



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5352/1
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2023 SENATE BILL 1104

April 11, 2024 - Introduced by Senators PFAFF, AGARD, CARPENTER, HESSELBEIN, L. JOHNSON, LARSON, ROYS, SMITH, SPREITZER and WIRCH, cosponsored by Representatives BALDEH, BILLINGS, PALMERI, C. ANDERSON, J. ANDERSON, ANDRACA, BARE, CONLEY, CONSIDINE, EMERSON, HONG, JOERS, NEUBAUER, MOORE OMOKUNDE, OHNSTAD, RATCLIFF, SHELTON, SINICKI, STUBBS, SUBECK and MADISON. Referred to Committee on Natural Resources and Energy.

AN ACT *to renumber and amend* 160.07 (5); *to amend* 20.370 (4) (ps), 227.137 (5), 227.19 (7), 281.61 (6) and 292.31 (1) (d) (intro.); and *to create* 20.370 (6) (af), 20.370 (6) (cs), 20.370 (6) (et), 92.14 (18), 160.07 (5) (b), 160.15 (4), 227.135 (6), 227.136 (8), 227.138 (3), 227.139 (5), 227.26 (5), 281.17 (8) (c), 281.73, 281.79, 283.31 (4) (g), 283.31 (4) (h), 292.31 (1) (d) 1m., 292.31 (11), 292.66, 292.67, 292.74, 299.485 and 299.487 of the statutes; **relating to:** regulating and addressing PFAS, extending the time limit for emergency rule procedures, providing an exemption from rule-making procedures and emergency rule procedures, granting rule-making authority, making an appropriation, and providing a penalty.

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).

SENATE BILL 1104***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.

The bill requires DNR to amend its rules to establish DHS's recommended groundwater enforcement standard for any PFAS as the enforcement standard for that substance. The bill exempts such rules from certain rulemaking requirements that would otherwise apply under current law.

Drinking water standards for PFAS

The bill also requires DNR to amend its rules to establish DHS's recommended groundwater enforcement standard for any PFAS as the maximum contaminant level for public water systems and water suppliers. The bill exempts such rules from certain rulemaking requirements that would otherwise apply under current law.

Under the bill, DNR must also require public water systems and water suppliers to monitor for such PFAS in accordance with requirements 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 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.

Soil cleanup standards for PFAS

Under current law, when a responsible party conducts a cleanup action to address soil contamination, the cleanup must be designed and implemented to restore the contaminated soil to certain designated residual contaminant levels or performance standards. Under the bill, DNR must require responsible parties to establish residual contaminant levels for the cleanup of contaminated soil and sediment, or select a soil performance standard, as a result of a discharge of any PFAS.

Emergency rules for PFAS

The bill also requires DNR to promulgate emergency rules establishing acceptable levels and standards, performance standards, monitoring requirements, and required response actions for any PFAS that DNR determines may be harmful to human health or the environment in drinking water, groundwater, surface water, air (if the standards are needed to provide adequate protection for public health or welfare), solid waste and solid waste facilities, beds of navigable waters, and soil and sediment. These emergency rules must cover, at a minimum, PFOS, PFOA, PFHxS, PFNA, and PFBS.

SENATE BILL 1104***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. Current law also allows standing committees of the legislature and the Joint Committee for the Review of Administrative Rules (JCRAR) to review, approve, object to, or modify a proposed rule. If JCRAR objects to all or part of a proposed rule, that rule may not be promulgated unless a bill is introduced and enacted that authorizes the promulgation of the rule. In addition, current law allows JCRAR to suspend rules that have already been promulgated; if the rule suspended is an emergency rule, the agency that promulgated the emergency rule is prohibited from proposing a permanent rule that contains the same substance as the suspended emergency rule. The bill creates exemption from these provisions for any proposed or existing 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.

The bill also exempts such DNR rules from the requirements under current law to prepare a statement of the scope of any proposed rule; to have the statement of scope approved by the governor; to hold a preliminary public hearing on a proposed rule if ordered to do so by JCRAR; to prepare an economic impact analysis of the proposed rules; and to prepare a report to the legislature of final rules.

