
Wisconsin Legislative Council

AMENDMENT MEMO



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2023 Assembly Bill 312

**Assembly Substitute
Amendment 2 and Assembly
Amendment 1 to Assembly
Substitute Amendment 2**

BACKGROUND

Per- and polyfluoroalkyl substances (PFAS) are a wide-ranging group of chemicals, used in various consumer and industrial products. In recent years, studies showing harmful health effects from PFAS have prompted efforts to prevent and remediate PFAS in drinking water and the environment.

Under current law, the Department of Natural Resources (DNR) has various sources of authority to address PFAS contamination, including Wisconsin’s remediation law and various permitting requirements. For more detailed background information regarding PFAS regulation in Wisconsin, see [Legislative Council, *Regulation of Per- and Polyfluoroalkyl Substances \(PFAS\)*, IM-2023-02 \(June 2023\)](#).

2023 ASSEMBLY BILL 312

2023 Assembly Bill 312 creates grant programs and modifies regulatory authority and requirements to address PFAS in Wisconsin.¹ Briefly, the bill: (1) creates a “municipal PFAS grant program,” to assist local units of government and certain other entities to prevent and respond to PFAS contamination; (2) prohibits DNR from taking certain actions, and requires DNR to take other actions, under Wisconsin’s remediation law; (3) authorizes grants for certain “innocent landowners”; (4) authorizes the use of certain water or sewerage ratepayer funds for PFAS source reduction measures; (5) creates limited exemptions from regulatory requirements for certain public utilities; (6) directs DNR to prioritize certain communities in the priority ranking system for the Clean Water Fund and State Drinking Water Loan Program, to the extent allowed under federal law; (7) authorizes a pilot project for treating surface water; (8) directs DNR and University of Wisconsin (UW) entities to reduce the Wisconsin State Laboratory of Hygiene’s PFAS testing costs and to carry out certain studies and efforts relating to PFAS; (9) temporarily limits annexation of territory to which water or sewer lines have been extended to address an immediate health concern; (10) specifies types of equipment eligible for reimbursement under the Well Compensation Grant Program; (11) requires DNR to survey or resurvey fire departments

¹ The bill does not appropriate any funds. However, the 2023-25 biennial budget act created a segregated trust fund, titled the “PFAS fund,” which could be utilized to fund one or more programs created by the bill. The budget act transferred \$110 million from the state’s general fund, \$15 million from the environmental fund, and the unencumbered balance from an appropriation for the collection of fire-fighting foam to the new PFAS fund. The budget act also authorized certain funds received from settlement agreements and orders relating to PFAS-related enforcement actions to be added to the PFAS fund. [See [2023 Wisconsin Act 19](#), SECS. 79, 210, and 9232.]

regarding fire-fighting foam and codifies authority for a fire-fighting foam collection program; and (12) directs DNR to submit certain reports to the Legislature.

ASSEMBLY SUBSTITUTE AMENDMENT 2, AS AMENDED

Assembly Substitute Amendment 2, as amended by Assembly Amendment 1, retains the bill's general framework, but with numerous modifications, summarized below.

Definition of "PFAS"

The substitute amendment simplifies the definition of "PFAS" and makes the definition consistent throughout the substitute amendment. Specifically, for all contexts addressed by the substitute amendment, the substitute amendment defines "PFAS" to mean "any per- or polyfluoroalkyl substance." In contrast, the bill defines "PFAS" to mean six particular substances, and certain other substances, depending on the context.

Municipal PFAS Grant Program

The substitute amendment makes the following changes relating to the municipal PFAS grant program:

- Specifies that the program is only applicable to PFAS for which there is a state or federal standard, a public health recommendation from the Department of Health Services (DHS) under Wisconsin's groundwater protection law,² or a health advisory issued by the Environmental Protection Agency (EPA).
- Modifies the criteria and requirements for grants for testing PFAS levels at municipal water systems and municipal wastewater treatment facilities, by: (1) clarifying that the grants may be used to reimburse municipalities for testing performed at properties owned, leased, managed, or contracted for by eligible municipalities; (2) removing a requirement that DNR distribute grants for testing in "equal shares," and instead directing DNR to base the amount of grants for testing on the cost of testing and the amount of testing needed in each community, while ensuring that funding is available to every eligible applicant that submits a claim; (3) and prohibiting DNR from requiring grant applicants to provide matching funds or information other than the basic information necessary to process a claim.
- Expands grant eligibility for certain activities undertaken by solid waste disposal facilities, by: (1) adding new eligibility for the owners or managers of, or the holders of a DNR-issued license for, privately owned solid waste disposal facilities, for grants of up to \$15,000 to test for the presence of PFAS in leachate; (2) expanding eligibility criteria for grants for disposing of PFAS-containing biosolids or leachate to include privately owned facilities, rather than only municipalities under the bill; and (3) providing that grants may also be used to purchase and install on-site treatment systems to address PFAS contained in biosolids or leachate.³

² The groundwater protection law sets forth a process for setting groundwater quality standards in Wisconsin. For contaminants that raise public health concerns, one key part of the process requires DHS to provide a recommendation to DNR. Very generally, those DHS recommendations must follow any applicable federal number, unless there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which DHS concludes, utilizing specified methodology and with a reasonable scientific certainty, that such a standard is justified. [See ch. 160, Stats.]

