



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2927/1
MCP:amn

2021 BILL

1 **AN ACT** *to amend* 20.370 (1) (mu), 281.61 (6) and 292.31 (1) (d) (intro.); and *to*
2 *create* 20.370 (4) (az), 20.370 (4) (pr), 20.370 (4) (ps), 20.370 (6) (ed), 20.370 (6)
3 (ee), 25.17 (1) (kt), 25.461, 160.07 (7), 160.15 (4), 227.139 (5), 281.17 (8) (c),
4 281.79, 285.27 (2) (bm), 292.31 (1) (d) 1m., 292.66, 292.67, 292.74, 299.15 (2m),
5 299.48 (1) (am), 299.48 (1) (e), 299.48 (3d), 299.48 (3m) (c) and 299.485 of the
6 statutes; **relating to:** regulating and addressing PFAS, providing an
7 exemption from rule-making procedures, granting rule-making authority, and
8 making an appropriation.

Analysis by the Legislative Reference Bureau

This bill makes various changes to existing programs, creates new programs and standards, provides funding, and creates new positions to address perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Groundwater standards for PFAS

Under current law, the Department of Natural Resources maintains a list of substances that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns. The Department of Health Services recommends groundwater enforcement standards for substances on this list, which DNR then proposes as DNR rules in its rule-making process.

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The bill requires DNR to apply DHS's recommended combined groundwater enforcement standard of 20 parts per trillion for perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorooctane sulfonamide (FOSA), N-ethyl perfluorooctane sulfonamido ethanol (NEtFOSE), N-ethyl perfluorooctane sulfonamide (NEtFOSA), and N-ethyl perfluorooctane sulfonamido acetic acid (NEtFOSAA), as an interim groundwater enforcement standard for all facilities, practices, and activities that may affect groundwater and that are regulated by certain state agencies, unless emergency or permanent rules that establish an enforcement standard for those substances are in effect.

Drinking water standards for PFAS

The bill also requires DNR to apply DHS's recommended combined enforcement standard of 20 parts per trillion for PFOA, PFOS, FOSA, NEtFOSE, NEtFOSA, and NEtFOSAA as an interim maximum contaminant level for public water systems and water suppliers.

In addition, under the bill, DNR must require public water systems and water suppliers to monitor for PFOA, PFOS, FOSA, NEtFOSE, NEtFOSA, NEtFOSAA, and any other PFAS for which DHS has recommended an enforcement standard, at the frequency established under current DNR rules. The bill also requires public water systems and water suppliers to use certain specified treatment technologies as an interim best available technology to treat PFOA, PFOS, FOSA, NEtFOSE, NEtFOSA, NEtFOSAA, and any other PFAS for which DHS has recommended an enforcement standard. Public water systems and water suppliers must also use laboratories certified to analyze drinking water to conduct required testing, and must use the method detection limit for reporting purposes.

Air emission standards and reporting requirements for PFAS

Under the bill, DNR must also establish air emission standards for any PFAS for which DHS has recommended a groundwater enforcement standard, to provide adequate protection for public health and welfare, taking into account energy, economic, and environmental impacts and other costs related to the emission source. The bill also requires DNR to consider any PFAS for which DHS has recommended a groundwater enforcement standard to be an air contaminant and to require reporting of any emission of those PFAS.

Rule-making exemptions for PFAS

Current law requires an agency to suspend working on a permanent rule if it determines that the proposed rule may result in more than \$10,000,000 in implementation and compliance costs over any two-year period. The bill creates an exemption from this requirement for any proposed DNR rule that establishes acceptable levels and standards, performance standards, monitoring requirements, or required response actions for any PFAS compound or group or class of PFAS in groundwater, drinking water, surface water, air, soil, or sediment.

PFAS municipal grant program

The bill creates a municipal grant program, administered by DNR, to address PFAS. Under the program, DNR must provide grants to cities, towns, villages, counties, utility districts, lake protection districts, sewerage districts, and municipal

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airports. DNR may award a grant only if the applicant tested or trained with a PFAS-containing fire fighting foam in accordance with applicable state and federal law, or if a third party tested or trained with PFAS-containing fire fighting foam within the boundaries of the municipality; the applicant applied biosolids to land under a water pollution permit issued by DNR; or PFAS are impacting the applicant's drinking water supply or surface water or groundwater within the municipality and the responsible party is unknown or is unwilling or unable to take the necessary response actions.

Under the bill, grants provided under this program may be used to investigate potential PFAS impacts in order to reduce or eliminate environmental contamination; treat or dispose of PFAS-containing fire fighting foam containers; sample a private water supply within three miles of a site or facility known to contain PFAS or to have caused a PFAS discharge; provide a temporary emergency water supply, a water treatment system, or bulk water to replace water contaminated with PFAS; conduct emergency, interim, or remedial actions to mitigate, treat, dispose of, or remove PFAS contamination; remove or treat PFAS in public water systems in areas where PFAS levels exceed the maximum contaminant level for PFAS in drinking water or an enforcement standard for PFAS in groundwater or in areas where the state has issued a health advisory for PFAS; or pay the costs of a mediator to negotiate between municipalities for an alternate source of clean drinking water.

An applicant that receives a grant under this program must contribute matching funds equal to at least 20 percent of the amount of the grant. The applicant must apply for a grant on a form prescribed by DNR and must include any information that DNR finds is necessary to determine the eligibility of the project, identify the funding requested, determine the priority of the project, and calculate the amount of a grant. In awarding grants under this program, DNR must consider the applicant's demonstrated commitment to performing and completing eligible activities, including the applicant's financial commitment and ability to successfully administer grants; the degree to which the project will have a positive impact on public health and the environment; and any other criteria that DNR finds necessary to prioritize the funds available for awarding grants.

