



State of Wisconsin
2023 - 2024 LEGISLATURE

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MP/ZW/ES/SWB:skw&amn

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 312**

June 21, 2023 - Offered by Representatives MURSAU and SWEARINGEN.

1 **AN ACT** *to renumber* 281.58 (8e); *to amend* 281.61 (6) and 281.75 (7) (c) 2. a.;
2 and *to create* 66.0811 (4), 196.49 (7), 281.58 (8e) (bm), 281.75 (5m), 292.315,
3 292.32 and 292.34 of the statutes; **relating to:** programs and requirements to
4 address perfluoroalkyl and polyfluoroalkyl substances and modifying
5 administrative rules related to emergency utility services and test wells for
6 community water systems.

Analysis by the Legislative Reference Bureau

This bill creates several new programs and requirements relating to PFAS, which is defined in the bill to mean perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA), perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluoroheptanoic acid (PFHpA), perfluorodecanoic acid (PFDA), and any other perfluoroalkyl or polyfluoroalkyl substance for which a standard has been promulgated under state or federal law. Certain provisions of the bill define PFAS to include additional substances.

Municipal PFAS grant program

The bill requires the Department of Natural Resources to create a municipal PFAS grant program. For purposes of this program, "PFAS" is defined to also include

perfluoroalkyl and polyfluoroalkyl substances for which a health advisory level (HAL) has been established by the Department of Health Services, if the HAL received a public comment period of at least 30 days and a response to any written comments that cited specific concerns, or by the federal Environmental Protection Agency. Under the bill, the municipal PFAS grant program provides all of the following grants:

1. Grants to municipalities (defined under current law as a city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, or metropolitan sewage district) for PFAS testing at municipal water systems and municipal wastewater treatment facilities, or for reimbursement for such testing.

2. Grants to nonmunicipal entities regulated as public or community water systems, distributed in equal shares up to \$1,800, to test their drinking water supply for PFAS, if required to do so by DNR, or for reimbursement for such testing.

3. Grants to privately owned landfills, in equal shares up to \$15,000, to test for the presence of PFAS in leachate.

4. Grants to municipalities to test for PFAS levels at municipally owned, leased, managed, or contracted locations where PFAS may be present, including testing for PFAS levels in leachate at landfills. These grants are not available to municipalities that receive a grant under this program to test for PFAS at municipal water systems and municipal wastewater treatment facilities. For these grants, DNR may require matching funds of up to 20 percent from the applicant.

5. Grants to municipalities and privately owned landfills to dispose of PFAS-containing biosolids or leachate at facilities that accept such biosolids or leachate. For these grants, DNR may require matching funds of up to 20 percent from the applicant and the grants may not be used for costs associated with landspreading.

6. Grants for capital costs or debt service, including for facility upgrades or new infrastructure, to municipalities that are small or disadvantaged or in which rates for water or wastewater utilities will increase by more than 20 percent as a direct result of steps taken to address PFAS contamination.

7. Grants to municipalities for capital costs or other costs related to PFAS that are not otherwise paid from the segregated environmental improvement fund, including costs for addressing landfills or other contaminated lands owned, leased, managed, or contracted for by municipalities or costs incurred by fire departments; or for costs incurred by public utilities or metropolitan sewerage districts for pretreatment or other PFAS reduction measures in certain circumstances. For these grants, DNR may require matching funds of up to 20 percent from the applicant.

For all of the grants provided under the municipal PFAS grant program, DNR may not require a grant recipient to take any action to address PFAS unless PFAS levels exceed any existing standard under state or federal law or unless state or federal law otherwise allows DNR to require the grant recipient to take action. The bill also prohibits DNR from publicly disclosing the results of any PFAS testing conducted under this grant program unless DNR notifies the grant recipient at least 72 hours before publicly disclosing any test result, with certain exceptions.

Current law provides that whenever a state agency is authorized to provide state funds to any county, city, village, or town for any purpose, funds may also be granted by that agency to any federally recognized tribal governing body for the same purpose.

Innocent landowner grant program

The bill also requires DNR to create an innocent landowner grant program to provide grants to persons that own property with PFAS contamination if the contamination is not the result of negligence or intentional conduct by the person or if the person 1) spread, but did not generate, biosolids contaminated by PFAS; 2) is a fire department or municipality responding to an emergency that required the use of PFAS; or 3) is a solids waste disposal facility that accepted PFAS. The total amount of grants awarded may not exceed \$250,000 and DNR may require grant recipients to provide matching funds of not more than 5 percent of the grant amount.