PFAS community grant program

The bill creates a PFAS community grant program, administered by DNR, to address PFAS. Under the program, DNR must provide grants to cities, towns, villages, counties, tribal governments, utility districts, lake protection districts, sewerage districts, municipal airports, schools, and daycares (municipalities). 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 three miles of a public or private water supply; the applicant applied biosolids to land under a water pollution permit issued by DNR; or PFAS are affecting 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 do any of the following: 1) investigate potential PFAS impacts in order to reduce or eliminate environmental contamination; 2) treat or dispose of PFAS-containing fire fighting foam or fire fighting foam containers or purchase PFAS-free fire fighting foam; 3) sample a private water supply within three miles of a site or facility known to contain PFAS or to have caused a PFAS discharge; 4) provide a temporary emergency water supply, a water treatment system, or bulk water to replace water contaminated with PFAS; 5) conduct emergency, interim, or remedial actions to

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mitigate, treat, dispose of, or remove PFAS contamination; 6) 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; 7) sample and test water in schools and daycares for PFAS contamination; or 8) pay the costs of a mediator to negotiate between municipalities for an alternate source of clean drinking water.

An applicant for a grant under this program must apply on a form prescribed by DNR and must include any information that DNR finds 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.

The bill creates a sum sufficient appropriation from the general fund for this purpose.

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 appropriates \$2,000,000 per fiscal year from the segregated PFAS fund and creates one additional position at DNR for this purpose.

Aid for private wells with PFAS contamination

The bill requires DNR to administer a program to provide financial assistance to municipalities located in an area where soil is contaminated with PFAS. Under the program, DNR would award grants from the PFAS fund to municipalities for eligible costs related to (1) construction of a municipal water system, (2) connection to an existing municipal water system, and (3) assisting owners of private wells, if appropriate, with the cost of installation of filters, remediation, or well replacement.

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.

The bill requires DNR, when ranking the priority of SDWLP projects, to rank

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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.

Products containing PFAS

Beginning January 1, 2028, the bill prohibits the sale or distribution of certain products that contain intentionally added PFAS, including food packaging, cleaning products, cosmetics, and textile furnishings. The bill prohibits the sale or distribution of all products containing intentionally added PFAS beginning January 1, 2034. The bill provides certain exemptions to this ban, including by allowing DNR to identify, by rule, products in which the use of PFAS is an unavoidable use.

The bill allows DNR to require manufacturers to test certain products for PFAS. A person that violates the prohibition on sales and distribution is subject to a civil forfeiture of \$100 for each violating product, for each day that the violation continues.

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-containing fire fighting foam appropriation

Current law establishes a continuing appropriation from the environmental fund for the collection of PFAS-containing fire fighting foam. The bill allows this appropriation to also be used to provide assistance to local fire departments in replacing PFAS-containing fire fighting foam with PFAS-free fire fighting foam.

WPDES permit conditions

Under current law, a wastewater treatment facility, and any person that wishes to land spread biosolids or other sludge, must obtain a water pollution permit (WPDES permit) from DNR. DNR is required to include conditions in such permits to ensure compliance with water quality standards.

Under the bill, a WPDES permit that allows the permittee to land spread biosolids must also include a condition that requires the permittee to test the sludge for PFAS, and prohibits the land spreading of the biosolids if PFAS levels exceed levels set by DNR in the WPDES permit. Additionally, a WPDES permit issued to a treatment work must require the permittee to test all sludge for the presence of PFAS and to report the testing results to DNR.

SENATE BILL 1104***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.

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, or who manufactures products that contain intentionally added 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.

Environmental justice impacts of PFAS transportation and disposal

The bill requires a person disposing of PFAS, or transporting PFAS for the purpose of disposal, to attempt to the greatest extent possible to avoid disposing of PFAS in, or transporting PFAS to, any location where such disposal or transportation will contribute to environmental justice concerns and to consider all reasonable alternatives for transport and disposal of PFAS. The bill requires DNR to assist in evaluating the environmental justice impacts of a person's PFAS disposal or transportation.

PFAS disposal study

The bill requires DNR to study and analyze different options for disposing of PFAS, including whether the transport of PFAS to certain locations for disposal would present environmental justice concerns. The bill provides \$2,000,000 in GPR funding for this purpose.

Legacy PFAS contamination testing

The bill also requires DNR to test for PFAS contamination in soil and groundwater in areas where biosolids have been land applied for at least 10 years and where vulnerable aquifers are present. The bill provides \$2,000,000 in GPR funding for this purpose.