County PFAS well testing grant program

The bill also creates a grant program, under which DNR provides grants to counties to provide sampling and testing services to private well owners to sample and test for PFAS, nitrates, bacteria, and lead. The bill provides \$2,000,000 per fiscal year and creates one additional position at DNR for this purpose.

PFAS under the Safe Drinking Water Loan Program

Under current law, the Department of Administration and DNR administer the Safe Drinking Water Loan Program (SDWLP), which provides financial assistance from the environmental improvement program to municipalities, and to the private owners of community water systems that serve municipalities, for projects that will help the municipality comply with federal drinking water standards. DNR establishes a funding priority list for SDWLP projects, and DOA allocates funding for those projects.

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The bill requires DNR, when ranking the priority of SDWLP projects, to rank a project relating to PFAS in the same manner as if a maximum contaminant level for PFAS had been attained or exceeded, if DHS has recommended an enforcement standard for the type of PFAS involved in the project.

Mediator for municipalities seeking alternate water sources due to PFAS

The bill creates an option for DNR to appoint a neutral, third-party mediator to help negotiate between municipalities and responsible parties when one municipality needs to obtain an alternate water source or connect to a water source within a different municipality as a result of PFAS contamination.

Under the bill, the mediator may assist the parties in coming to an agreement or, if no agreement is reached, recommend a solution. The parties to the mediation are responsible for the costs of mediation, as determined by the mediator. The mediator may add additional parties to the negotiation if necessary, and DNR must provide the mediator with technical assistance.

PFAS fire fighting foam regulation

The bill includes several provisions that were included in DNR emergency rule 2045 and partially suspended by the Joint Committee for Review of Administrative Rules. Specifically, the bill:

1. Defines the term “foam” to include any material that contains PFAS that is generated as a result of foam storage, containment, or treatment, including treatment media, equipment used to clean up fire fighting foams, booms, filters, infrastructure, or other debris.
2. Defines the term “treatment” in a way that requires the immobilization, removal, or destruction of the contaminant.
3. Requires a person responsible for treatment of foam who uses a treatment other than incineration or thermal destruction to monitor and sample any treated wastewater for certain specific indicator parameters; requires treated wastewater samples to be collected at least weekly during periods of discharge; and specifies response actions that must be taken if the concentration of PFAS in a wastewater sample exceeds a specified treatment indicator parameter action level.
4. Requires the notification to DNR that is required under current law to be done according to ch. NR 706, Wis. Adm. Code.

PFAS in food packaging

The bill also prohibits, beginning January 1, 2025, the distribution, sale, or offering for sale of any food packaging that contains intentionally added PFAS. A violation of this requirement would be subject to the same penalty for general environmental violations under current law, which is a civil forfeiture of between \$10 and \$5,000 for each violation.

Access to information on solid or hazardous waste

In addition, the bill requires a person who generates solid or hazardous waste at a site or facility under investigation by DNR to provide DNR with access to information relating to any transportation to or treatment, storage, or disposal at another site, facility, or location.

BILL***Proof of financial responsibility for PFAS contamination***

The bill also provides that DNR may, if it determines doing so is necessary to protect human health or the environment, require a person who possesses or controls or who causes the discharge of PFAS to provide proof of financial responsibility for remediation and long-term care to address contamination by a potential discharge of PFAS or environmental pollution that may be caused by a discharge of PFAS. This financial responsibility requirement does not apply to a municipality, fire department, fire district, water utility, wastewater utility, agricultural producer, or the state.

Criteria for certifying labs for PFAS testing

In addition, the bill requires DNR to set criteria for certifying laboratories to test for PFAS, and to certify laboratories that meet these criteria. These criteria must be based on protocols established by the federal Environmental Protection Agency and the federal Department of Defense. Before these criteria are set, the bill allows DNR to require testing for PFAS to be done according to nationally recognized procedures.

Report on regulating PFAS as a class

The bill also requires DNR and DHS to submit a joint report to the legislature, no later than June 30, 2023, on the feasibility and advisability of regulating PFAS as one or more classes of substances.

Funding and emergency rules for PFAS fire fighting foam collection

The bill provides \$1,000,000 in a new continuing SEG appropriation for the purpose of collecting and disposing of PFAS-containing fire fighting foam. The bill also allows DNR to promulgate emergency rules relating to the collection and disposal of PFAS-containing fire fighting foams without finding an emergency, preparing a statement of scope, or submitting the final proposed rules to the governor for approval.

Funding for sampling and testing public water supplies for PFAS

The bill also provides \$750,000 in a new continuing SEG appropriation for the purpose of sampling and testing public water supplies for PFAS.

Funding for testing for PFAS in rivers and wastewater treatment facilities

The bill increases SEG funding for DNR to test for PFAS contamination in water supplies, including \$55,000 each fiscal year for testing in rivers and \$25,000 each fiscal year for testing at wastewater treatment facilities.

Funding for testing for PFAS at sites under state responsibility

The bill also increases SEG funding for DNR by \$600,000 in each fiscal year for the purpose of testing for and addressing PFAS contamination at sites and facilities for which the state has assumed responsibility.

DNR PFAS positions

The bill authorizes 11.0 additional SEG positions relating to PFAS in DNR and provides funding for those positions.

