



## 2019 ASSEMBLY BILL 922

February 17, 2020 - Introduced by Representatives KITCHENS, MURSAU, NOVAK, KRUG and SWEARINGEN, cosponsored by Senators COWLES and PETROWSKI. Referred to Committee on Environment.

1     **AN ACT** *to renumber* 281.58 (7) (b) 1.; *to amend* 281.58 (8e) (a), 281.58 (12) (a)  
2           1. (intro.), 281.61 (6), 281.75 (5) (f), 281.75 (6) (a) and 281.75 (11) (b) 2.; and *to*  
3           **create** 227.01 (13) (yv), 281.18, 281.58 (7) (b) 1g. and 281.75 (1) (b) 1m. of the  
4           statutes; **relating to:** PFAS management zones, extending the time limit for  
5           emergency rule procedures, providing an exemption from emergency rule  
6           procedures, and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a process for establishing management zones for perfluoroalkyl and polyfluoroalkyl substances (PFAS) and creates special requirements within those zones. This bill also changes existing grant and loan programs to prioritize projects in PFAS management zones, and requires the Department of Natural Resources to establish an advisory committee to assist in all PFAS-related actions.

#### ***Establishing PFAS management zones***

Under the bill, if a test of drinking water shows levels of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in excess of 70 parts per trillion (a positive test), the outer boundaries of an initial PFAS management zone is set at a one-mile radius around the location of the positive test. The area that is one mile outside of this initial boundary is designated as the testing region, within which DNR

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may conduct testing and research relating to PFOA and PFOS, as well as perfluorobutane sulfonic acid (PFBS), perfluoroheptanoic acid (PFHpA), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA).

If five positive tests for PFOA and PFOS are found in a testing region, the maximum boundary of an initial PFAS management zone expands to include the testing region and the area that is one mile outside of this new boundary becomes a new testing region. DNR may continue to expand the maximum boundary of a proposed PFAS management zone and testing region in one-mile increments until it can no longer find five positive tests for PFOA and PFOS in a testing region.

If DNR finds a discernable path of contamination, DNR must continue to extend the boundary of the proposed PFAS management zone and testing region in one-mile increments in the direction of the path of contamination until it can no longer find five positive tests for PFOA and PFOS in the testing region. If DNR finds a discernable path of contamination, DNR must also consider removing from the proposed PFAS management zone any areas that are not in the path of contamination and that either do not contain positive tests or that contain minimal evidence of contamination. DNR must also consider removing areas from the proposed PFAS management zone based on several listed factors, including hydrogeological considerations, likely sources of contamination, and physical boundaries such as public roadways.

The bill requires DNR, when testing for PFAS, to require testing to be done in soil and sediment, groundwater, surface water, drinking water, biosolids, and, if applicable, fish and wildlife tissue. DNR must use any testing data to advise in any PFAS-related permanent rules. The bill also requires any sampling to be conducted by DNR or by a third party with whom DNR contracts. Any testing must be conducted by the State Laboratory of Hygiene or a laboratory accredited for PFAS testing by DNR.

After it determines the boundaries of a proposed PFAS management zone, DNR must hold a public meeting to provide information about contaminants and their possible sources and effects. If, after the public meeting, DNR determines that a PFAS management zone should be established, DNR must establish the final management zone within 30 days after the meeting. The bill exempts DNR's creation of a PFAS management zone from the rule-making process.

Under the bill, a designation of a PFAS management zone expires one year after any emergency rules relating to testing in a PFAS management zone expire.

***Requirements within PFAS management zones***

The bill requires DNR to establish, by emergency rule, requirements for public water systems that draw water from groundwater or surface water within a PFAS management zone to test their water for PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS and to submit the results of testing to DNR. The bill provides that such rules may not create a standard for PFAS contained in drinking water in a PFAS management zone, although testing results may be used to inform future actions.