Limitations on DNR actions relating to PFAS

Under the bill, DNR may not require the owner of a brownfield property to test for PFAS unless DNR has information that the property previously had a substantial amount of uncontained PFAS. "Brownfield property" is defined to mean abandoned or idle industrial or commercial facilities or sites or agricultural lands, the expansion, development, or redevelopment of which is adversely affected by actual or perceived environmental contamination. For purposes of the limitations described here, "PFAS" also includes perfluoroalkyl and polyfluoroalkyl substances for which a HAL has been established by the EPA, if the HAL is enforceable under federal law.

Under the bill, DNR may not prevent, delay, or otherwise impede any construction project or project of public works based on a presence of PFAS contamination unless DNR determines that 1) the project poses a substantial risk to public health or welfare, 2) there is a substantial risk that the project will create worsening environmental conditions, or 3) the entity proposing to complete the project is, as a result of negligence or intentional conduct, responsible for the original contamination. "Public works" is defined to mean the physical structures and facilities developed or acquired by a local unit of government or a federally recognized American Indian tribe or band in this state to provide services and functions for the benefit and use of the public, including water, sewerage, waste disposal, utilities, and transportation, and privately owned landfills that accept residential waste.

In addition, under the bill, if DNR conducts testing for PFAS under the current spills law, DNR may not collect samples from lands not owned by the state without written permission from the landowner to collect samples, to test those samples, and to publicly disclose the results of that testing. DNR also may not publicly disclose such PFAS testing results unless it notifies the landowner of the test results at least 72 hours before publicly disclosing them. In addition, DNR may not take any enforcement action against a landowner based on the results of any PFAS testing conducted on samples taken from lands not owned by the state unless PFAS levels exceed any applicable limit under state or federal law or another applicable state or federal law requires DNR to take enforcement action. In addition, DNR, or a

third-party contract by DNR, must respond in a timely manner to requests from any person to conduct PFAS testing on samples taken from the person's property if practicable and if funds are available to do so, if there is a reasonable belief that PFAS contamination may be present on the property, and if existing information such as public water supply testing data is not available. The bill also provides that, if DNR believes that a project could not be prevented, delayed, or otherwise impeded under the provisions of this bill but for a potential violation of a federal water quality certification, DNR must seek an exemption to that water quality certification.

The bill also requires DNR, in the 2023-25 fiscal biennium, to increase its PFAS testing activities.

Fire fighting foam

The bill requires DNR to survey or resurvey local fire departments about their use and possession of PFAS-containing fire fighting foam, send communications and information, and contract with a third party to collect PFAS-containing firefighting foam.

Well compensation grant program

Under current law, an individual owner or renter of a contaminated private well, subject to eligibility requirements, may apply for a grant from DNR to cover a portion of the costs to treat the water, reconstruct the well, construct a new well, connect to a public water supply, or fill and seal the well. The bill provides that a grant for costs to treat the water may be used to cover the cost of a filtration device and up to two replacement filters.

In addition, under the bill, if DNR determines that a claimant who is applying for a grant under the well compensation grant program on the basis of PFAS contamination would be eligible for a grant under the innocent landowner grant program created under the bill, and funding under that program is available, DNR may refer the claimant's application to that program instead of processing it under the well compensation grant program.

Portable water treatment system pilot project

The bill requires DNR to contract with an entity to conduct a pilot project in which PFAS-contaminated surface water is partially or fully diverted to a portable treatment system and treated water is returned to the surface water. DNR and the entity must conduct tests to evaluate the success of the pilot project.

Remedial action at sites contaminated by PFAS

The bill allows DNR, or a contracted third party, to begin response and remedial actions, including site investigations, at any PFAS-contaminated site where a responsible party has not been identified or the responsible party is unable to pay for remediation. The bill directs DNR to prioritize response and remedial actions at sites that have the highest levels of PFAS contamination and sites with the greatest threats to public health or the environment because of PFAS.

Assistance for testing laboratories

The bill requires DNR and the Board of Regents of the University of Wisconsin System to enter into a memorandum of understanding to ensure that the state laboratory of hygiene provides guidance and other materials, conducts training, and

provides assistance to laboratories in this state that are certified to test for contaminants other than PFAS in order for them to become certified to test for PFAS, and to assist laboratories certified to test for PFAS in this state to reduce their testing costs and shorten the timeline for receiving test results.

Under the bill, the Board of Regents, in coordination with DNR, may provide grants to laboratories in this state that are certified to test for PFAS, or that are seeking such certification, to assist with up to 40 percent of the costs of purchasing equipment necessary for testing for PFAS.

The bill requires the state laboratory of hygiene to prepare a report on these efforts and provide the report to the legislature.