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PFAS action fund

Finally, the bill creates a new segregated fund, designated as the PFAS action fund, to collect all moneys received from DNR’s portion of settlement agreements in court actions, or proposed actions, resulting from PFAS contamination. The funds must be used to carry out the purposes for which they were received.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

				2021-22	2022-23
3	20.370	Natural resources, department of			
4	(4)	ENVIRONMENTAL MANAGEMENT			
5	(pr)	PFAS in public water supplies	SEG C	750,000	-0-
6	(ps)	PFAS in fire fighting foam	SEG C	1,000,000	-0-
7	(6)	ENVIRONMENTAL AIDS			
8	(ed)	Environmental aids — PFAS			
9		municipal grant program	GPR C	10,000,000	10,000,000
10	(ee)	Environmental aids — county			
11		well testing grant program	GPR C	2,000,000	2,000,000

12 **SECTION 2.** 20.370 (1) (mu) of the statutes is amended to read:

13 20.370 (1) (mu) *General program operations — state funds.* The amounts in
14 the schedule for general program operations that are conducted under ss. 23.09 to
15 23.11, 27.01, 30.203, 30.277, and 90.21, and chs. 29 and 169, for activities conducted
16 under the ecological inventory and monitoring program of the endangered resources

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1 program, for the aquatic and terrestrial resources inventory under s. 23.09 (2) (km),
2 for providing the signage required under s. 23.118, for toxicology testing relating to
3 perfluoroalkyl and polyfluoroalkyl substances, and for payments of \$53,700 in each
4 fiscal year, to be credited to the appropriation account under s. 20.285 (1) (k), to the
5 University of Wisconsin System for outdoor skills training under s. 29.598.

6 **SECTION 3.** 20.370 (4) (az) of the statutes is created to read:

7 20.370 (4) (az) *PFAS — settlement funds.* From the PFAS action fund, all
8 moneys described under s. 25.461 to carry out the purposes for which they are
9 received.

10 **SECTION 4.** 20.370 (4) (pr) of the statutes is created to read:

11 20.370 (4) (pr) *PFAS in public water supplies.* From the environmental fund,
12 as a continuing appropriation, the amounts in the schedule for sampling and testing
13 public water supplies for PFAS contamination.

14 **SECTION 5.** 20.370 (4) (ps) of the statutes is created to read:

15 20.370 (4) (ps) *PFAS in fire fighting foam.* From the environmental fund, as
16 a continuing appropriation, the amounts in the schedule for the collection and
17 disposal of PFAS-containing fire fighting foam.

18 **SECTION 6.** 20.370 (6) (ed) of the statutes is created to read:

19 20.370 (6) (ed) *Environmental aids — PFAS municipal grant program.* As a
20 continuing appropriation, the amounts in the schedule for the municipal grant
21 program under s. 292.66.

22 **SECTION 7.** 20.370 (6) (ee) of the statutes is created to read:

23 20.370 (6) (ee) *Environmental aids — county well testing grant program.* As
24 a continuing appropriation, the amounts in the schedule for the county well testing
25 grant program under s. 292.67.

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1 **SECTION 8.** 25.17 (1) (kt) of the statutes is created to read:

2 25.17 (1) (kt) PFAS action fund (s. 25.461);

3 **SECTION 9.** 25.461 of the statutes is created to read:

4 **25.461 PFAS action fund.** There is established a separate nonlapsible trust
5 fund designated as the PFAS action fund, to consist of moneys that are received for
6 the department of natural resources under settlement agreements or orders in
7 settlement of actions or proposed actions for violations of chs. 280 to 299, or in
8 settlement of actions initiated under 42 USC 9601 to 9675, resulting from
9 environmental contamination from a perfluoroalkyl or polyfluoroalkyl substance.

10 **SECTION 10.** 160.07 (7) of the statutes is created to read:

11 160.07 (7) The department shall apply the department of health services'
12 recommended combined enforcement standard of 20 parts per trillion for
13 perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorooctane sulfonamide,
14 N-ethyl perfluorooctane sulfonamido ethanol, N-ethyl perfluorooctane
15 sulfonamide, and N-ethyl perfluorooctane sulfonamido acetic acid as an interim
16 enforcement standard for all facilities, practices, and activities that may affect
17 groundwater and that are regulated under ch. 85, 93, 94, 101, 145, 281, 283, 287, 289,
18 291, or 292, unless emergency or permanent rules that establish an enforcement
19 standard for that substance are in effect.

20 **SECTION 11.** 160.15 (4) of the statutes is created to read:

21 160.15 (4) Notwithstanding sub. (1), if an interim enforcement standard for a
22 perfluoroalkyl or polyfluoroalkyl substance is applied under s. 160.07 (7), the
23 department shall apply an interim preventive action limit for that substance of 20
24 percent of the concentration established as the interim enforcement standard,

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1 unless emergency or permanent rules that establish a preventive action limit for that
2 substance are in effect.

3 **SECTION 12.** 227.139 (5) of the statutes is created to read:

4 227.139 (5) This section does not apply to a proposed rule of the department
5 of natural resources establishing acceptable levels and standards, performance
6 standards, monitoring requirements, and required response actions for any
7 perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances in
8 groundwater, drinking water, surface water, air, soil, or sediment.

9 **SECTION 13.** 281.17 (8) (c) of the statutes is created to read:

10 281.17 (8) (c) 1. The department shall apply the department of health services'
11 recommended combined enforcement standard of 20 parts per trillion for
12 perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorooctane sulfonamide,
13 N-ethyl perfluorooctane sulfonamido ethanol, N-ethyl perfluorooctane
14 sulfonamide, and N-ethyl perfluorooctane sulfonamido acetic acid as an interim
15 maximum contaminant level for public water systems and water suppliers.