In addition, the bill requires DNR to establish emergency rules requiring the testing of any biosolids from a publicly owned treatment works if the biosolids are spread in a PFAS management zone or, for a publicly owned treatment works that

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has any part of its service area in a PFAS management zone, if the biosolids are to be moved off-site. The bill provides that such rules may not create a standard for PFAS contained in biosolids that are spread in a PFAS management zone, although testing results may be used to inform future actions.

***Notification and reporting***

The bill requires DNR to establish an Internet site for each PFAS management zone, and to include specific information on those sites. The bill also requires DNR to notify any local, county, or tribal governments within an initial or established PFAS management zone when DNR finds the first initial positive test, when DNR establishes a PFAS management zone, and when DNR establishes an Internet site for the zone.

In addition, under the bill, DNR must report to the legislature on the boundaries and method for establishing the PFAS management zones, the results of PFAS testing in PFAS management zones, plans for addressing PFAS contamination, and the technical and economic feasibility of complying with PFAS standards.

***Grant and loan priorities***

The bill changes the existing well compensation grant program, the safe drinking water loan program, and the clean water fund program to give priority to projects addressing PFAS contamination in PFAS management zones.

***PFAS advisory committee***

Finally, the bill requires DNR to establish an advisory committee to advise DNR on the promulgation of permanent rules relating to PFAS. The committee must include members of groups likely to be affected by such rules.

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

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

- 1           **SECTION 1.** 227.01 (13) (yv) of the statutes is created to read:
- 2           227.01 (13) (yv) Determines the boundaries of a PFAS management zone under
- 3           s. 281.18 (3).
- 4           **SECTION 2.** 281.18 of the statutes is created to read:
- 5           **281.18 PFAS management zones. (1) DEFINITIONS.** In this section:

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1 (a) “Discernable path of contamination” means the path that PFAS  
2 contamination takes from its source, such as down a river or with the flow of the  
3 groundwater table.

4 (b) “Drinking water” means surface water or groundwater used as a source of  
5 public or private drinking water, as determined by the department.

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

7 (d) “PFBS” means perfluorobutane sulfonic acid.

8 (e) “PFHpA” means perfluoroheptanoic acid.

9 (f) “PFHxS” means perfluorohexane sulfonic acid.

10 (g) “PFNA” means perfluorononanoic acid.

11 (h) “PFOA” means perfluorooctanoic acid.

12 (i) “PFOS” means perfluorooctanesulfonic acid.

13 (j) “Positive test” means a test of a drinking water sample that shows levels of  
14 PFOA and PFOS in excess of 70 parts per trillion.

15 **(2) PURPOSE.** The purpose of this section is to define geographical areas in this  
16 state that are characterized by elevated levels of PFOA and PFOS in surface water  
17 or groundwater that is used as a source for public or private drinking water. The  
18 purpose of PFAS management zones is to provide guidelines that target areas of the  
19 state most affected by PFAS contamination to, in the short-term, protect public  
20 health and welfare and, in the long-term, research the best methods and most  
21 economically and technically feasible outcomes for implementing statewide  
22 standards, for performing cleanup measures, including soil and sediment  
23 remediation, and for properly disposing of contaminants. The department shall use  
24 the information gathered from these zones to inform future actions, including rule

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1 making and other administrative actions. The PFAS management zones shall also  
2 be used to identify the path of contamination to inform future actions.

3 (3) ESTABLISHING PFAS MANAGEMENT ZONES. A PFAS management zone shall  
4 be established using the following method:

5 (a) The area within a one-mile radius of a positive test is the maximum  
6 boundary of the initial PFAS management zone.

7 (b) The area within one mile of the boundary of an initial PFAS management  
8 zone is the testing region. The department may conduct testing and research  
9 relating to PFOA, PFOS, PFHxS, PFNA, PFBS, and PFHpA within a testing region.