PFAS studies and reporting

The bill requires DNR and the Board of Regents of the University of Wisconsin System to enter into a memorandum of understanding to 1) study and analyze the cost, feasibility, and effectiveness of different methods of treating PFAS before they are released into a water system or water body; 2) conduct a cost-benefit analysis of different options for disposing of biosolids or sludge that contains or may contain PFAS; 3) study and analyze the cost, feasibility, and effectiveness of different destruction and disposal methods for PFAS; 4) study and analyze the migration of PFAS into the bay of Green Bay; 5) study and analyze the migration of PFAS into the Wisconsin and Mississippi Rivers and their tributaries; 6) create a comprehensive, interactive map showing all available PFAS testing data and, for each data point, whether it exceeds any applicable state or federal standard for PFAS; and 7) conduct any additional studies related to PFAS, as approved by the Joint Committee on Finance. Such data may not contain any personally identifiable information unless the entity to which the data applies is a municipal entity that is required to test and disclose its results under state law.

DNR reporting requirements

The bill requires DNR to report to the legislature once every six months for a period of three years to provide a detailed description of DNR's expenditures under the bill and a detailed description of DNR's progress in implementing the provisions of the bill.

Clean Water Fund Program and 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 to municipalities, and to the private owners of community water systems that serve municipalities, for projects that will help the municipalities comply with federal drinking water standards. DNR establishes a funding priority list for SDWLP projects, and DOA allocates funding for those projects. Also under current law, DNR administers the Clean Water Fund Program (CWFP), which provides financial assistance to municipalities for projects to control water pollution, such as sewage treatment plants.

Under the bill, if DNR, when ranking SDWLP or CWFP projects or determining an applicant's eligibility for assistance under those programs, considers whether an applicant that intends to extend service outside municipal boundaries because of water contamination is "small" or "disadvantaged," DNR must determine the

applicant to be small or disadvantaged if the area receiving the extended service would normally be determined to be small or disadvantaged, regardless of whether the existing service area would normally be determined to be small or disadvantaged.

Public water utility projects

Under current law, a public utility may not engage in certain construction, expansion, or other projects unless the Public Service Commission grants a certificate of authority (CA) for the proposed project. Under the bill, if a water public utility or a combined water and sewer public utility (water utility) fails to obtain a CA before commencing a project for which one is required, PSC may not investigate, impose a penalty against, or bring an action to enjoin the water utility if 1) the water utility undertook the project in response to a public health concern caused by PFAS or an emerging contaminant, the presence of which was unknown to the water utility until shortly before it commenced the project and the contaminant or PFAS exceeded or was close to exceeding an applicable state or federal standard, if such a standard exists; 2) the water utility submits the appropriate application and supporting documentation to PSC no later than six months after commencing the project; and 3) the total cost of the project is not greater than \$2,000,000. The bill defines “emerging contaminant” as a chemical or material characterized by a perceived, potential, or real threat to human health or the environment and by a lack of, or newly established, published standards.

In the PSC administrative code, the bill adds an emergency resulting from water supply contamination to the circumstances under which PSC authorization is not necessary prior to a utility beginning necessary repair work. The current administrative code limits this to an emergency resulting from the failure of power supply or from fire, storm, or similar events.

Use of revenue for PFAS source reduction measures

The bill authorizes a municipal public utility or metropolitan sewerage district to use revenues from its water or sewerage services for up to half of the cost of pretreatment or other PFAS source reduction measures for an interconnected customer or other regular customer if the costs incurred are less than the costs of the upgrades otherwise required at the endpoint treatment facility and if the costs are approved by the governing body of the municipality or the metropolitan sewerage district.

Test wells for community water systems

Under rules promulgated by DNR relating to community water systems (a system for providing piped water for human consumption to the public and that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents), DNR must pre-approve any test wells that will be converted into permanent wells and any test wells that will pump at least 70 gallons per minute for more than 72 hours. DNR rules require test wells to be drilled for permanent wells for community water systems to determine geologic formation information and water quality and quantity data. DNR rules also allow DNR to designate special well casing depth areas within which wells must be drilled to a greater depth and meet other requirements to avoid contamination.

This bill provides that test wells for community water systems must also be approved by DNR if they are located in special well casing depth areas that have been designated based in whole or in part on the presence of PFAS.