16 2. The department shall require public water systems and water suppliers to
17 monitor the substances described under subd. 1. and any other perfluoroalkyl and
18 polyfluoroalkyl substances for which the department of health services has
19 recommended an enforcement standard at the frequency established under ss. NR
20 809.20 to 809.207, Wis. Adm. Code.

21 3. Public water systems and water suppliers shall use, as an interim best
22 available technology, granular activated carbon, powdered activated carbon, ion
23 exchange resins, nanofiltration, or reverse osmosis to treat the substances described
24 under subd. 1. and any other perfluoroalkyl and polyfluoroalkyl substances for which
25 the department of health services has recommended an enforcement standard.

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1 4. Public water systems and water suppliers shall use laboratories certified to
2 analyze drinking water to conduct testing under this paragraph, and shall use the
3 method detection limit for reporting purposes.

4 5. This paragraph does not apply to any substance for which the department
5 has established a maximum contaminant level in an emergency rule or permanent
6 rule.

7 **SECTION 14.** 281.61 (6) of the statutes is amended to read:

8 281.61 (6) PRIORITY LIST. The department shall establish a priority list that
9 ranks each safe drinking water loan program project. The department shall
10 promulgate rules for determining project rankings that, to the extent possible, give
11 priority to projects that address the most serious risks to human health, that are
12 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
13 300j-26, and that assist applicants that are most in need on a per household basis,
14 according to affordability criteria specified in the rules. For the purpose of ranking
15 projects under this subsection, the department shall treat a project to upgrade a
16 public water system to provide continuous disinfection of the water that it distributes
17 as if the public water system were a surface water system that federal law requires
18 to provide continuous disinfection. For the purpose of ranking projects under this
19 subsection, if the department of health services has recommended an enforcement
20 standard for perfluoroalkyl or polyfluoroalkyl substances, the department of natural
21 resources shall treat a project relating to those perfluoroalkyl or polyfluoroalkyl
22 substances as if a maximum contaminant level for those substances has been
23 attained or exceeded.

24 **SECTION 15.** 281.79 of the statutes is created to read:

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1 **281.79 Negotiations for alternate source of water due to PFAS**
2 **contamination. (1) DEFINITIONS.** In this section:

3 (a) “Municipality” means a city, village, town, county, utility district, lake
4 protection district, sewerage district, or municipal airport.

5 (b) “Private water supply” has the meaning given in s. 281.77 (1) (a).

6 **(2) REQUEST FOR MEDIATOR.** A municipality that contains private water supplies
7 that have been contaminated by perfluoroalkyl or polyfluoroalkyl substances and
8 that is entitled to obtain an alternate source of water or to connect to a public water
9 supply or another private water supply under s. 281.75 or 281.77 may request that
10 the department appoint a mediator to assist in negotiations if the alternate source
11 of water is to be provided by or the connection is to be made to a water supply located
12 within another municipality.

13 **(3) LIST OF MEDIATORS.** The department shall maintain a list of competent and
14 disinterested mediators qualified to perform the duties under this section. None of
15 the mediators may be employees of the department. Upon receiving a request from
16 a municipality under sub. (2), the secretary or his or her designee shall select 2 or 3
17 mediators from the list and inform the requesting municipality of the persons
18 selected. The municipalities and any responsible parties participating in
19 negotiation shall choose a mediator and shall notify the department of the person
20 selected, upon which the secretary or his or her designee shall appoint the mediator.
21 If the parties cannot agree on a mediator, the secretary or his or her designee shall
22 appoint a mediator.

23 **(4) NEGOTIATION.** The mediator, immediately upon being appointed, shall
24 contact the department, the municipalities, and any participating responsible
25 parties and shall schedule negotiating sessions. The mediator shall schedule the

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1 first negotiating session no later than 20 days after being appointed. The mediator
2 may meet with all parties to the negotiation, individual parties, or groups of parties.
3 The mediator shall facilitate a discussion between the municipalities and any
4 participating responsible parties to attempt to reach an agreement on the provision
5 of an alternate source of water to the requesting municipality or the connection to
6 a public water supply or another private water supply and the contribution of funds
7 by the municipalities and any responsible parties.

8 (5) ADDITION OF PARTIES. The mediator shall permit the addition to the
9 negotiation, at any time, of any responsible party or any other person who wishes to
10 be a party to the negotiated agreement.

11 (6) AGREEMENT. The parties to the negotiation may enter into an agreement,
12 in accordance with ss. 292.11 and 292.31, regarding the provision of an alternate
13 source of water to the requesting municipality or the connection to a public water
14 supply or another private water supply and the contribution of funds by the
15 municipalities and any responsible parties.

16 (7) FAILURE TO REACH AN AGREEMENT. If the parties to the negotiation are unable
17 to reach an agreement under sub. (6) by the end of the period of negotiation, the
18 mediator shall make a recommendation to the department and to the parties to the
19 negotiation regarding the provision of an alternate source of water to the requesting
20 municipality or the connection to a public water supply or another private water
21 supply and the contribution of funds by the municipalities and any responsible
22 parties.

23 (8) COSTS. The municipalities and any responsible parties that participate in
24 negotiations shall pay for the costs of the mediator, whether or not an agreement
25 among the parties is reached under sub. (6) or the parties accept the recommendation

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1 of the mediator under sub. (7). The mediator shall determine an equitable manner
2 of paying for the costs of the mediator, which is binding.