Statewide PFAS biomonitoring studies

The bill requires DHS to conduct biomonitoring studies across the state to assess PFAS exposure levels and better understand the factors that affect PFAS levels in residents of different communities. As part of these studies, DHS may survey volunteer participants, test blood samples for PFAS, and analyze the results. The bill authorizes 5.0 additional FTE positions in DHS to conduct these studies and provides \$630,000 in annual GPR funding for this purpose.

SENATE BILL 1104***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, 2026, on the feasibility and advisability of regulating PFAS as one or more classes of substances.

DATCP testing for PFAS

Under current law, the Department of Agriculture, Trade and Consumer Protection conducts several statewide monitoring programs, sampling programs, and surveys related to testing groundwater quality for agricultural purposes. The bill requires that, when collecting and testing samples under one of these statewide programs, DATCP must also, at its discretion and where appropriate, test samples for the presence of PFAS.

Funding for statewide PFAS sampling and testing

The bill also increases SEG funding for DNR by \$1,480,000 in fiscal year 2023-24 and \$730,000 in fiscal year 2024-25 for statewide PFAS sampling and testing activities.

Funding for PFAS substance emergency measures

The bill also increases SEG funding for DNR by \$900,000 annually for PFAS emergency measures.

Funding for fire fighting foam collection

The bill also increases SEG funding for DNR by \$1,000,000 for the purpose of collecting and disposing of PFAS-containing fire fighting foam.

Funding for PFAS outreach and awareness

The bill also increases GPR funding for DHS by \$500,000 annually for PFAS outreach and awareness activities.

DNR PFAS positions

The bill authorizes 12.0 additional GPR positions relating to PFAS in DNR and provides funding for those positions.

DHS PFAS positions

The bill authorizes 4.0 additional GPR positions in DHS for the purpose of recommending groundwater enforcement standards for PFAS and provides funding for those positions.

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:

SENATE BILL 1104**SECTION 1**

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

2023-24 2024-25

20.370 Natural resources, department of**(6) ENVIRONMENTAL AIDS****(cs) Environmental aids - assistance**

for private well owners; PFAS

fund	SEG	C	10,000,000	-0-
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(et) Environmental aids - county well

testing grant program	SEG	C	2,000,000	2,000,000
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SECTION 2. 20.370 (4) (ps) of the statutes is amended to read:

20.370 (4) (ps) ~~Fire~~ PFAS-containing fire fighting foam. As a continuing appropriation, from the environmental fund, the amounts in the schedule for the collection and disposal of PFAS-containing fire fighting foam collection and for providing assistance to local fire departments in replacing fire fighting foam that contains PFAS with fire fighting foam that does not contain such substances.

SECTION 3. 20.370 (6) (af) of the statutes is created to read:

20.370 (6) (af) *Environmental aids - PFAS community grant program*. A sum sufficient for the PFAS community grant program under s. 292.66.

SECTION 4. 20.370 (6) (cs) of the statutes is created to read:

20.370 (6) (cs) *Environmental aids - assistance for private well owners; PFAS fund*. As a continuing appropriation, from the PFAS fund, the amounts in the schedule for providing financial assistance under s. 281.73.

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SECTION 5. 20.370 (6) (et) of the statutes is created to read:

20.370 (6) (et) *Environmental aids - county well testing grant program.* From the PFAS fund, as a continuing appropriation, the amounts in the schedule for the county well testing grant program under s. 292.67.

SECTION 6. 92.14 (18) of the statutes is created to read:

92.14 (18) PFAS MONITORING. As part of any statewide monitoring program, sampling program, or survey conducted by the department, any samples that are collected and tested shall also, at the department's discretion and where appropriate, be tested for the presence of any perfluoroalkyl or polyfluoroalkyl substance.

SECTION 7. 160.07 (5) of the statutes is renumbered 160.07 (5) (a) and amended to read:

160.07 (5) (a) ~~Within~~ Except as provided under par. (b), within 9 months after transmitting the name of a substance to the department of health services under sub. (2), the department of natural resources shall propose rules establishing the recommendation of the department of health services as the enforcement standard for that substance and publish the notice required under s. 227.16 (2) (e), 227.17 or 227.24 (3).

SECTION 8. 160.07 (5) (b) of the statutes is created to read:

160.07 (5) (b) Within 9 months after transmitting the name of a perfluoroalkyl or polyfluoroalkyl substance to the department of health services under sub. (2), the department of natural resources shall amend its rules to

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establish the recommendation of the department of health services as the enforcement standard for that substance.