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

- 1 **SECTION 1.** 66.0811 (4) of the statutes is created to read:
- 2 66.0811 (4) Notwithstanding subs. (2) and (3) and s. 66.0901 (11), a municipal
- 3 public utility or a metropolitan sewerage district created under ss. 200.21 to 200.65
- 4 may use funds derived from its water or sewerage services for up to one-half the cost
- 5 of pretreatment or other perfluoroalkyl and polyfluoroalkyl substances source
- 6 reduction measures for an interconnected customer or other regular customer if the
- 7 costs incurred are less than the costs of the upgrades otherwise required at the
- 8 endpoint treatment facility and if the costs are approved by the governing body of the
- 9 municipality or the metropolitan sewerage district.
- 10 **SECTION 2.** 196.49 (7) of the statutes is created to read:
- 11 196.49 (7) (a) In this subsection, “emerging contaminant” means a chemical or
- 12 material characterized by a perceived, potential, or real threat to human health or
- 13 the environment and by a lack of, or newly established, published standards.
- 14 (b) With respect to a water public utility or a combined water and sewer public
- 15 utility, the commission may not investigate, impose a penalty against, or bring an
- 16 action to enjoin the public utility for failing to obtain a certificate of authority before
- 17 commencing a project for which one is required under this section if all of the
- 18 following apply:
- 19 1. The public utility undertook the project in response to a public health
- 20 concern caused by an emerging contaminant or by PFAS, as defined in s. 292.315 (1),

1 the presence of which was unknown to the public utility until shortly before it
2 commenced the project, and the contaminant or PFAS exceeded or was close to
3 exceeding an applicable state or federal standard, if such a standard exists.

4 2. The public utility submits the appropriate application and supporting
5 documentation to the commission no later than 6 months after the project was
6 commenced.

7 3. The total cost of the project is not greater than \$2,000,000.

8 **SECTION 3.** 281.58 (8e) of the statutes is renumbered 281.58 (8e) (am).

9 **SECTION 4.** 281.58 (8e) (bm) of the statutes is created to read:

10 281.58 **(8e)** (bm) If the department, when ranking projects under this
11 subsection or determining an applicant's eligibility for assistance under this section,
12 considers whether an applicant that intends to extend service outside the boundaries
13 of a municipality because of water contamination is small or disadvantaged, the
14 department shall, to the extent allowable under federal law, determine the applicant
15 to be small or disadvantaged if the area receiving the extended service would
16 normally be determined to be small or disadvantaged, regardless of whether the
17 existing service area would normally be determined to be small or disadvantaged.

18 **SECTION 5.** 281.61 (6) of the statutes is amended to read:

19 281.61 **(6)** PRIORITY LIST. The department shall establish a priority list that
20 ranks each safe drinking water loan program project. The department shall
21 promulgate rules for determining project rankings that, to the extent possible, give
22 priority to projects that address the most serious risks to human health, that are
23 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
24 300j-26, and that assist applicants that are most in need on a per household basis,
25 according to affordability criteria specified in the rules. For the purpose of ranking

1 projects under this subsection, the department shall treat a project to upgrade a
2 public water system to provide continuous disinfection of the water that it distributes
3 as if the public water system were a surface water system that federal law requires
4 to provide continuous disinfection. If the department, when ranking projects under
5 this subsection or determining an applicant's eligibility for assistance under this
6 section, considers whether an applicant that intends to extend service outside the
7 boundaries of a local governmental unit because of water contamination is small or
8 disadvantaged, the department shall, to the extent allowable under federal law,
9 determine the applicant to be small or disadvantaged if the area receiving the
10 extended service would normally be determined to be small or disadvantaged,
11 regardless of whether the existing service area would normally be determined to be
12 small or disadvantaged.

13 **SECTION 6.** 281.75 (5m) of the statutes is created to read:

14 281.75 (5m) REFERRAL TO THE INNOCENT LANDOWNER GRANT PROGRAM. If the
15 department determines that a claimant that submits a claim under this section on
16 the basis of contamination by perfluoroalkyl or polyfluoroalkyl substances would be
17 eligible for a grant under the innocent landowner grant program under s. 292.34, and
18 moneys are available under s. 292.34, the department may refer the claim to the
19 program under s. 292.34 instead of reviewing the claim under this section.

20 **SECTION 7.** 281.75 (7) (c) 2. a. of the statutes is amended to read:

21 281.75 (7) (c) 2. a. Equipment used for treating the water, including a filtration
22 device and up to 2 replacement filters;

23 **SECTION 8.** 292.315 of the statutes is created to read:

24 **292.315 Municipal PFAS grant program. (1) DEFINITION.** In this section,
25 "PFAS" means perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA),

1 perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA),
2 perfluoroheptanoic acid (PFHpA), perfluorodecanoic acid (PFDA), and any other
3 perfluoroalkyl or polyfluoroalkyl substance for which a standard has been
4 promulgated under state or federal law or for which a health advisory level has been
5 established by the department of health services, if the health advisory level received
6 a public comment period of at least 30 days and a response to any written comments
7 that cited specific concerns, or by the federal environmental protection agency.