3 **(9) TECHNICAL ASSISTANCE.** The department shall provide technical assistance
4 to a mediator at the request of the mediator. The department may limit the amount
5 of staff time allocated to each negotiation.

6 **SECTION 16.** 285.27 (2) (bm) of the statutes is created to read:

7 285.27 **(2)** (bm) *Standards for PFAS.* The department shall promulgate
8 emission standards for any perfluoroalkyl or polyfluoroalkyl substance for which the
9 department of health services has recommended a groundwater enforcement
10 standard to provide adequate protection for public health and welfare, taking into
11 account energy, economic, and environmental impacts and other costs related to the
12 emission source. The department shall begin promulgating standards under this
13 paragraph within 12 months of receiving a recommended groundwater enforcement
14 standard from the department of health services.

15 **SECTION 17.** 292.31 (1) (d) (intro.) of the statutes is amended to read:

16 292.31 **(1)** (d) *Access to information.* (intro.) Upon the request of any officer,
17 employee, or authorized representative of the department, any person who
18 generated, transported, treated, stored, or disposed of solid or hazardous waste
19 ~~which~~ that may have been disposed of at a site or facility under investigation by the
20 department and any person who generated solid or hazardous waste at a site or
21 facility under investigation by the department that was transported to, treated at,
22 stored at, or disposed of at another site, facility, or location shall provide the officer,
23 employee, or authorized representative access to any records or documents in that
24 person's custody, possession, or control which relate to:

25 **SECTION 18.** 292.31 (1) (d) 1m. of the statutes is created to read:

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1 292.31 (1) (d) 1m. The type and quantity of waste generated at the site or
2 facility that was transported to, treated at, stored at, or disposed of at another site,
3 facility, or location, and the dates and locations of these activities.

4 **SECTION 19.** 292.66 of the statutes is created to read:

5 **292.66 PFAS municipal grant program. (1) DEFINITIONS.** In this section:

6 (a) “Class B fire fighting foam” has the meaning given in s. 299.48 (1) (a).

7 (b) “Municipality” means a city, village, town, county, utility district, lake
8 protection district, sewerage district, or municipal airport.

9 (c) “PFAS” means a perfluoroalkyl or polyfluoroalkyl substance.

10 **(2) FINANCIAL ASSISTANCE.** The department shall administer a program to
11 provide grants from the appropriation under s. 20.370 (6) (ed) to municipalities that
12 meet the requirements under sub. (3) for the purpose of conducting any of the eligible
13 activities under sub. (4).

14 **(3) ELIGIBILITY PREREQUISITES.** A grant may be awarded under sub. (2) only if
15 one of the following has occurred:

16 (a) The municipality tested or trained with a class B fire fighting foam that
17 contained intentionally added PFAS in accordance with applicable state and federal
18 law, or a 3rd party tested or trained with a class B fire fighting foam that contained
19 intentionally added PFAS within the boundaries of the municipality.

20 (b) The municipality applied biosolids to land under a permit issued by the
21 department under s. 283.31.

22 (c) One or more PFAS are impacting the municipality’s drinking water supply
23 or surface water or groundwater within the municipality and the responsible party
24 is unknown or is unwilling or unable to take the necessary response actions.

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1 **(4) ELIGIBLE ACTIVITIES.** The department may award a grant under sub. (2) for
2 any of the following activities:

3 (a) Investigating potential PFAS impacts to the air, land, or water at a site or
4 facility for the purpose of reducing or eliminating environmental contamination.

5 (b) Treating or disposing of PFAS-containing fire fighting foam containers from
6 a municipal site or facility.

7 (c) Sampling a private water supply within 3 miles of a site or facility known
8 to contain PFAS or to have caused a PFAS discharge.

9 (d) Providing a temporary emergency water supply, a water treatment system,
10 or bulk water to replace water contaminated with PFAS.

11 (e) Conducting emergency, interim, or remedial actions to mitigate, treat,
12 dispose of, or remove PFAS contamination to the air, land, or waters of the state.

13 (f) Removing or treating PFAS in a public water system using the most
14 cost-effective method to provide safe drinking water in areas where PFAS levels
15 exceed the maximum contaminant level for PFAS under ch. 281 or an enforcement
16 standard for PFAS under ch. 160 or where the state has issued a health advisory for
17 PFAS.

18 (g) Paying the costs of a municipality for a mediator under s. 281.79.

19 **(5) APPLICATION.** A municipality shall apply for a grant on a form prescribed
20 by the department and shall include any information that the department finds
21 necessary to determine the eligibility of the project, identify the funding requested,
22 determine the priority of the project, and calculate the amount of a grant.

23 **(6) EVALUATION CRITERIA.** The department, in awarding grants under this
24 section, shall consider all of the following criteria:

BILL**SECTION 19**

1 (a) The municipality's demonstrated commitment to performing and
2 completing eligible activities, including the municipality's financial commitment
3 and ability to successfully administer grants.

4 (b) The degree to which the project will have a positive impact on public health
5 and the environment.

6 (c) Other criteria that the department finds necessary to prioritize the funds
7 available for awarding grants.

8 **(7) MATCHING FUNDS.** The department may not distribute a grant under this
9 section unless the applicant contributes matching funds equal to at least 20 percent
10 of the amount of the grant. Matching funds may be in the form of cash, in-kind
11 contributions, or both.