SECTION 9. 160.15 (4) of the statutes is created to read:

160.15 (4) Notwithstanding sub. (1), if an enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance is adopted under s. 160.07 (5) (b), the department shall apply a preventive action limit for that substance of 20 percent of the concentration established as the enforcement standard, or 10 percent of the concentration established as the enforcement standard if the substance has carcinogenic, mutagenic, or teratogenic properties or interactive effects.

SECTION 10. 227.135 (6) of the statutes is created to read:

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

SECTION 11. 227.136 (8) of the statutes is created to read:

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

SECTION 12. 227.137 (5) of the statutes is amended to read:

227.137 (5) This section does not apply to emergency rules promulgated

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under s. 227.24, or to rules proposed by the department of natural resources establishing acceptable levels and standards, performance standards, monitoring requirements, and required response actions for any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances in groundwater, drinking water, surface water, air, soil, or sediment.

SECTION 13. 227.138 (3) of the statutes is created to read:

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

SECTION 14. 227.139 (5) of the statutes is created to read:

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

SECTION 15. 227.19 (7) of the statutes is amended to read:

227.19 (7) NONAPPLICATION. This section does not apply to rules promulgated under s. 227.24, or to rules proposed by the department of natural resources establishing acceptable levels and standards, performance standards, monitoring requirements, and required response actions for any perfluoroalkyl or

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polyfluoroalkyl substance or group or class of such substances in groundwater, drinking water, surface water, air, soil, or sediment.

SECTION 16. 227.26 (5) of the statutes is created to read:

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

SECTION 17. 281.17 (8) (c) of the statutes is created to read:

281.17 (8) (c) 1. The department shall amend its rules to establish the department of health services' recommended enforcement standard for any perfluoroalkyl or polyfluoroalkyl substance as the maximum contaminant level for public water systems and water suppliers.

2. The department shall require public water systems and water suppliers to monitor the substances described under subd. 1. in accordance with the requirements established under ss. NR 809.20 to 809.207, Wis. Adm. Code.

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

4. Public water systems and water suppliers shall use laboratories certified to

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analyze drinking water to conduct testing under this paragraph, and shall use the method detection limit for reporting purposes.

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

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

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

SECTION 19. 281.73 of the statutes is created to read:

281.73 Aid for private wells with PFAS contamination. (1) The department shall administer a program to provide financial assistance to municipalities located in an area where soil is contaminated with a perfluoroalkyl or polyfluoroalkyl substance.

(2) From the appropriation under s. 20.370 (6) (cs), the department shall issue to eligible municipalities awards for eligible costs related to any of the following:

- (a) Construction of a municipal water system.
- (b) Connecting to an existing municipal water system.
- (c) Assisting owners of private wells located in the municipality, if appropriate, with the cost of installation of filters, remediation, or well replacement.

(3) The department shall promulgate rules necessary to administer this section, including procedures for submission, review, and determination of applications for assistance under this section. The rules promulgated under this subsection shall give priority to providing assistance to owners of private wells contaminated with a perfluoroalkyl or polyfluoroalkyl substance.

SECTION 20. 281.79 of the statutes is created to read:

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

- (a) “Municipality” means a city, village, town, county, utility district, lake protection district, sewerage district, or municipal airport.
- (b) “Private water supply” has the meaning given in s. 281.77 (1) (a).

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

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

(4) NEGOTIATION. The mediator, immediately upon being appointed, shall contact the department, the municipalities, and any participating responsible parties and shall schedule negotiating sessions. The mediator shall schedule the first negotiating session no later than 20 days after being appointed. The mediator may meet with all parties to the negotiation, individual parties, or groups of parties. The mediator shall facilitate a discussion between the municipalities and

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any participating responsible parties to attempt to reach an agreement on the provision of an alternate source of water to the requesting municipality or the connection to a public water supply or another private water supply and the contribution of funds by the municipalities and any responsible parties.

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

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

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

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

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

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

SECTION 21. 283.31 (4) (g) of the statutes is created to read:

283.31 (4) (g) That, if the permit allows for the land application of sludge, the permittee will test the sludge for the presence of perfluoroalkyl or polyfluoroalkyl substances before land applying the sludge, and will not apply the sludge if levels of perfluoroalkyl or polyfluoroalkyl substances exceed levels designated by the department in the permit.