8 (2) GRANTS. The department shall provide all of the following grants:

9 (a) Grants to municipalities to test for PFAS levels at municipal water systems
10 and municipal wastewater treatment facilities, or to reimburse municipalities for
11 PFAS testing performed after applicable standards for the chemical being tested
12 have been promulgated. The department shall base the amount of grant awards
13 under this paragraph on the cost of testing and the amount of testing needed in each
14 community, while ensuring that funding is available to every eligible applicant that
15 submits a claim under this paragraph. The department may not require a
16 municipality that submits a claim for a grant under this paragraph to provide
17 information other than the basic information necessary to process the claim and may
18 not require the recipient of a grant under this paragraph to provide any matching
19 funds.

20 (b) Grants, provided in equal shares not to exceed \$1,800, to entities that are
21 not municipalities and that are regulated as public or community water systems for
22 the entity to test its drinking water supply for PFAS if required to do so by the
23 department, or for reimbursement to the entity for PFAS testing performed after
24 applicable standards for the chemical being tested have been promulgated. An entity
25 that is not a municipality may apply to the department one time for a grant under

1 this paragraph, by a deadline set by the department. The department may not
2 require the recipient of a grant under this paragraph to provide any matching funds.

3 (c) Grants, provided in equal shares not to exceed \$15,000, to privately owned
4 solid waste disposal facilities to test for the presence of PFAS in leachate. An entity
5 may apply to the department one time for a grant under this paragraph, by a
6 deadline set by the department. The department may not require the recipient of a
7 grant under this paragraph to provide any matching funds.

8 (d) Grants to municipalities to test for PFAS levels at locations that are owned,
9 leased, managed, or contracted for by a municipality and where PFAS may be
10 present, including airports, water systems, wastewater treatment facilities, or
11 contaminated lands, and to test for PFAS levels in leachate at solid waste disposal
12 facilities that are owned, leased, managed, or contracted for by a municipality. The
13 department may not provide a grant under this paragraph to test for PFAS in a water
14 system or wastewater treatment facility if the applicant has received a grant under
15 par. (a), unless the applicant demonstrates that it has used all of the grant funds
16 provided to it under par. (a). The department shall accept applications for grants and
17 provide grants under this paragraph on a rolling basis. The department may not
18 require the recipient of a grant under this paragraph to provide matching funds in
19 an amount greater than 20 percent of the amount of the grant.

20 (e) Grants to municipalities and privately owned solid waste disposal facilities
21 to dispose of PFAS-containing biosolids or leachate at facilities that accept such
22 biosolids or leachate. Grant moneys received under this paragraph may not be used
23 for any cost associated with landspreading. The department may not require the
24 recipient of a grant under this paragraph to provide matching funds in an amount
25 greater than 20 percent of the amount of the grant.

1 (f) Grants for capital costs or debt service, including for facility upgrades or new
2 infrastructure, to municipalities that are small or disadvantaged or in which rates
3 for water or wastewater utilities will increase by more than 20 percent as a direct
4 result of steps taken to address PFAS contamination. A grant provided under this
5 paragraph may not exceed 50 percent of the municipality's capital or debt service
6 costs, and no municipality may receive grants under this paragraph that total more
7 than 20 percent of the funding available for grants under this paragraph. The
8 department shall accept applications for grants and provide grants under this
9 paragraph on a rolling basis. A municipality may submit an application for a grant
10 under this program at the same time as submitting an application for a grant under
11 s. 281.58 or 281.61.

12 (g) Grants to municipalities for capital costs or other costs related to PFAS that
13 are not otherwise paid from the environmental improvement fund, including costs
14 for addressing solid waste disposal facilities or other contaminated lands owned,
15 leased, managed, or contracted for by the municipality and costs incurred by fire
16 departments, including to replace PFAS-containing fire fighting foam; and grants
17 to municipalities for costs incurred by municipal public utilities or metropolitan
18 sewerage districts created under ss. 200.21 to 200.65 for pretreatment or other PFAS
19 source reduction measures for an interconnected customer or other regular customer
20 if the costs incurred are less than the costs of the upgrades otherwise required at the
21 endpoint treatment facility and if the costs are approved by the governing body of the
22 municipality or the metropolitan sewerage district. No municipality may receive
23 grants under this paragraph that total more than 20 percent of the funding available
24 for grants under this paragraph. The department may not require the recipient of
25 a grant under this paragraph to provide matching funds in an amount greater than

1 20 percent of the amount of the grant. The department shall accept applications for
2 grants and provide grants under this paragraph on a rolling basis.