12 **SECTION 20.** 292.67 of the statutes is created to read:

13 **292.67 County well testing grant program. (1) DEFINITIONS.** In this
14 section:

15 (a) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance.

16 (b) "Private water supply" means a well that is used as a source of water for
17 humans, livestock, as defined in s. 95.80 (1) (b), or poultry.

18 **(2) FINANCIAL ASSISTANCE.** The department shall administer a program to
19 provide grants from the appropriation under s. 20.370 (6) (ee) to counties for the
20 purpose of providing sampling and testing services to owners of private water
21 supplies to sample and test for PFAS, nitrates, bacteria, and lead.

22 **SECTION 21.** 292.74 of the statutes is created to read:

23 **292.74 Financial responsibility for PFAS.** The department may, if it
24 determines doing so is necessary to protect human health or the environment,
25 require a person who possesses or controls or who causes the discharge of a

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1 perfluoroalkyl or polyfluoroalkyl substance to provide proof of financial
2 responsibility for conducting emergency response actions, remedial actions,
3 environmental repair, and long-term care to address contamination by a potential
4 discharge of perfluoroalkyl or polyfluoroalkyl substances or environmental pollution
5 that may be caused by a discharge of such substances. The department shall
6 establish, by rule, the procedure for determining whether requiring a proof of
7 financial responsibility is necessary to protect human health or the environment,
8 and may establish requirements for types of financial responsibility, methods for
9 calculating amounts of financial responsibility, access and default, bankruptcy
10 notifications, and any other requirements the department determines is necessary
11 under this section. The proof of financial responsibility required under this section
12 shall be in addition to any other proof of financial responsibility or financial
13 assurance required under this chapter. This section does not apply to a municipality,
14 fire department, fire district, water utility, wastewater utility, agricultural producer,
15 or the state.

16 **SECTION 22.** 299.15 (2m) of the statutes is created to read:

17 299.15 (2m) The department shall consider any perfluoroalkyl or
18 polyfluoroalkyl substance for which the department of health services has
19 recommended a groundwater enforcement standard to be an air contaminant for
20 purposes of sub. (2) (a) 2. The reporting level for these substances is any amount
21 greater than zero pounds per year.

22 **SECTION 23.** 299.48 (1) (am) of the statutes is created to read:

23 299.48 (1) (am) “Foam” includes any material that contains PFAS that is
24 generated as a result of foam storage, containment, or treatment, including

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1 treatment media, equipment used to clean up fire fighting foams, booms, filters,
2 infrastructure, or other debris.

3 **SECTION 24.** 299.48 (1) (e) of the statutes is created to read:

4 299.48 (1) (e) "Treatment" means any method, technique, or process, including
5 thermal destruction, that changes the physical, chemical, or biological character or
6 composition of a contaminant so as to immobilize, remove, or destroy the
7 contaminant.

8 **SECTION 25.** 299.48 (3d) of the statutes is created to read:

9 299.48 (3d) TREATMENT AND DISPOSAL. (a) If the person responsible for
10 treatment of foam uses a treatment other than incineration or thermal destruction,
11 the person shall monitor and sample any treated wastewater for the foam indicator
12 parameters listed in par. (b) or in a modified list of indicator parameters under par.
13 (d) to ensure effective treatment of foam, which includes removal of PFAS. The
14 treatment indicator parameter action levels included in par. (b) or in any modified
15 list under par. (d) are not enforceable effluent limitations, but are values that shall
16 be used by the person treating foam to gauge appropriate treatment effectiveness,
17 and to trigger actions under par. (c) that are needed to ensure that a treatment
18 system continues to optimize PFAS removal. Treated wastewater samples shall be
19 collected at least weekly during periods of discharge, although this frequency may
20 be reduced after one year of data collection if the department determines that data
21 indicate that breakthrough of PFAS occurs less frequently than weekly. All
22 analytical sample results for PFAS shall be retained for 3 years and made available
23 to the department upon request. In accordance with par. (c), the person responsible
24 for the treatment of foam may request a modification to the list of PFAS indicator
25 parameters that are required for sampling under par. (b).

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1 (b) The PFAS treatment indicator parameters and action levels for this
2 subsection are as follows:

- 3 1. For 4:2 Fluorotelomer Sulfonic Acid (4:2 FTS), the action level is 2.1 ng/L.
- 4 2. For 6:2 Fluorotelomer Sulfonic Acid (6:2 FTS), the action level is 2.4 ng/L.
- 5 3. For 8:2 Fluorotelomer Sulfonic Acid (8:2 FTS), the action level is 2.3 ng/L.
- 6 4. For Perfluorobutanoic Acid (PFBA), the action level is 960 ng/L.
- 7 5. For Perfluorobutanesulfonic Acid (PFBS), the action level is 1.8 ng/L.
- 8 6. For Perfluoropentanoic Acid (PFPeA), the action level is 197 ng/L.
- 9 7. For Perfluoropentanesulfonic Acid (PFPeS), the action level is 2.4 ng/L.
- 10 8. For Perfluorohexanoic Acid (PFHxA), the action level is 2.4 ng/L.
- 11 9. For Perfluorohexanesulfonic Acid (PFHxS), the action level is 1.7 ng/L.
- 12 10. For Perfluoroheptanoic Acid (PFHpA), the action level is 3.2 ng/L.
- 13 11. For Perfluoroheptanesulfonic Acid (PFHpS), the action level is 2.0 ng/L.
- 14 12. For Perfluorooctanoic Acid (PFOA), the action level is 2.1 ng/L.
- 15 13. For Perfluorooctanesulfonic Acid (PFOS), the action level is 1.3 ng/L.
- 16 14. For Perfluorooctanesulfonamide (PFOSA / FOSA), the action level is 4.9
17 ng/L.