SECTION 22. 283.31 (4) (h) of the statutes is created to read:

283.31 (4) (h) That, if the permittee is a treatment work, the permittee will test all sludge for the presence of perfluoroalkyl or polyfluoroalkyl substances and report the testing results to the department.

SECTION 23. 292.31 (1) (d) (intro.) of the statutes is amended to read:

292.31 (1) (d) *Access to information.* (intro.) Upon the request of any officer, employee, or authorized representative of the department, any person who generated, transported, treated, stored, or disposed of solid or hazardous waste ~~which~~ that may have been disposed of at a site or facility under investigation by the department and any person who generated solid or hazardous waste at a site or facility under investigation by the department that was transported to, treated at, stored at, or disposed of at another site, facility, or location shall provide the officer,

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employee, or authorized representative access to any records or documents in that person's custody, possession, or control which relate to:

SECTION 24. 292.31 (1) (d) 1m. of the statutes is created to read:

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

SECTION 25. 292.31 (11) of the statutes is created to read:

292.31 (11) SOIL CLEANUP STANDARDS FOR PFAS. The department shall require responsible parties to establish residual contaminant levels for the cleanup of contaminated soil and sediment, or select a soil performance standard, as a result of a discharge of any perfluoroalkyl or polyfluoroalkyl substance.

SECTION 26. 292.66 of the statutes is created to read:

292.66 PFAS community grant program. (1) DEFINITIONS. In this section:

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

(b) "Municipality" means a city, village, town, county, tribal governing body, utility district, lake protection district, sewerage district, or municipal airport or a public, private, or tribal elementary or secondary school, a child care center that is licensed under s. 48.65, a child care program that is established or contracted for under s. 120.13 (14), or a child care provider that is certified under s. 48.651.

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

(2) FINANCIAL ASSISTANCE. The department shall administer a program to provide grants from the appropriation under s. 20.370 (6) (af) to municipalities that

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meet the requirements under sub. (3) for the purpose of conducting any of the eligible activities under sub. (4).

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

(a) The municipality tested or trained with a class B fire fighting foam that contained intentionally added PFAS in accordance with applicable state and federal law, or a 3rd party tested or trained with a class B fire fighting foam that contained intentionally added PFAS within 3 miles of a public or private water supply.

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

(c) One or more PFAS are affecting the municipality'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.

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

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

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

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

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

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

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

(g) Paying a municipality's costs for a mediator under s. 281.79.

(h) Sampling and testing water for PFAS contamination in a public, private, or tribal elementary or secondary school, a child care center that is licensed under s. 48.65, a child care program that is established or contracted for under s. 120.13 (14), or a child care provider that is certified under s. 48.651.

(5) APPLICATION. A municipality shall apply for a grant on a form prescribed by the department and shall include any information that the department finds 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.

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

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

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

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

SECTION 27. 292.67 of the statutes is created to read:

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

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

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

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

SECTION 28. 292.74 of the statutes is created to read:

292.74 Financial responsibility for PFAS. The department 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 a perfluoroalkyl or polyfluoroalkyl substance, and any person who manufactures any product that contains intentionally added PFAS, as defined under s. 299.485 (c), to provide proof of financial responsibility for conducting emergency response actions, remedial actions, environmental repair, and long-term care to address contamination by a potential discharge of a perfluoroalkyl or polyfluoroalkyl substance or environmental pollution that may be caused by a discharge of such

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substances. The department shall establish, by rule, the procedure for determining whether requiring a proof of financial responsibility is necessary to protect human health or the environment, and may establish requirements for types of financial responsibility, methods for calculating amounts of financial responsibility, access and default, bankruptcy notifications, and any other requirements the department determines is necessary under this section. The proof of financial responsibility required under this section shall be in addition to any other proof of financial responsibility or financial assurance required under this chapter. This section does not apply to a municipality, fire department, fire district, water utility, wastewater utility, agricultural producer, or the state.

SECTION 29. 299.485 of the statutes is created to read:

299.485 Products containing PFAS. (1) DEFINITIONS. In this section:

(a) “Fabric treatment” means a substance applied to fabric to give the fabric one or more characteristics, such as stain or water resistance.