10 (c) If 5 positive tests are found in a testing region, the maximum boundary of  
11 an initial PFAS management zone expands to include the testing region. The area  
12 within one mile of the boundary of this expanded PFAS management zone becomes  
13 a new testing region.

14 (d) The department may continue to expand the maximum boundary of a  
15 proposed PFAS management zone and testing region in one-mile increments until  
16 it can no longer find 5 positive tests in a testing region.

17 (e) If the department finds a discernable path of contamination, the  
18 department shall continue to extend the boundary of the proposed PFAS  
19 management zone and testing region in one-mile increments in the direction of the  
20 path of contamination until it can no longer find 5 positive tests in the testing region.

21 (f) If the department finds a discernable path of contamination, the department  
22 shall consider removing from the proposed PFAS management zone any areas that  
23 are not in the path of contamination and that either do not contain positive tests or  
24 that contain minimal evidence of contamination.

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1 (g) The department shall consider removing from the proposed PFAS  
2 management zone other areas based on the following factors:

3 1. Hydrogeological considerations, including soil characteristics, depth to  
4 groundwater, groundwater gradients, and flow direction, based on positive test  
5 locations.

6 2. The geographic extent of the PFAS contamination and mobility of the  
7 contaminants, based on positive test locations.

8 3. Likely sources of PFAS contamination.

9 4. Reliability of sampling data and frequency of PFAS detections in samples.

10 5. Present and anticipated uses of surface or groundwater.

11 6. Legal land description boundaries, including political and property  
12 boundaries.

13 7. Public roads or other physical boundaries.

14 8. Any other factors the department determines are relevant.

15 (h) The department shall hold a public meeting after determining the  
16 boundaries of the proposed PFAS management zone. The public meeting shall be  
17 held not more than 30 days before establishing a final PFAS management zone. At  
18 the meeting, the department shall provide information about the PFAS  
19 contaminants within the proposed PFAS management zone, any known sources of  
20 the contaminants, any known effects on drinking water, and any anticipated steps  
21 the department plans to take to address the contamination.

22 (i) If, after holding the public meeting under par. (h), the department  
23 determines that a PFAS management zone should be established, the department  
24 shall establish the final PFAS management zone within 30 days after holding the  
25 public meeting, based on the factors outlined in this subsection.

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1 (j) For administrative purposes, PFAS management zones that overlap may be  
2 considered to be a single, merged PFAS management zone.

3 (4) EMERGENCY RULES FOR TREATMENT WORKS AND PUBLIC WATER SYSTEMS. (a) No  
4 later than 9 months after the effective date of this paragraph .... [LRB inserts date],  
5 the department shall, using the procedure under s. 227.24, promulgate emergency  
6 rules to establish the following:

7 1. Requirements for public water systems that draw water from groundwater  
8 or surface water within a PFAS management zone to test their water for PFOA,  
9 PFOS, PFHxS, PFHpA, PFNA, and PFBS and to submit the results to the  
10 department. Emergency rules promulgated under this subdivision may not create  
11 a standard for PFAS contained in drinking water in a PFAS management zone,  
12 although testing results may be used to inform future actions.

13 2. Requirements for testing biosolids from a publicly owned treatment works  
14 if the biosolids are spread in a PFAS management zone or, for a publicly owned  
15 treatment works that has any part of its service area in a PFAS management zone,  
16 if the biosolids are to be moved off-site. If a publicly owned treatment works that  
17 has any part of its service area in a PFAS management zone moves biosolids off-site  
18 and spreads biosolids in a PFAS management zone, the requirements established  
19 under this subdivision may require testing for only one of these actions, not both.  
20 Emergency rules promulgated under this subdivision may not create a standard for  
21 PFAS contained in biosolids that are spread in a PFAS management zone, although  
22 testing results may be used to inform future actions.