³ The substitute amendment also provides that these grants may not be used for any cost associated with landspreading and specifies that grants must be made to the owner or manager of an eligible privately owned facility, or to the holder of a DNR-issued solid waste facility license for the facility.

- Modifies language relating to eligibility for PFAS testing by certain nonmunicipal entities that operate water systems. Specifically, the substitute amendment provides that entities regulated as public or community water systems are eligible for such grants, whereas the bill only extends eligibility to entities regulated as public water systems.
- Expands the purposes of grants under the municipal PFAS grant program for certain capital costs or other costs related to PFAS that are not otherwise paid from the Environmental Improvement Fund. Specifically, the substitute amendment authorizes grants to be provided for addressing solid waste disposal facilities or other contaminated lands owned, leased, managed, or contracted for by a municipality (rather than only providing such grants for contaminated lands owned by a municipality). The substitute amendment also expands grant eligibility to allow for grants to municipalities for costs incurred by municipal utilities or metropolitan sewerage districts for pretreatment or other PFAS source reduction measures, if the costs incurred are less than the costs of upgrades that would otherwise be required and are approved by the governing body of the municipality or metropolitan sewerage district.
- For certain grants, limits the portion of grant funds that a single recipient may receive.⁴ Specifically, the substitute amendment provides that no municipality may receive grants totaling more than 20 percent of the funding available for such grants.
- For grants to municipalities for testing for PFAS at various locations that are managed or contracted for by a municipality, specifies that DNR may not issue a grant unless the property owner has given written consent to allow the municipality to enter the property and conduct testing, or an existing agreement permits such entry and testing.
- For grants to small or disadvantaged municipalities facing more than 20 percent water or wastewater rate increases as a result of capital costs or debt service to address PFAS contamination, requires DNR to prioritize projects that are necessary to address an exceedance of an applicable promulgated state or federal standard.⁵
- For grants to municipalities for certain costs not otherwise paid from the Environmental Improvement Fund, adds the preparation and implementation of pollutant minimization plans⁶ to the list of costs for which a municipality may receive a grant.
- Clarifies limitations on DNR's authority with respect to recipients of grants under the municipal PFAS grant program, by specifying that: (1) DNR may not require a grant recipient to take action to address contamination unless testing demonstrates that PFAS levels exceed any applicable promulgated standard under state or federal law; and (2) limitations on DNR's authority to disclose

⁴ Specifically, those changes apply to: (a) grants to municipalities for capital costs or other costs related to PFAS that are not otherwise paid for from the Environmental Improvement Fund; and (b) grants 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. For the second category, the substitute amendment also specifies that a municipality may submit an application for such a grant at the same time as submitting an application for a grant under the Clean Water Fund Program or the Safe Drinking Water Loan Program.

⁵ The substitute amendment also clarifies that a municipality may submit an application for such a grant at the same time as submitting an application for any form of financial assistance, rather than only grant funding, under the Clean Water Fund Program or the Safe Drinking Water Loan Program.

⁶ DNR's administrative rules require pollutant minimization reports, and pollutant minimization plans specific to perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), in some cases as part of permitting requirements for wastewater discharge permits under the Wisconsin Pollutant Discharge Elimination System. [See ss. NR [106.04\(5\)](#) and [106.99](#), Wis. Adm. Code.]

certain test results do not apply to testing required or conducted under certain other statutory requirements, such as testing under a Wisconsin pollutant discharge elimination system permit.

Innocent Landowner Grant Program

The substitute amendment makes the following changes relating to the innocent landowner grant program:

- Codifies the innocent landowner grant program in the statutes, whereas the bill creates the program in nonstatutory provisions.
- Specifies that the program is only applicable to PFAS for which there is a state or federal standard, a public health recommendation from DHS under Wisconsin's groundwater protection law, or a health advisory issued by the EPA.
- Refines the eligibility criteria for the program. Under the bill, DNR must provide grants to persons who own PFAS-contaminated property where the person has not been identified as responsible for the contamination. In contrast, the substitute amendment enumerates more specific categories of persons who are eligible for the grants, and authorizes DNR to identify additional categories of eligibility, subject to approval by the Joint Committee on Finance (JCF). Specifically, under the substitute amendment, a person is eligible for a grant if the person falls in one or more of the following five categories: (1) a person that spread biosolids or wastewater residuals contaminated by PFAS in compliance with any applicable license or permit; (2) a person that owns land upon which biosolids or wastewater residuals contaminated by PFAS were spread in compliance with any applicable license or permit; (3) a fire department or municipality that responded to emergencies that required the use of PFAS or that conducted training for such emergencies in compliance with applicable federal regulations; (4) a solid waste disposal facility that accepted PFAS; or (5) a person that owns, leases, manages, or contracts for property on which the PFAS contamination did not originate. In addition, under the substitute amendment, DNR may submit a proposal to JCF to add an additional person or category of persons as eligible person under the program. Such proposals are subject to a 14-day passive review process by JCF.
- Allows persons who lease, manage, contract for contaminated property, or hold a DNR-issued solid waste facility license for contaminated property, rather than only persons who own such property, to obtain grants under the program, and also allows applications submitted by a person who is applying on behalf of multiple eligible persons located in the same geographic region, if the person will be conducting similar activities on the multiple properties.
- Modifies the list of activities for which innocent landowner grants may be used. Specifically, the substitute amendment specifies that costs associated with interconnection to a municipal water supply are included among the types of eligible costs relating to clean drinking water supplies. Additionally, the substitute amendment eliminates language within the bill that would allow innocent landowner grants to cover legal fees and "any other costs resulting from land spreading of contaminated biosolids by other parties."
- Reduces the amount of matching funds that DNR may require from 20 percent to five percent.

- Requires, rather than authorizes, DNR to refer a claim submitted under the Well Compensation Grant Program to the innocent landowner grant program, if DNR determines that the claimant would be eligible for the program and funding is available.⁷

DNR Authority Under the Remediation Law

The substitute amendment makes the following changes relating to DNR's authority to conduct testing and enforcement activities under the remediation law:

- Removes a provision of the bill that limits DNR authority to require testing on brownfield properties.⁸
- Modifies exceptions to a general prohibition on DNR authority to prevent, delay, or otherwise impede a construction project or project of public works on the basis of PFAS contamination. Specifically, the substitute amendment: (1) adds an exception for instances in which DNR action is specifically required under the federal Clean Water Act; (2) authorizes DNR to act if the entity proposing to complete the project is responsible for the original contamination as a result of "conduct that was reckless or was done with the intent to discharge PFAS into the environment," rather than as a result of negligence; and (3) authorizes DNR to act if a project poses a "substantial" risk to public health or welfare, rather than a "measurable" risk.
- Clarifies that provisions relating to DNR's authority to conduct PFAS testing on lands not owned by the state apply only when the department seeks to conduct testing pursuant to a landowner's voluntary consent, rather than in situations in which the remediation law or another state or federal law provides an alternative basis for testing.⁹ Under the substitute amendment, if DNR collects samples based on a landowner's permission, DNR must obtain such permission in writing and notify the landowner that the permission includes the authority to collect samples, test the samples, and publicly disclose the results of the testing.
- Modifies limits on DNR authority to take enforcement action based on PFAS test results from samples taken from lands not owned by the state. Under the substitute amendment, DNR may not commence any enforcement action against a person that meets the criteria for an innocent landowner grant, if the person grants permission to DNR to remediate land at DNR's expense. In circumstances where a person is not eligible for an innocent landowner grant, the substitute amendment prohibits DNR enforcement action based on the results of PFAS testing on land not owned by the state, unless the testing demonstrates that PFAS levels exceed any promulgated standard under state or federal law.
- Clarifies that the prohibition on certain DNR enforcement actions based on PFAS test results does not limit voluntary remedial actions based on such test results.

⁷ The substitute amendment also specifies that DNR must refer the claim back to the Well Compensation Grant Program if the person is denied funding through the innocent landowner grant program.

⁸ That provision was removed by Assembly Amendment 1 to Assembly Substitute Amendment 2.

⁹ The substitute amendment also clarifies that the provisions relating to DNR testing on lands not owned by the state also apply to testing conducted by a third-party entity contracted by the department.

Utilities and PSC Authority

The substitute amendment makes the following changes relating to utilities and PSC's authority:

- Removes a provision of the bill that requires PSC to authorize a separate rate class for customers to whom service was extended in response to a public health concern caused by contamination upon request of a water public utility or combined water and sewer public utility.
- Expands the applicability of provisions relating to metropolitan sewerage districts¹⁰ to apply to any metropolitan sewerage district, rather than only the Milwaukee Metropolitan Sewerage District.
- Narrows the scope of an exemption from PSC enforcement authority for a water utility or combined water and sewer utility that does not obtain an otherwise required certificate of authority before commencing a project in response to a public health concern caused by PFAS. Specifically, under the substitute amendment, the authority to proceed without a certificate of authority applies only to situations involving PFAS, rather than to any "emerging contaminant." The substitute amendment also specifies that the provision applies only to projects with a total cost not greater than \$2 million, rather than the lesser of \$2 million or 50 percent of the utility's total operating expenses under the bill. The substitute amendment also modifies the obligations of a public utility operating under the exemption. Specifically, the substitute amendment requires a public utility to promptly notify the PSC of work associated with a project and shortens the deadline to submit the appropriate application and documentation to PSC from six months to 30 days.¹¹