(b) “Food packaging” means a container applied to or providing a means to market, protect, handle, deliver, serve, contain, or store a food or beverage. “Food packaging” includes a unit package, an intermediate package, and a shipping container; unsealed receptacles, such as carrying cases, crates, cups, plates, bowls, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs; and an individually assembled part of a food package, such as any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, and label.

(c) “Intentionally added PFAS” means PFAS that are deliberately added

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during the manufacture of a product where the continued presence of PFAS is desired in the final product or one of the product's components to perform a specific function.

(d) "Juvenile product" means a product designed or marketed for use by infants and children under the age of 12, but does not include an electronic product such as a personal computer, audio and video equipment, calculator, wireless phone, game console, or any associated peripheral.

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

(f) "Textile furnishings" means textile goods of a type customarily used in households and businesses, including draperies, floor coverings, furnishings, bedding, towels, and tablecloths.

(g) "Unavoidable use" means a use of PFAS that is protective or beneficial to public health or safety or to the environment and for which there are no feasible alternatives available with a lower risk to public health and the environment.

(2) PROHIBITIONS. (a) Beginning on January 1, 2028, no person may distribute, sell, or offer for sale any of the following products if the product contains intentionally added PFAS:

1. Food packaging, or food products contained in food packaging.
2. Carpets or rugs.
3. Cleaning products.
4. Cookware.
5. Cosmetics.
6. Dental floss.

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7. Fabric treatments.

8. Juvenile products.

9. Menstruation products.

10. Textile furnishings.

11. Ski wax.

12. Upholstered furniture.

13. A product for which the manufacturer has failed to provide the information required under sub. (4).

(b) The department may, by rule, identify products, in addition to those under par. (a) 1. to 13., by category or use that may not be distributed, sold, or offered for sale, and designate effective dates for such prohibitions.

(c) Beginning on January 1, 2034, no person may distribute, sell, or offer for sale any product that contains intentionally added PFAS, unless the department has determined, by rule, that the use of PFAS in the product is an unavoidable use.

(3) EXEMPTIONS. This section does not apply to any of the following:

(a) A product for which federal law governs the presence of PFAS in the product in a manner that preempts state law.

(b) Fire fighting foam regulated under s. 299.48.

(c) The sale or resale of a used product.

(d) A prosthetic or orthotic device, or any product that is a medical device or drug or that is otherwise used in a medical setting or in medical applications regulated by the U.S. food and drug administration.

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(e) A product for which the department has determined, by rule, that the use of PFAS in the product is an unavoidable use.

(4) INFORMATION REQUIRED. (a) On or before January 1, 2026, a manufacturer of a product distributed, sold, or offered for sale that contains intentionally added PFAS shall submit to the department a brief description of the product; the purpose for which PFAS is used in the product; the amount of each type of PFAS in the product; the name, address, and phone number for the manufacturer; and any additional information requested by the department as needed to implement this section.

(b) A manufacturer shall submit the information required under par. (a) whenever a new product that contains intentionally added PFAS is distributed, sold, or offered for sale, and shall revise information provided to the department whenever there is a significant change in the information.

(5) TESTING; CERTIFICATE OF COMPLIANCE. If the department has reason to believe that a product contains intentionally added PFAS and the product is being distributed, sold, or offered for sale, the department may direct the manufacturer of the product to, within 30 days, provide the department with testing results that demonstrate the amount of each of the PFAS in the product. If testing shows that the product does not contain intentionally added PFAS, the manufacturer shall provide the department with the testing results and a certificate attesting that the product does not contain intentionally added PFAS. If testing shows that the product contains intentionally added PFAS, the manufacturer shall provide the department with the testing results and the information required under sub. (4).

(6) **FINANCIAL RESPONSIBILITY.** The manufacturer of any new product that contains intentionally added PFAS that is distributed, sold, or offered for sale shall provide proof of financial responsibility as required under s. 292.74.

(7) **PENALTY.** A person that violates sub. (2) (a) or (c) shall be subject to a forfeiture of \$100 for each violating product, for each day that the violation continues.

SECTION 30. 299.487 of the statutes is created to read:

299.487 Transportation and disposal of PFAS. (1) In this section:

(a) “Environmental justice” means the fair treatment and meaningful involvement of all individuals, regardless of race, color, national origin, educational level, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies to ensure that no population of color or community of color, indigenous community, or low-income community shall be exposed to a disproportionate burden of the negative human health and environmental impacts of pollution or other environmental hazards.