18 (c) If the concentration of PFAS in a wastewater sample exceeds a treatment
19 indicator parameter action level listed in par. (b) or treatment indicator parameter
20 action level in a modified list approved under par. (d), the person responsible for the
21 treatment of foam shall take one or more of the following actions until the indicator
22 parameter action level is achieved again:

- 23 1. Hold the treated water until further sampling, treatment, or both confirms
24 that treatment indicator parameter action levels are attained.

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1 2. Replace the granular activated carbon media within the lead carbon vessel,
2 move that vessel to the lag position, and move all other vessels forward one position
3 in the series.

4 3. Modify the design or operation of the treatment system to prevent discharges
5 of foam with the goal of compliance with the treatment indicator parameters in par.
6 (b) or in a modified list approved under par. (d).

7 (d) The person responsible for treatment of foam may request modification of
8 the sampling requirements in pars. (a) and (b) based on the documented nature and
9 concentration of foam being tested. The request shall include sampling and analysis
10 of the foam that will be discharged and data documenting efficiency of removal by
11 the treatment system. Samples shall be representative of daily operations and
12 performed when the full range of PFAS are likely to be present in maximum
13 concentrations or quantities. The department may approve modified sampling
14 requirements if the requester demonstrates that any indicator parameters listed in
15 par. (b) that will be excluded will not be present in the effluent, and that the proposed
16 alternative or remaining parameters are sufficient to gauge appropriate treatment
17 effectiveness and to trigger actions needed to ensure that the treatment system
18 continues to optimize PFAS removal. The department shall notify the person
19 requesting a modification in writing of its decision.

20 **SECTION 26.** 299.48 (3m) (c) of the statutes is created to read:

21 299.48 **(3m)** (c) Notification under this subsection shall be done according to
22 ch. NR 706, Wis. Adm. Code.

23 **SECTION 27.** 299.485 of the statutes is created to read:

24 **299.485 Food packaging containing PFAS. (1) DEFINITION.** In this section,
25 “PFAS” means a perfluoroalkyl and polyfluoroalkyl substance.

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1 **(2) PROHIBITION.** Beginning on January 1, 2025, no person may distribute, sell,
2 or offer for sale food packaging or products contained in food packaging that contains
3 intentionally added PFAS.

4 **SECTION 28. Nonstatutory provisions.**

5 **(1) EMERGENCY RULES FOR PFAS MUNICIPAL GRANT PROGRAM.** The department of
6 natural resources may use the procedure under s. 227.24 to promulgate emergency
7 rules relating to the municipal grant program under s. 292.66. Notwithstanding s.
8 227.24 (1) (a) and (3), when promulgating emergency rules under this subsection, the
9 department is not required to provide evidence that promulgating a rule under this
10 subsection as an emergency rule is necessary for the preservation of the public peace,
11 health, safety, or welfare and is not required to provide a finding of emergency for a
12 rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (e) 1d. and
13 1g., for emergency rules promulgated under this subsection, the department is not
14 required to prepare a statement of scope of the rules or to submit the proposed rules
15 in final draft form to the governor for approval.

16 **(2) EMERGENCY RULES FOR FIRE FIGHTING FOAM.** The department of natural
17 resources may use the procedure under s. 227.24 to promulgate emergency rules
18 relating to the collection and disposal of fire fighting foams that contain
19 perfluoroalkyl and polyfluoroalkyl substances. Notwithstanding s. 227.24 (1) (a) and
20 (3), when promulgating emergency rules under this subsection, the department is
21 not required to provide evidence that promulgating a rule under this subsection as
22 an emergency rule is necessary for the preservation of the public peace, health,
23 safety, or welfare and is not required to provide a finding of emergency for a rule
24 promulgated under this subsection. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., for
25 emergency rules promulgated under this subsection, the department is not required

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1 to prepare a statement of scope of the rules or to submit the proposed rules in final
2 draft form to the governor for approval.

3 (3) NOTIFICATION. The department of natural resources shall notify the
4 legislative reference bureau when the federal environmental protection agency
5 promulgates regulations relating to air stack testing methods for any perfluoroalkyl
6 or polyfluoroalkyl substance and the effective date of those regulations. The
7 legislative reference bureau shall publish a notice in the Wisconsin Administrative
8 Register that specifies the effective date of the treatment of ss. 285.27 (2) (bm) and
9 299.15 (2m), as determined under SECTION 30 (2) of this act.

10 (4) EMISSION STANDARDS FOR PFAS. Notwithstanding s. 285.27 (2) (bm), if the
11 department of health services has recommended a groundwater enforcement
12 standard for a perfluoroalkyl or polyfluoroalkyl substance before the effective date
13 of this subsection, the department of natural resources is not required to begin
14 promulgating an emission standard for that substance until 12 months beginning
15 after the effective date of this subsection.

16 (5) TESTING LABORATORIES; EMERGENCY RULES.

17 (a) The department of natural resources shall use the procedure under s. 227.24
18 to promulgate, no later than the first day of the 7th month beginning after the
19 effective date of this paragraph, emergency rules establishing criteria for certifying
20 laboratories to test for any perfluoroalkyl or polyfluoroalkyl substances, including
21 the standards and methods for such testing, and shall certify laboratories that meet
22 these criteria. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules
23 promulgated under this paragraph remain in effect until 3 years after the effective
24 date of this paragraph or the date on which permanent rules take effect, whichever
25 is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural

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1 resources is not required to provide evidence that promulgating a rule under this
2 paragraph as an emergency rule is necessary for the preservation of public peace,
3 health, safety, or welfare and is not required to provide a finding of emergency for a
4 rule promulgated under this paragraph.

