**NOTE:** This provides that a city, village, town, or county may not  
prohibit septage disposal on land if the disposal conforms with the  
statutes and DNR rules or with a septage land disposal ordinance  
adopted by a county, city, village, or town under s. 281.48 (5m) (a).

7           **SECTION 42.** 281.49 (1) (a) of the statutes is amended to read:

8           281.49 (1) (a) “Septage” means the scum, liquid, sludge or other waste from a septic  
9 tank, soil absorption field, holding tank or privy. This term does not include the waste from  
10 a grease trap interceptor.

11          **SECTION 43.** 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~~  
14 ~~other users of the municipal sewage system, and including the costs of additional facilities or~~  
15 ~~personnel necessary to accept septage at the point of introduction into the municipal sewage~~  
16 ~~system~~ factors in par. (e).

**NOTE:** This provision modifies the standard a municipal sewage system  
must use in setting its fees for septage disposal by a licensed disposer to  
be that the fees must be “reasonable” disposal fees rather than “actual  
and equitable” disposal fees.

17          **SECTION 44.** 281.49 (5) (e) of the statutes is created to read:

18          281.49 (5) (e) A municipal sewage system shall base its disposal fees under par. (c) 4.  
19 for septage introduced into the system by a licensed disposer on only the following factors:

1           1. The portion of the cost of facilities at the system that receive and hold septage that  
2 are attributable to the septage.

3           2. The cost of any testing of the septage conducted by the system.

4           3. The cost of treating the septage by the system based on the volume and strength of  
5 the septage.

6           4. The portion of the system's reasonable additional administrative and personnel costs  
7 for accepting the septage not reflected in the costs identified in subds. 2. and 3.

**NOTE:** This provision sets criteria for septage disposal fees charged by a  
municipal sewage system. These criteria replace the criteria in current s.  
281.49 (5) (c) 4. The municipal sewage system is limited by the bill  
draft to use only these criteria.

8           **SECTION 45.** 281.58 (1) (cv) of the statutes is created to read:

9           281.58 (1) (cv) "Septage" has the meaning designated under s. 281.48 (2) (e).

10          **SECTION 46.** 281.58 (7) (b) 7. of the statutes is created to read:

11          281.58 (7) (b) 7. Projects or capacity for the receiving, storage, and disposal of septage.

**NOTE:** The current statutes create the clean water fund program, which  
provides financial assistance to municipalities for the cost of planning,  
design and construction of wastewater treatment facilities, and other  
surface and groundwater pollution abatement facilities. The program  
includes various forms of financial assistance, including market interest  
rate or below market interest rate loans.

          The current clean water fund program can be used as a source of funding  
for a portion of a sewage treatment plant project that provides receiving,  
storage, and disposal of septage. However, this is not expressly stated in  
the statute. This bill draft adds an explicit statement that such facilities  
for septage are eligible for financial assistance under the clean water  
fund.

12          **SECTION 47.** 281.58 (8) (b) 1. of the statutes is amended to read:

13          281.58 (8) (b) 1. Except as provided in subd. 2. and par. (k), the amount of reserve  
14 capacity for a project eligible for financial assistance through a method specified under sub.

1 (6) (b) is limited to that future capacity required to serve the users of the project expected to  
2 exist within the sewer service area of the project and that future capacity required to serve the  
3 need expected to exist outside of the sewer service area of the project for septage that is  
4 reasonably likely to be disposed in the project 10 years after the project is estimated to become  
5 operational. The department, in consultation with the demographic services center in the  
6 department of administration under s. 16.96, shall promulgate rules defining procedures for  
7 projecting population used in determining the amount of reserve capacity.

**NOTE:** The current clean water fund program places a limit on the allowable reserve capacity of a sewage treatment plant in order to qualify for below market rate loans and certain other financial assistance. Reserve capacity is the extra capacity to treat wastewater beyond present needs. The current statutory limit is the capacity to treat wastewater from users within the service area for no more than 10 years after completion of the project. This bill draft adds to the allowable reserve capacity an amount needed to provide septage disposal for property located outside of the sewer service area for that 10-year period if the septage is reasonably likely to be taken to the sewage treatment plant.