23 (b) Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to  
24 provide evidence that promulgating a rule under this subsection as an emergency  
25 rule is necessary for the preservation of the public peace, health, safety, or welfare

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1 and is not required to provide a finding of emergency for a rule promulgated under  
2 this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules  
3 promulgated under this subsection remain in effect for 3 years after the effective date  
4 of this paragraph .... [LRB inserts date], or the date on which permanent rules take  
5 effect, whichever is sooner. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., for  
6 emergency rules promulgated under this subsection, the department is not required  
7 to prepare a statement of scope of the rules or to submit the proposed rules in final  
8 draft form to the governor for approval.

9 (5) TESTING; USE OF RESULTS. The department shall require testing to be  
10 conducted by an entity under sub. (6) for PFOA, PFOS, PFHxS, PFHpA, PFNA, and  
11 PFBS in soil and sediment, including lake and river bed sediment; groundwater;  
12 surface water; drinking water; biosolids; and fish and wildlife tissue, as applicable.  
13 The department may cause testing to be conducted in other media if the department  
14 determines that doing so is a priority. Data collected through testing shall be used  
15 to advise permanent rule making that seeks to regulate PFAS.

16 (6) COLLECTION AND TESTING; AUTHORIZED ENTITIES. The collection of samples for  
17 PFAS testing conducted under this section shall follow commonly accepted PFAS  
18 collection protocols and shall be completed by the department or a 3rd party  
19 contracted by the department. Any testing conducted under this section shall be  
20 completed by the state laboratory of hygiene or a laboratory accredited for PFAS  
21 testing by the department.

22 (7) INTERNET SITE. The department shall establish an Internet site for each  
23 PFAS management zone. The department shall include the following information  
24 on each Internet site:

25 (a) The geographic boundaries of the PFAS management zone.

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1 (b) Information on how the PFAS management zone was established, including  
2 information on any expansions or reductions of the initial zone and the department's  
3 rationale for these decisions.

4 (c) Results from PFAS testing in the PFAS management zone conducted under  
5 sub. (3) or (5).

6 (d) Directions for private well owners who wish to test their own water,  
7 including protocols and laboratories for this testing.

8 (e) Health risks associated with the overconsumption of PFAS and measures  
9 the public may take to reduce the health risks of PFAS exposure, as provided by the  
10 department of health services.

11 (f) Any other information that the department determines to be relevant.

12 **(8) NOTIFICATION.** The department shall notify any local, county, or tribal  
13 governments within an initial or established PFAS management zone upon each of  
14 the following occurrences:

15 (a) The department finds the first initial positive test under sub. (3) (a).

16 (b) The department establishes the zone under sub. (3) (i).

17 (c) The department establishes an Internet site for the zone under sub. (7).

18 **(9) REPORT.** Not later than one year after the effective date of this subsection  
19 .... [LRB inserts date], and annually for 4 years thereafter, the department shall  
20 submit a report to the joint committee on rules and regulations and to the chief clerk  
21 of each house of the legislature for distribution to the appropriate standing  
22 committees under s. 13.172 (3) having jurisdiction over matters relating to natural  
23 resources. The report shall include the geographic boundaries of each PFAS  
24 management zone in effect; information on how the PFAS management zones were  
25 established, including information on any expansions or reductions of the initial

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1 zone and the department's rationale for these decisions; a summary of results from  
2 testing in PFAS management zones; plans for addressing PFAS contamination in  
3 PFAS management zones; the technical and economic feasibility of compliance with  
4 PFAS standards; and any other information deemed relevant by the department.

5 **(10) DISSOLUTION.** A PFAS management zone established under sub. (3) shall  
6 dissolve one year after any emergency rules established under sub. (4) expire.

7 **SECTION 3.** 281.58 (7) (b) 1. of the statutes is renumbered 281.58 (7) (b) 1r.

8 **SECTION 4.** 281.58 (7) (b) 1g. of the statutes is created to read:

9 281.58 (7) (b) 1g. Projects in or near a PFAS management zone established  
10 under s. 281.18 (3) that the department determines are necessary to address  
11 contamination by perfluoroalkyl or polyfluoroalkyl substances.