3 **(3) LIMITATIONS.** (a) The department may not require the recipient of a grant
4 under sub. (2) to take action to address PFAS contamination unless testing
5 determines that PFAS levels exceed any applicable limit under state or federal law
6 or unless another applicable state or federal law allows the department to require
7 the grant recipient to take action. For purposes of this paragraph, a health advisory
8 level that has been established by the department of health services does not
9 constitute an applicable limit, unless that health advisory level is required to be
10 established and is enforceable under federal law.

11 (b) The department may not publicly disclose the results of any PFAS testing
12 conducted under this section unless the department notifies the grant recipient at
13 least 72 hours before publicly disclosing any test result. This paragraph does not
14 apply to any testing required or conducted under ch. 281 or 283.

15 **SECTION 9.** 292.32 of the statutes is created to read:

16 **292.32 Limitations on department actions relating to PFAS. (1)**

17 **DEFINITIONS.** In this section:

18 (a) “Brownfield property” means abandoned or idle industrial or commercial
19 facilities or sites or agricultural lands, the expansion, development, or
20 redevelopment of which is adversely affected by actual or perceived environmental
21 contamination.

22 (b) “Construction project” means a building project that will affect one or more
23 parcels.

24 (c) “PFAS” means perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid
25 (PFOA), perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA),

1 perfluoroheptanoic acid (PFHpA), perfluorodecanoic acid (PFDA), and any other
2 perfluoroalkyl or polyfluoroalkyl substance for which a standard has been
3 promulgated under state or federal law or for which a health advisory level has been
4 established by the federal environmental protection agency, if the health advisory
5 level is enforceable under federal law.

6 (d) "Public works" means the physical structures and facilities developed or
7 acquired by a local unit of government or a federally recognized American Indian
8 tribe or band in this state to provide services and functions for the benefit and use
9 of the public, including water, sewerage, waste disposal, utilities, and
10 transportation, and privately owned solid waste disposal facilities that accept
11 residential waste.

12 **(2) BROWNFIELDS.** The department may not require the owner of a brownfield
13 property to conduct testing for the presence of PFAS unless the department has
14 information, including reporting on the toxics release inventory maintained by the
15 U.S. environmental protection agency, that reasonably supports the belief that the
16 property previously had a substantial amount of uncontained PFAS.

17 **(3) CONSTRUCTION PROJECTS.** (a) The department may not prevent, delay, or
18 otherwise impede any construction project or project of public works on the basis of
19 a presence of PFAS contamination unless the department determines any of the
20 following:

21 1. The project poses a substantial risk to public health or welfare.

22 2. There is a substantial risk that the project will create worsening
23 environmental conditions.

24 3. The entity proposing to complete the project is, as a result of negligence or
25 intentional conduct, responsible for the original contamination.

1 (b) If the department believes a project could not be prevented, delayed, or
2 otherwise impeded under par. (a) but for a potential violation of a federal water
3 quality certification, the department shall seek an exemption to the water quality
4 certification. The department shall notify the project owner of the status promptly
5 and regularly until a decision is rendered.

6 (4) PFAS TESTING REQUIREMENTS. If the department conducts testing under this
7 chapter for PFAS, the department shall comply with all of the following:

8 (a) The department may not collect samples from lands not owned by the state
9 without written permission from the landowner to collect samples, to test those
10 samples, and to publicly disclose the results of that testing.

11 (b) The department may not publicly disclose the results of any PFAS testing
12 conducted on samples taken from lands not owned by the state unless the
13 department notifies the landowner of the test results at least 72 hours before publicly
14 disclosing the test results.

15 (c) The department may not take any enforcement action based on the results
16 of any PFAS testing conducted on samples taken from lands not owned by the state
17 unless that testing determines that PFAS levels exceed any applicable limit under
18 state or federal law or another applicable state or federal law requires the
19 department to take enforcement action against the landowner. This paragraph does
20 not limit the ability of a landowner or other authorized party to voluntarily take
21 remedial action based on test results collected by the department.

22 (5) PFAS TESTING REQUESTS. The department shall, in a timely manner, respond
23 to requests from any person to conduct PFAS testing on samples taken from the
24 person's property if practicable and if funds are available to do so, if there is a
25 reasonable belief that PFAS contamination may be present on the property, and if

1 existing information such as public water supply testing data is not available. The
2 department may contract with a 3rd party to respond to requests for testing under
3 this paragraph.

4 **SECTION 10.** 292.34 of the statutes is created to read:

5 **292.34 Innocent landowner grant program. (1)** In this section, “PFAS”
6 has the meaning given in s. 292.315 (1).

7 **(2)** The department shall administer a program under which the department
8 may provide a grant to an eligible person who owns property that is contaminated
9 by PFAS.