Drinking Water Wells

The substitute amendment adds new provisions relating to drilling wells for drinking water. Specifically, the substitute amendment adds a provision that modifies DNR's administrative rules regarding drilling certain test drinking water wells. Specifically, the substitute amendment requires a person to obtain DNR approval before constructing a test well for a community water system,¹² if the well is located in a "special well casing depth area," and DNR has designated that area based, in whole or in part, on the presence of PFAS. DNR's approval must include review and approval of specifications and plans relating to drilling, well casing, filling, and sealing.

¹⁰ Under the substitute amendment, a metropolitan sewerage district may use water and sewerage service funds (i.e., ratepayer funds) to cover a portion of the costs of certain PFAS source reduction measures. Similarly, the substitute amendment directs DNR to provide grants under the municipal grant program to municipal public utilities and metropolitan sewerage districts for costs associated with certain PFAS source reduction measures.

¹¹ The substitute amendment makes a similar change to the PSC's administrative code. Specifically, the substitute amendment provides that a utility may begin necessary repair, temporary treatment, or other emergency work to address an emergency resulting from contamination of water supply without first receiving PSC authorization. However, the utility must promptly notify the PSC of the work and furnish certain information to the PSC within 30 days.

¹² For this purpose, "community water system" is a system for providing water for human consumption that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. The definition generally presumes that any water system serving seven or more single-family homes or 10 or more mobile homes, apartment units, duplex living units, or condominium units is a community water system. [s. NR 811.02 (16), Wis. Adm. Code.]

Nonstatutory Requirements for Studies and DNR Actions

The substitute amendment modifies nonstatutory provisions relating to testing and remediation activities, as follows:

- Modifies language relating to DNR actions for PFAS-contaminated sites for which a responsible party has not been identified or where the responsible party is unable to pay for remediation. Specifically, the substitute amendment removes a requirement for DNR to begin response and remediation actions and instead authorizes DNR to begin these actions. Specifically, the substitute amendment provides that DNR may begin these actions in situations where a responsible party has not been identified or where the responsible party qualifies as an innocent landowner under the innocent landowner grant program. Additionally, the substitute amendment allows DNR to contract with a third party to conduct these actions and specifies how DNR must prioritize sites based on levels of PFAS contamination and threats to public health or the environment.
- Modifies requirements relating to the State Laboratory of Hygiene. Whereas the bill requires DNR and the Board of Regents of the UW System to enter into a memorandum of understanding to ensure that the laboratory reduces PFAS testing costs by a certain amount, the substitute amendment instead directs these entities to take certain steps to assist other laboratories certified in the state. This assistance to other laboratories may include grants to assist with the cost of purchasing equipment for PFAS testing.
- Creates additional nonstatutory requirements for DNR and the UW System Board of Regents, requiring the entities to: (1) study and analyze the migration of PFAS into the Wisconsin River and its tributaries and the Mississippi River and its tributaries; and (2) conduct any additional studies related to PFAS, as approved by JCF.
- With respect to a study and analysis to be conducted by DNR and the Board of Regents regarding the cost, feasibility, and effectiveness of different destruction and disposal methods for PFAS, the substitute amendment provides that, for PFAS-contaminated sites, these entities must also study and analyze the cost, feasibility, and effectiveness of PFAS remediation methods that leave the contaminated medium in place and methods that remove the contaminated medium. The substitute amendment requires that work be done in consultation with persons who are able and qualified to conduct environmental remediation in the state.
- Provides that a directive for DNR to conduct additional PFAS testing activities in the 2023-25 fiscal biennium to provide that the directive applies only to voluntary testing.
- Provides that a directive relating to the collection of PFAS containing fire-fighting foam from fire departments applies only to the voluntary collection of such foam.

Local Annexation

The substitute amendment removes a provision of the bill that temporarily limits municipal annexation authority for territory to which water or sewer lines have been extended to address an immediate health concern.

BILL HISTORY

Representatives Mursau and Swearingen offered Assembly Substitute Amendment 2 on October 10, 2023, and Assembly Amendment 1 to Assembly Substitute Amendment 2 on November 14, 2023. On January 11, 2024, the Assembly Committee on Environment voted to recommend adoption of Assembly Amendment 1 to Assembly Substitute Amendment 2, adoption of the substitute amendment, as amended, and passage of the bill, as amended, each on a vote of Ayes, 5; Noes, 3.

For a full history of the bill, visit the Legislature's [bill history page](#).

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