5 (b) Before emergency rules are promulgated under par. (a), the department of
6 natural resources may require testing for a perfluoroalkyl or polyfluoroalkyl
7 substance to be done according to any nationally recognized procedures.

8 (c) Emergency rules promulgated under par. (a) for drinking water shall be
9 based on federal environmental protection agency protocols, if any, for testing for
10 perfluoroalkyl and polyfluoroalkyl substances. In promulgating emergency rules
11 under par. (a) for nondrinking water, the department of natural resources shall take
12 into consideration the latest version of the federal department of defense's Quality
13 Systems Manual for Environmental Laboratories.

14 (6) REPORT. No later than June 30, 2023, the department of natural resources
15 and the department of health services shall submit a joint report to the chief clerk
16 of each house of the legislature for distribution to the appropriate standing
17 committees under s. 13.172 (3) having jurisdiction over matters relating to the
18 environment. The report shall describe the feasibility and advisability of regulating
19 perfluoroalkyl and polyfluoroalkyl substances as one or more classes of substances.

20 (7) POSITION AUTHORIZATION — COUNTY WELL TESTING GRANT PROGRAM. The
21 authorized FTE positions for the department of natural resources are increased by
22 1.0 GPR position, to be funded from the appropriation under s. 20.370 (6) (ee), for the
23 purpose of administering the county well testing grant program under s. 292.67.

SECTION 29. Fiscal changes.

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1 (1) TESTING OF PFAS CONTAMINATION IN WATER SUPPLIES — RIVERS. In the schedule
2 under s. 20.005 (3) for the appropriation to the department of natural resources
3 under s. 20.370 (4) (mq), the dollar amount for fiscal year 2021-22 is increased by
4 \$55,000 and the dollar amount for fiscal year 2022-23 is increased by \$55,000 for the
5 purpose of testing for perfluoroalkyl and polyfluoroalkyl substances in rivers.

6 (2) TESTING OF PFAS CONTAMINATION IN WATER SUPPLIES — WASTEWATER TREATMENT
7 FACILITIES. In the schedule under s. 20.005 (3) for the appropriation to the
8 department of natural resources under s. 20.370 (4) (mq), the dollar amount for fiscal
9 year 2021-22 is increased by \$25,000 and the dollar amount for fiscal year 2022-23
10 is increased by \$25,000 for the purpose of testing for perfluoroalkyl and
11 polyfluoroalkyl substances at wastewater treatment facilities.

12 (3) PFAS AT SITES AND FACILITIES UNDER STATE RESPONSIBILITY. In the schedule
13 under s. 20.005 (3) for the appropriation to the department of natural resources
14 under s. 20.370 (4) (dv), the dollar amount for fiscal year 2021-22 is increased by
15 \$600,000 and the dollar amount for fiscal year 2022-23 is increased by \$600,000 for
16 the purpose of testing for and addressing perfluoroalkyl and polyfluoroalkyl
17 substance contamination at sites and facilities for which the state has assumed
18 responsibility.

19 (4) PFAS POSITIONS — ENVIRONMENTAL MANAGEMENT. In the schedule under s.
20 20.005 (3) for the appropriation to the department of natural resources under s.
21 20.370 (4) (mq), the dollar amount for fiscal year 2021-22 is increased by \$670,800
22 to increase the authorized FTE positions for the department by 10.0 SEG positions
23 for the purpose of implementing the Wisconsin PFAS Action Plan of December 2020.
24 The positions shall be placed in the department's environmental management
25 division as follows: 3.0 water supply specialists in the drinking and groundwater

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1 program; 2.0 wastewater specialists in the water quality program; 1.0 engineer,
2 specialist, or chemist in the air management program; 1.0 air management specialist
3 in the air management program; 1.0 hydrogeologist in the remediation and
4 redevelopment program; 1.0 hydrogeologist program coordinator in the remediation
5 and redevelopment program; and 1.0 hydrogeologist in the waste and materials
6 management program. In the schedule under s. 20.005 (3) for the appropriation to
7 the department of natural resources under s. 20.370 (4) (mq), the dollar amount for
8 fiscal year 2022-23 is increased by \$857,500 to provide funding for the positions
9 authorized under this subsection.

10 (5) PFAS TOXICOLOGIST. In the schedule under s. 20.005 (3) for the appropriation
11 to the department of natural resources under s. 20.370 (1) (mu), the dollar amount
12 for fiscal year 2021-22 is increased by \$60,500 to increase the authorized FTE
13 positions for the department by 1.0 SEG position to serve as a toxicologist in the
14 bureau of wildlife management of the division of fish, wildlife, and parks for the
15 purpose of implementing the Wisconsin PFAS Action Plan of December 2020. In the
16 schedule under s. 20.005 (3) for the appropriation to the department of natural
17 resources under s. 20.370 (1) (mu), the dollar amount for fiscal year 2022-23 is
18 increased by \$79,200 to provide funding for the positions authorized under this
19 subsection.

20 **SECTION 30. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) The treatment of s. 281.17 (8) (c) takes effect on the first day of the 7th month
23 beginning after publication, or on the first day of the 7th month beginning after
24 publication of the 2021 biennial budget act, whichever is later.

