

1 **AN ACT** *to renumber* 200.59 (5); *to amend* 281.49 (5) (c) 4.; and *to create* 66.0821
2 (5) (c), (d) and (e), 196.85 (1m) (c), 200.59 (5) (b), (c) and (d) and 281.49 (10) and
3 (11) of the statutes; **relating to:** septage disposal fees charged by municipal sewage
4 systems.

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 process for a licensed disposer to obtain a review of a septage disposal fee in a 3-stage process involving review of the disputed fee by the municipal sewage system, staff at the public service commission (PSC) and, if needed, the PSC.

5 **SECTION 1.** 66.0821 (5) (c), (d) and (e) of the statutes are created to read:

6 66.0821 **(5)** (c) For purposes of this subsection, a user of a service includes a licensed
7 disposer, as defined in s. 281.49 (1) (b), who disposes septage at a municipal sewage system
8 under a disposal plan under s. 281.49 (5) and initiates under s. 281.49 (11) (d) a review under
9 par. (a) of a disputed septage disposal fee by the public service commission.

10 (d) If the public service commission determines in a proceeding under par. (a) that a
11 septage disposal fee is unreasonable, the commission shall determine and fix under par. (a) a
12 reasonable fee that conforms with s. 281.49 (5) (c) 4.

1 (e) Notwithstanding par. (a), the public service commission shall bill under s. 196.85
2 (1) any expense of the commission attributable to a proceeding under par. (a) that is initiated
3 under s. 281.49 (11) (d) as follows:

4 1. If the commission determines in the proceeding that one or more septage disposal
5 fees are unreasonable and determines and fixes by order reasonable septage disposal fees that,
6 when combined with any other applicable septage disposal fees, total an amount that is at least
7 15% lower than the total amount of septage disposal fees established by the municipal sewage
8 system for the quantity and type of septage specified in s. 281.49 (11) (b), the municipal
9 sewage system that is a party to the dispute shall pay the entire amount of the assessment.

10 2. If the commission determines in the proceeding that one or more of the septage
11 disposal fees are unreasonable and determines and fixes by order reasonable fees that, when
12 combined with any other applicable septage disposal fees, total an amount that is not at least
13 15% lower than the total amount of septage disposal fees established by the municipal sewage
14 system for the quantity and type of septage specified in s. 281.49 (11) (b), the licensed disposer
15 that is a party to the dispute shall pay the entire amount of the assessment.

16 3. If the commission determines in the proceeding that the septage disposal fees are
17 reasonable, the licensed disposer that is a party to the dispute shall pay the entire amount of
18 the assessment.

19 4. If the commission terminates the proceeding before making a final determination on
20 the reasonableness of the septage disposal fees, the municipal sewage system and the licensed
21 disposer that are parties to the dispute shall each pay 50% of the assessment, unless the
22 municipal sewage system and the licensed disposer agree to a different allocation of the
23 assessment.

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 establishes that the complaint process in s. 66.0821 (5) also applies to the rates for the disposal of septage by a licensed disposer at a municipal sewage system subject to sub. (5) if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the draft.

COMMENT: This allocation of the PSC’s expenses is based on the allocation of the cost of condemnation proceedings under s. 32.28, stats. The proposed allocation policy is intended to encourage settlement of a dispute over a septage disposal fee prior to the dispute reaching the PSC.

1 **SECTION 2.** 196.85 (1m) (c) of the statutes is created to read:

2 196.85 (**1m**) (c) For the purpose of direct assessment under sub. (1) of expenses
3 incurred by the commission in connection with its activities under s. 66.0821 (5) (a) or 200.59
4 (a) that are initiated under s. 281.49 (11) (d), the term “sewerage system” includes a licensed
5 disposer as defined in s. 281.49 (1) (b).

6 **SECTION 3.** 200.59 (5) of the statutes is renumbered 200.59 (5) (a).

7 **SECTION 4.** 200.59 (5) (b), (c) and (d) of the statutes are 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) and initiates under s. 281.49 (11) (d) a review under par. (a)
11 of a disputed septage disposal fee by the public service commission.

12 (c) If the public service commission determines in a proceeding under par. (a) that a
13 septage disposal fee is unreasonable, the commission shall determine and fix under par. (a) a
14 reasonable fee that conforms with s. 281.49 (5) (c) 4.

1 (d) Notwithstanding the statutes referenced in par. (a) governing a proceeding under
2 par. (a), the public service commission shall allocate its assessment under s. 196.85 (1) for any
3 expense of the commission for a proceeding under par. (a) that is initiated under s. 281.49 (11)
4 (d) as specified in s. 66.0821 (5) (e).

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 above 2 SECTIONS establish that this complaint process also applies to the district’s rates for the disposal of septage by a licensed disposer if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the draft.

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

6 281.49 (5) (c) 4. ~~Actual and equitable~~ Reasonable disposal fees based on the volume
7 of septage introduced into the municipal sewage system and calculated at the rate applied to
8 other users of the municipal sewage system, and including the costs of additional facilities or
9 personnel necessary to accept septage at the point of introduction into the municipal sewage
10 system factors in sub. (10) (b) and established in accordance with generally accepted
11 accounting principles.

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).

12 **SECTION 6.** 281.49 (10) and (11) of the statutes are created to read:

1 281.49 **(10)** (a) As used in this subsection, “cost” includes the cost of debt service,
2 operation, and maintenance.

3 (b) A municipal sewage system shall base its disposal fees under sub. (5) (c) 4. for
4 septage introduced into the system by a licensed disposer on only the following factors:

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

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

8 3. The cost of treating the septage by the system. This cost may vary based on the
9 volume and strength of the septage.

10 4. The portion of the system’s additional administrative and personnel costs for
11 accepting the septage not reflected in the costs identified in subds. 2. and 3. that are attributable
12 to the septage.

13 **(11) REVIEW OF SEPTAGE DISPOSAL FEES.** (a) Each municipal sewage system shall
14 establish a procedure to review a septage disposal fee charged by the system that is disputed
15 by a licensed disposer.

16 (b) Upon the request of a licensed disposer, a municipal sewage system shall use the
17 procedure established by the system under par. (a) to review whether a septage disposal fee
18 charged by the system for the quantity and type of septage specified by the licensed disposer
19 conforms with sub. (5) (c) 4.

20 (c) After pursuing the review of a septage disposal fee under par. (b), a licensed disposer
21 may request the staff of the public service commission to informally review the disputed
22 septage disposal fee. If the staff determine that there is sufficient basis for a dispute regarding
23 the fee and that use of the procedure under par. (b) is not likely to resolve the dispute, the staff

1 may agree to review the disputed septage disposal fee. Based on its review, the staff may
2 recommend a reasonable septage disposal fee that conforms with sub. (5) (c) 4.

3 (d) If the use of the procedure under par. (c) does not lead to resolution of the dispute,
4 the licensed disposer requesting the review under par. (c) may make a written request to the
5 public service commission for review of the disputed septage disposal fee under s. 66.0821
6 (5) or 200.59 (5).

7 (e) Upon the request of a licensed disposer, or the public service commission or its staff,
8 a municipal sewage system shall provide information to the requester concerning the basis of
9 its septage disposal fees and to the commission or its staff any other information that the
10 commission or its staff requests related to a review under par. (c) or (d).

COMMENT: The definition of “cost” in sub. (10) (a) is based on the costs required to be accounted for in a municipal sewage system’s financial management system required under s. NR 162.08 (3) (e).

The 3–step process for reviewing a dispute over a septage disposal fee in sub. (11) is based on the PSC’s procedures for addressing disputes over a water utility’s billing or service under s. PSC 185.39.

(END)