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

(2) A person disposing of PFAS, or transporting PFAS for the purpose of disposal, shall attempt to the greatest extent possible to avoid disposing of PFAS in, or transporting PFAS to, any location where such disposal or transportation will contribute to environmental justice concerns and shall consider all reasonable alternatives for transport and disposal of PFAS. The department shall assist any person, upon request, in evaluating the environmental justice impacts of the person’s disposal or transportation of PFAS.

SECTION 31. Nonstatutory provisions.

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

(2) EMISSION STANDARDS FOR PFAS. If the department of health services has recommended a groundwater enforcement standard for a perfluoroalkyl or polyfluoroalkyl substance before the effective date of this subsection, the department of natural resources is not required to begin promulgating rules establishing an emission standard for that substance until 12 months beginning after the effective date of this subsection.

(3) EMERGENCY RULES FOR PFAS IN DRINKING WATER, GROUNDWATER, SURFACE WATER, SOLID WASTE, BEDS OF NAVIGABLE WATERS, AND CONTAMINATED SOIL AND SEDIMENT.

(a) The department of natural resources shall promulgate emergency rules

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under s. 227.24 establishing acceptable levels and standards, performance standards, monitoring requirements, and required response actions for any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances that the department determines may be harmful to human health or the environment in the following:

1. Drinking water under s. 281.17 (8).
2. Groundwater under ss. 160.07 (5) and 160.15, except as provided under ss. 160.07 (5) (b) and 160.15 (4).
3. Surface water from point sources under ss. 283.11 (4) and 283.21 and from nonpoint sources under s. 281.16.
4. Solid waste and solid waste facilities under chs. 289 and 291.
5. Beds of navigable waters under s. 30.20.
6. Soil and sediment under chs. 289 and 292.

(b) The department of natural resources shall promulgate emergency rules under s. 227.24 to do all of the following:

1. Add any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances that the department determines may be harmful to human health or the environment to the list of toxic pollutants under s. 283.21 (1) (a) for purposes of setting toxic effluent standards or prohibitions under s. 283.11 (4).
2. Add to the list of hazardous constituents under s. 291.05 (4) any perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances for which the department determines that the listing is necessary to protect public health, safety, or welfare.

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3. Administer and enforce ch. 292 in relation to remedial actions involving perfluoroalkyl or polyfluoroalkyl substances or a group or class of such substances.

4. Establish procedures for submission, review, and determination of applications for assistance under s. 281.73.

(c) Notwithstanding any finding required under par. (a) or (b), emergency rules promulgated under pars. (a) and (b) shall cover, at a minimum, perfluorooctane sulfonic acid, perfluorooctanoic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluorobutane sulfonic acid and shall include provisions for enforcing these standards, including requiring sampling, monitoring, testing, and response actions.

(d) Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under pars. (a) and (b) remain in effect until July 1, 2026, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(4) REPORT. No later than June 30, 2026, the department of natural resources and the department of health services shall submit a joint report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) having jurisdiction over matters relating to the environment. The report shall describe the feasibility and advisability of regulating perfluoroalkyl and polyfluoroalkyl substances as one or more classes of substances.

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

(6) STATEWIDE BIOMONITORING STUDIES. The department of health services shall conduct biomonitoring studies across the state to assess perfluoroalkyl and polyfluoroalkyl substance exposure levels and better understand the factors that affect perfluoroalkyl and polyfluoroalkyl substance exposure levels in different communities. The department may, as part of these studies, survey volunteer participants, test blood samples for the presence and levels of perfluoroalkyl and polyfluoroalkyl substances, and analyze the results.

SECTION 32. Fiscal changes.

(1) POSITION AUTHORIZATIONS; HEALTH SERVICES; STATEWIDE BIOMONITORING STUDIES. In the schedule under s. 20.005 (3) for the appropriation to the department of health services under s. 20.435 (1) (a), the dollar amount for fiscal year 2023-24 is increased by \$630,000 to conduct the studies under SECTION 31 (6) and to increase the authorized FTE positions for the department by 5.0 GPR positions to serve as 1.0 research scientist, 1.0 public health educator, 1.0 program manager and study coordinator, 1.0 epidemiologist, and 1.0 outreach specialist. In the schedule under s. 20.005 (3) for the appropriation to the department of health services under s. 20.435 (1) (a), the dollar amount for fiscal year 2024-25 is increased by \$630,000 for the same purposes.