10 **(3)** A person is eligible for a grant under this section if the original PFAS
11 contamination is not the result of negligence or intentional conduct by the person or
12 if the person is any of the following:

13 (a) A person who spread, but did not generate, biosolids contaminated by PFAS.

14 (b) Fire departments and municipalities responding to emergencies that
15 required the use of PFAS.

16 (c) Solid waste disposal facilities that accepted PFAS.

17 **(4)** Grants under this section may be used to cover costs associated with
18 additional testing; environmental studies; engineering reports; clean drinking water
19 supplies, including temporary potable water, filtration, well replacement, or
20 interconnection to a municipal water supply; remediation costs; and any other cost
21 resulting from landspreading of contaminated biosolids, detection of groundwater
22 contamination, or other contamination events affecting the property.

23 **(5)** The department shall accept applications for grants and award grants
24 under this section on a rolling basis.

1 **(6)** Grants awarded under this section may not exceed \$250,000. The
2 department may require the recipient of a grant under this section to provide
3 matching funds in an amount not to exceed 5 percent of the amount of the grant.

4 **SECTION 11.** NR 811.12 (1) (g) 2. of the administrative code is renumbered NR
5 811.12 (1) (g) 2. (intro.) and amended to read:

6 NR 811.12 **(1)** (g) 2. (intro.) ~~Test wells to be converted to permanent wells or test~~
7 ~~wells to be pumped at a rate of 70 gallons per minute or more for a period of more than~~
8 ~~72 hours~~ All of the following test wells shall be approved by the department prior to
9 their construction.:

10 **SECTION 12.** NR 811.12 (1) (g) 2. a., b. and c. of the administrative code are
11 created to read:

12 NR 811.12 **(1)** (g) 2. a. Test wells to be converted to permanent wells.

13 b. Test wells to be pumped at a rate of 70 gallons per minute or more for a period
14 of more than 72 hours.

15 c. Test wells located in special well casing depth areas that are designated by
16 the department as special well casing depth areas based in whole or in part on the
17 presence of perfluoroalkyl or polyfluoroalkyl substances. Approval under this subd.
18 2. c. shall include review and approval of specifications and plans relating to drilling,
19 well casing, and abandonment.

20 **SECTION 13.** PSC 184.06 of the administrative code is amended to read:

21 **PSC 184.06 Emergency work.** In case of an emergency resulting from the
22 failure of power supply or from fire, storm, or similar events, a utility may begin
23 necessary repair work without receiving prior commission authorization. In case of
24 an emergency resulting from the contamination of water supply, a utility may begin
25 necessary repair, temporary treatment, or other emergency work to address the issue

1 without receiving prior commission authorization. The utility shall promptly notify
2 the commission of the emergency work and shall, within 30 days after commencing
3 the work, furnish the commission with the information required under s. PSC 184.04
4 (3).

5 **SECTION 14. Nonstatutory provisions.**

6 (1) PORTABLE TREATMENT SYSTEM PILOT. The department of natural resources
7 shall contract with an entity to conduct a pilot project in which surface water is
8 partially or fully diverted to a portable treatment system and treated water is
9 returned to the surface water. Project activities under this subsection shall be
10 conducted at locations with surface water with the highest concentration of
11 perfluoroalkyl or polyfluoroalkyl substances and where a responsible party has not
12 been identified or the responsible party is unable to pay for remediation. The
13 department of natural resources and the entity contracted under this subsection
14 shall evaluate the success of the pilot project by conducting tests upstream and
15 downstream of the locations where the portable treatment system is used.

16 (2) REMEDIAL ACTION AT SITES CONTAMINATED BY PFAS. The department of
17 natural resources may begin response and remedial actions, including site
18 investigations, at any site contaminated by perfluoroalkyl or polyfluoroalkyl
19 substances where a responsible party has not been identified or where the
20 department determines that the responsible party is unable to pay for remediation.
21 The department of natural resources may contract with a 3rd party to conduct
22 response and remedial actions under this subsection. The department of natural
23 resources shall prioritize response and remedial actions at sites with the highest
24 levels of perfluoroalkyl or polyfluoroalkyl substances and sites with the greatest

1 threats to public health or the environment as a result of perfluoroalkyl or
2 polyfluoroalkyl substances.

3 (3) PFAS TESTING LABORATORIES. (a) The department of natural resources and
4 the Board of Regents of the University of Wisconsin System shall enter into a
5 memorandum of understanding to jointly ensure that the state laboratory of hygiene
6 provides guidance and other materials, conducts training, and provides assistance
7 to laboratories in this state that are certified under s. 299.11 (7) to test for
8 contaminants other than perfluoroalkyl or polyfluoroalkyl substances to become
9 certified under s. 299.11 (7) to test for perfluoroalkyl or polyfluoroalkyl substances,
10 and to assist laboratories in this state that are certified under s. 299.11 (7) to test for
11 perfluoroalkyl or polyfluoroalkyl substances in reducing the costs of such testing and
12 shortening the timeline for receiving such testing results.