12 **SECTION 5.** 281.58 (8e) (a) of the statutes is amended to read:

13 281.58 (8e) (a) The type of project and the order in which it is listed under sub.  
14 (7) (b) ~~1. 1g. to 6.,~~ to the extent allowable under federal law.

15 **SECTION 6.** 281.58 (12) (a) 1. (intro.) of the statutes is amended to read:

16 281.58 (12) (a) 1. (intro.) Except as modified under par. (f) and except as  
17 restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub.  
18 (7) (b) ~~1. 1g. to 5.~~ is one of the following:

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

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

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1 according to affordability criteria specified in the rules. For the purpose of ranking  
2 projects under this subsection, the department shall treat a project to upgrade a  
3 public water system to provide continuous disinfection of the water that it distributes  
4 as if the public water system were a surface water system that federal law requires  
5 to provide continuous disinfection. In establishing a priority list under this  
6 subsection, the department shall, to the extent possible, give priority to projects that  
7 address contamination by perfluoroalkyl or polyfluoroalkyl substances in PFAS  
8 management zones established under s. 281.18 (3).

9 **SECTION 8.** 281.75 (1) (b) 1m. of the statutes is created to read:

10 281.75 (1) (b) 1m. In a PFAS management zone established under s. 281.18 (3),  
11 produces water containing a detectable amount of PFOA or PFOS.

12 **SECTION 9.** 281.75 (5) (f) of the statutes is amended to read:

13 281.75 (5) (f) The In allocating money for the payment of claims under this  
14 section, the department shall prioritize completed claims that are based on the type  
15 of contamination defined under sub. (1) (b) 1m. and, for these claims, shall allocate  
16 money for the payment of claims according to the level of contamination, with the  
17 highest levels of contamination receiving payment first. For all other claims, the  
18 department shall allocate money for the payment of claims according to the order in  
19 which completed claims are received. The department may conditionally approve a  
20 completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay  
21 the claim. The department shall allocate money for the payment of a claim which  
22 is conditionally approved as soon as funds become available.

23 **SECTION 10.** 281.75 (6) (a) of the statutes is amended to read:

24 281.75 (6) (a) Contamination of a private water supply, as defined under sub.  
25 (1) (b) 1., 1m., or 2., is required to be established by analysis of at least 2 samples of

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1 water, taken at least 2 weeks apart, in a manner which assures the validity of the  
2 test results. The samples shall be tested by a laboratory certified under s. 299.11.

3 **SECTION 11.** 281.75 (11) (b) 2. of the statutes is amended to read:

4 281.75 (11) (b) 2. An award may be issued for water treatment only if the  
5 contamination cannot be remedied by reconstruction or replacement of the private  
6 water supply, or connection to another water supply is not feasible. This subdivision  
7 does not apply to contamination defined under sub. (1) (b) 1m.

8 **SECTION 12. Nonstatutory provisions.**

9 (1) PFAS ADVISORY COMMITTEE. The department of natural resources shall  
10 establish an advisory committee under s. 227.13 to advise the department in the  
11 promulgation of permanent rules that establish any groundwater, surface water, or  
12 drinking water standards for PFAS including any rule promulgated pursuant to  
13 statements of scope approved prior to the effective date of this act. The committee  
14 shall include members of groups likely to be affected by the promulgation of such  
15 standards, including local governments or local government associations;  
16 representatives of municipal water utilities; and representatives of businesses that  
17 may be affected. The committee shall assist the department in developing  
18 economically and technically attainable statewide standards for PFAS that protect  
19 human health.

20 (2) ACHIEVEMENT OF STANDARDS. The department of natural resources shall  
21 work with persons and entities likely to be affected by the promulgation of  
22 permanent rules that establish standards for PFAS to look at the technological and  
23 economic feasibility of meeting those standards and ways to help municipal utilities