8 **SECTION 48.** 281.58 (12) (a) 5. of the statutes is created to read:

9 281.58 (12) (a) 5. The interest rate for the portion of a project that provides facilities  
10 for receiving and treating septage and capacity for disposal of septage is zero percent.

**NOTE:** This bill draft creates a zero percent interest rate for the portion of a clean water fund loan for septage receiving and treatment facilities and capacity for septage disposal. This interest rate applies even though the rest of the project has a different interest rate or method of financial assistance. The purpose of the zero percent interest rate is to provide an incentive for a municipality to add facilities and capacity for septage disposal, and to reduce the risk for the municipality of providing that capacity, but then not receiving the expected amount of septage. Even though the interest rate is zero, the municipality will need to repay the clean water fund loan, so the municipality will still have an incentive to build cost-effective projects and to market the septage disposal service.

11 **SECTION 49.** 281.77 (1) (b) of the statutes is amended to read:

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

**NOTE:** Section 281.77, stats., relates to damage to water supplies. This statute 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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

6           **SECTION 50.** 283.82 of the statutes is created to read:

7           **283.82 Land application of sewage sludge. (1)** The department shall oversee, set  
8           technical standards for, and regulate the application of sewage sludge to land.

9           **(2)** No city, village, town, or county may prohibit, through zoning or any other means,  
10          the application of sewage sludge to land if that application complies with this section and rules  
11          promulgated under this section.

12          **(3)** A city, village, town, or county may not regulate the application of sewage sludge  
13          to land, except that the city, village, town, or county may enact the model ordinance developed  
14          under sub. (4).

15          **(4)** The department shall develop a model land application ordinance for sewage sludge.  
16          The model ordinance shall be consistent with rules promulgated under this section.

**NOTE:** This provision directs the DNR to set standards for and to regulate the application of sewage sludge to land, and to develop a model land application ordinance for sewage sludge. Further, this provision states that a city, village, town, or county may not prohibit the land application of sludge if the land application complies with the standards promulgated by DNR, and not regulate the land application of sewage sludge except by enacting the model ordinance developed by the DNR.

1       **SECTION 51.** 283.87 (1) of the statutes is amended to read:

2       283.87 (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who  
3 violates this chapter or any provision of s. 29.601 or chs. 30, 31, 281, 285 or 289 to 299, ~~except~~  
4 ~~s. 281.48~~, relating to water quality the department may recover the cost of removing,  
5 terminating or remedying the adverse effects upon the water environment resulting from the  
6 unlawful discharge or deposit of pollutants into the waters of the state, including the cost of  
7 replacing fish or other wildlife destroyed by the discharge or deposit. All moneys recovered  
8 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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

9       **SECTION 52.** 299.95 of the statutes is amended to read:

10       **299.95 Enforcement; duty of department of justice; expenses.** The attorney general  
11 shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ~~ss. 281.48, 285.57, 285.59,~~  
12 and 299.64, and all rules, special orders, licenses, plan approvals, permits, and water quality

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

**NOTE:** Under current law, the DNR may issue a citation to collect a forfeiture for a violation of regulations governing the servicing of private sewage systems, or the disposal of septage. 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.

For most other environmental enforcement actions, when the DNR does not issue a citation, the DNR refers the violation 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 septage 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 septage 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 septage 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 septage disposal regulations.

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

The bill draft does not affect the enforcement of the separate requirement for the certification of operators of septage servicing vehicles. The DNR enforces this requirement by either revoking the certification or referring the violation to the attorney general for enforcement.

- 1       **SECTION 53.** 895.48 (2) (c) 2. of the statutes is amended to read:
- 2       895.48 (2) (c) 2. Who would be liable for the discharge under chs. 281 to 285 or 289
- 3       to 299, ~~except s. 281.48~~, or any rule promulgated or permit or order issued under chs. 281 to
- 4       285 or 289 to 299, ~~except s. 281.48~~;

**NOTE:** Section 895.48 (2), stats., creates an exemption from 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. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]