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(2) POSITION AUTHORIZATIONS; HEALTH SERVICES; GROUNDWATER ENFORCEMENT STANDARDS. In the schedule under s. 20.005 (3) for the appropriation to the department of health services under s. 20.435 (1) (a), the dollar amount for fiscal year 2023-24 is increased by \$248,600 to increase the authorized FTE positions for the department by 4.0 GPR research scientist positions for the purpose of recommending enforcement standards for perfluoroalkyl and polyfluoroalkyl substances under s. 160.07. In the schedule under s. 20.005 (3) for the appropriation to the department of health services under s. 20.435 (1) (a), the dollar amount for fiscal year 2024-25 is increased by \$248,600 to provide funding for the positions authorized under this subsection.

(3) POSITION AUTHORIZATIONS; NATURAL RESOURCES; PFAS ACTION PLAN IMPLEMENTATION. In the schedule under s. 20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (ma), the dollar amount for fiscal year 2023-24 is increased by \$729,400 and the dollar amount for fiscal year 2024-25 is increased by \$934,200 to increase the authorized FTE positions for the department by 12.0 GPR positions and 1.0 GPR 4-year project position for the purpose of implementing the 2020 PFAS Action Plan published by the Wisconsin PFAS Action Council. The FTE positions shall be placed in the department as follows: 2.0 FTE positions to assist in conducting deposition monitoring, to develop and prioritize a list of sources that may be emitting PFAS compounds into the air, and to develop control technology standards; 3.0 FTE positions for drinking and groundwater monitoring; 2.0 FTE positions to assess necessary actions to limit exposure to PFAS; 2.0 FTE positions to develop water quality guidelines and

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standards related to PFAS, particularly for wastewater treatment facilities; 1.0 FTE position to develop standards related to PFAS disposal; 1.0 FTE position to develop sampling methodologies and perform sampling in cases where wildlife is suspected of having been contaminated by PFAS; and 1.0 FTE position to conduct community outreach and engagement.

(4) NATURAL RESOURCES; STATEWIDE PFAS SAMPLING AND TESTING. In the schedule under s. 20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (mw), the dollar amount for fiscal year 2023-24 is increased by \$1,480,000 and the dollar amount for fiscal year 2024-25 is increased by \$730,000 for the following statewide PFAS sampling and testing activities: testing at state-led sites; waterway monitoring; testing fish and wildlife; testing at wastewater treatment plants; and sampling municipal water supplies.

(5) NATURAL RESOURCES; PFAS SUBSTANCE EMERGENCY MEASURES. In the schedule under s. 20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (mw), the dollar amount for fiscal year 2023-24 is increased by \$900,000 and the dollar amount for fiscal year 2024-25 is increased by \$900,000 to support emergency measures related to PFAS, such as providing temporary drinking water to homes impacted by groundwater contamination.

(6) NATURAL RESOURCES; PFAS FIRE FIGHTING FOAM COLLECTION. In the schedule under s. 20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (ps), the dollar amount for fiscal year 2023-24 is increased by \$1,000,000.

(7) NATURAL RESOURCES; PFAS DISPOSAL STUDY. In the schedule under s.

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20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (ma), the dollar amount for fiscal year 2024-25 is increased by \$2,000,000 for the purpose of studying and analyzing different options for disposing of PFAS, including whether the transport of PFAS to certain locations for disposal would present environmental justice concerns.

(8) NATURAL RESOURCES; LEGACY PFAS CONTAMINATION IN SOIL AND GROUNDWATER. In the schedule under s. 20.005 (3) for the appropriation to the department of natural resources under s. 20.370 (4) (ma), the dollar amount for fiscal year 2024-25 is increased by \$2,000,000 for the purpose of testing for PFAS contamination in soil and groundwater in areas where biosolids have been land applied for at least 10 years and where vulnerable aquifers are present.

(9) HEALTH SERVICES; PFAS OUTREACH AND AWARENESS. In the schedule under s. 20.005 (3) for the appropriation to the department of health services under s. 20.435 (1) (a), the dollar amount for fiscal year 2023-24 is increased by \$500,000 and the dollar amount for fiscal year 2024-25 is increased by \$500,000 for PFAS outreach and awareness activities.

SECTION 33. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of s. 281.17 (8) (c) takes effect on the first day of the 7th month beginning after publication.

(END)