13 (b) The Board of Regents of the University of Wisconsin System, in coordination
14 with the department of natural resources, may provide grants to laboratories in this
15 state that are certified under s. 299.11 (7) to test for perfluoroalkyl or polyfluoroalkyl
16 substances, or that are seeking such certification, to assist with the cost of
17 purchasing equipment necessary for testing for perfluoroalkyl or polyfluoroalkyl
18 substances. A grant under this paragraph may not exceed 40 percent of the cost of
19 such equipment. All laboratories in this state that are certified under s. 299.11 (7)
20 to test for perfluoroalkyl or polyfluoroalkyl substances, or that are seeking such
21 certification, shall be given equal opportunity to receive a grant under this
22 paragraph.

23 (c) The state laboratory of hygiene shall prepare a report on its efforts under
24 this subsection and shall deliver the report to the joint committee on finance and the

1 standing committees with jurisdiction over natural resources and the environment
2 no later than August 31, 2025.

3 (4) PFAS STUDIES AND REPORTING. (a) In this subsection, “PFAS” means
4 perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA),
5 perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA),
6 perfluoroheptanoic acid (PFHpA), perfluorodecanoic acid (PFDA), and any other
7 perfluoroalkyl or polyfluoroalkyl substance for which a standard has been
8 promulgated under state or federal law or for which a health advisory level has been
9 established by the department of health services or the federal environmental
10 protection agency.

11 (b) The department of natural resources and the Board of Regents of the
12 University of Wisconsin System shall enter into a memorandum of understanding
13 to jointly do all of the following, with the assistance of University of Wisconsin
14 institutions, the department of natural resources and other relevant state agencies,
15 county land and water conservation departments, and local 3rd parties, if available:

16 1. Study and analyze the cost, feasibility, and effectiveness of different methods
17 of treating PFAS before they are released into a water system or water body.

18 2. Conduct a cost-benefit analysis of different options for disposing of biosolids
19 or sludge that contains or may contain PFAS.

20 3. Study and analyze the cost, feasibility, and effectiveness of different
21 destruction and disposal methods for PFAS.

22 4. Study and analyze the migration of PFAS into the bay of Green Bay,
23 including where the PFAS are entering the bay and what effects PFAS may have in
24 the bay.

1 5. Study and analyze the migration of PFAS into the Wisconsin River and its
2 tributaries and the Mississippi River and its tributaries, including where the PFAS
3 are entering surface waters and unconfined groundwater and what effects PFAS
4 may have in those rivers.

5 6. Create a comprehensive, interactive map showing all available PFAS testing
6 data and whether each data point on the map exceeds any applicable state or federal
7 standard for PFAS. Such data may not contain any personally identifiable
8 information unless the entity to which the data applies is a municipal entity that is
9 required to test and disclose its results under ch. 281 or 283.

10 7. Conduct any additional studies related to PFAS, as approved by the joint
11 committee on finance.

12 (c) The Board of Regents of the University of Wisconsin System shall require
13 the University of Wisconsin-Madison division of extension to provide the map and
14 reports on the studies required under this subsection to the joint committee on
15 finance and the standing committees with jurisdiction over natural resources and
16 the environment no later than 2 years after the effective date of this paragraph.

17 (5) REPORTS TO LEGISLATURE ON PROGRESS UNDER THIS ACT. For a period of 3 years
18 after the effective date of this subsection, the department of natural resources shall,
19 every 6 months, submit a report to the joint committee on finance and to the standing
20 committees with jurisdiction over natural resources and the environment. The first
21 report under this subsection shall be submitted no later than 6 months after the
22 effective date of this subsection. The report shall include a detailed description of the
23 department's expenditures under this act and a detailed description of the
24 department's progress in implementing the provisions of this act.

1 (6) PFAS TESTING. In the 2023-25 fiscal biennium, the department of natural
2 resources shall conduct additional PFAS testing activities.

3 (7) FIRE FIGHTING FOAM. The department of natural resources shall survey or
4 resurvey local fire departments about their use and possession of PFAS-containing
5 fire fighting foam, send communications and information regarding such foam, and
6 contract with a 3rd party to collect such foam.

7 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
8 except as follows:

9 (1) ADMINISTRATIVE RULES. The treatment of administrative rules takes effect
10 as provided in s. 227.265.

11 (END)