

State of Wisconsin



2023 Senate Bill 312

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

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

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

SECTION 1. 66.0811 (4) of the statutes is created to read:

66.0811 (4) Notwithstanding subs. (2) and (3) and s. 66.0901 (11), a municipal public utility or a metropolitan sewerage district created under ch. 200 may use funds derived from its water or sewerage services for up to one-half the cost of pretreatment or other perfluoroalkyl and polyfluoroalkyl substances source reduction measures for an interconnected customer or other regular customer if the costs incurred are less than the costs of the upgrades otherwise required at the endpoint treatment facility and if the costs are approved by the governing body of the municipality or the metropolitan sewerage district.

SECTION 2. 196.49 (7) of the statutes is created to read:

196.49 (7) With respect to a water public utility or a combined water and sewer public utility, the commission may not investigate, impose a penalty against, or bring an action to enjoin the public utility for failing to obtain a certificate of authority before commencing a

project for which one is required under this section if all of the following apply:

(a) The public utility undertook the project in response to a public health concern caused by PFAS, as defined in s. 292.315 (1), the presence of which was unknown to the public utility until shortly before it commenced the project, and the public utility provides evidence showing that the utility has exceeded or is likely to exceed the applicable promulgated state or federal standard for that type of PFAS.

(b) The public utility promptly notifies the commission of the work and, within 30 days after commencing the work, submits the appropriate application and supporting documentation to the commission.

(c) The total cost of the project is not greater than \$2,000,000.

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

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

281.58 (8e) (bm) If the department, when ranking projects under this subsection or determining an applicant's eligibility for assistance under this section, considers whether an applicant that intends to extend ser-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

vice outside the boundaries of a municipality because of water contamination is small or disadvantaged, the department shall, to the extent allowable under federal law, determine the applicant to be small or disadvantaged if the area receiving the extended service would normally be determined to be small or disadvantaged, regardless of whether the existing service area would normally be determined to be small or disadvantaged.

SECTION 5. 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. If the department, when ranking projects under this subsection or determining an applicant's eligibility for assistance under this section, considers whether an applicant that intends to extend service outside the boundaries of a local governmental unit because of water contamination is small or disadvantaged, the department shall, to the extent allowable under federal law, determine the applicant to be small or disadvantaged if the area receiving the extended service would normally be determined to be small or disadvantaged, regardless of whether the existing service area would normally be determined to be small or disadvantaged.

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

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

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

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

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

292.315 Municipal PFAS grant program. (1)

DEFINITION. In this section, "PFAS" means any perfluoroalkyl or polyfluoroalkyl substance.

(1m) APPLICABILITY. This section applies only to PFAS for which there is a state or federal standard, a public health recommendation from the department of health services under s. 160.07, or a health advisory issued by the federal environmental protection agency.

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

(a) Grants to municipalities to test for PFAS levels at municipal water systems and municipal wastewater treatment facilities, or to reimburse municipalities for PFAS testing performed at properties owned, leased, managed, or contracted for by those municipalities after applicable standards for the chemical being tested have been promulgated. The department shall base the amount of grant awards under this paragraph 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 under this paragraph. The department may not require a municipality that submits a claim for a grant under this paragraph to provide information other than the basic information necessary to process the claim and may not require the recipient of a grant under this paragraph to provide any matching funds.

(b) Grants, provided in equal shares not to exceed \$1,800, to entities that are not municipalities and that are regulated as public or community water systems for the entity to test its drinking water supply for PFAS if required to do so by the department, or for reimbursement to the entity for PFAS testing performed after applicable standards for the chemical being tested have been promulgated. An entity that is not a municipality may apply to the department one time for a grant under this paragraph, by a deadline set by the department. The department may not require the recipient of a grant under this paragraph to provide any matching funds.

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

(d) Grants to municipalities to test for PFAS levels

at locations that are owned, leased, managed, or contracted for by a municipality and where PFAS may be present, including airports, water systems, wastewater treatment facilities, or contaminated lands, and to test for PFAS levels in leachate at solid waste disposal facilities that are owned, leased, managed, or contracted for by a municipality. If the property is not owned by the municipality, the department may not issue a grant under this paragraph unless the property owner has given the municipality written consent for the municipality to enter the property and conduct testing or the ability to enter the property and conduct testing is permitted under an existing agreement between the property owner and the municipality. The department may not provide a grant under this paragraph to test for PFAS in a water system or wastewater treatment facility if the applicant has received a grant under par. (a), unless the applicant demonstrates that it has used all of the grant funds provided to it under par. (a). The department shall accept applications for grants and provide grants under this paragraph on a rolling basis. The department may not require the recipient of a grant under this paragraph to provide matching funds in an amount greater than 20 percent of the amount of the grant.

(e) Grants to municipalities and the owner or manager of, or the holder of a solid waste facility license issued by the department for, privately owned solid waste disposal facilities to dispose of PFAS-containing biosolids or leachate at facilities that accept such biosolids or leachate or to purchase and install on-site treatment systems to address PFAS contained in biosolids or leachate. Grant moneys received under this paragraph may not be used for any cost associated with landspreading. The department may not require the recipient of a grant under this paragraph to provide matching funds in an amount greater than 20 percent of the amount of the grant.

(f) Grants for capital costs or debt service, including for facility upgrades or new infrastructure, to municipalities that are small or disadvantaged or in which rates for water or wastewater utilities will increase by more than 20 percent as a direct result of steps taken to address PFAS contamination. A grant provided under this paragraph may not exceed 50 percent of the municipality's capital or debt service costs, and no municipality may receive grants under this paragraph that total more than 20 percent of the funding available for grants under this paragraph. The department shall give priority under this paragraph to projects that are necessary to address an exceedance of an applicable promulgated state or federal standard. The department shall accept applications for grants and provide grants under this paragraph on a rolling basis. A municipality may submit an application for a grant under this program at the same time as sub-

mitting an application for financial assistance under s. 281.58 or 281.61.

(g) Grants to municipalities for capital costs or other costs related to PFAS that are not otherwise paid from the environmental improvement fund, including costs for addressing solid waste disposal facilities or other contaminated lands owned, leased, managed, or contracted for by the municipality and costs incurred by fire departments, including to replace PFAS-containing fire fighting foam; grants to municipalities for the preparation and implementation of pollutant minimization plans; and grants to municipalities for costs incurred by municipal public utilities or metropolitan sewerage districts created under ch. 200 for pretreatment or other PFAS source reduction measures for an interconnected customer or other regular customer if the costs incurred are less than the costs of the upgrades otherwise required at the endpoint treatment facility and if the costs are approved by the governing body of the municipality or the metropolitan sewerage district. No municipality may receive grants under this paragraph that total more than 20 percent of the funding available for grants under this paragraph. The department may not require the recipient of a grant under this paragraph to provide matching funds in an amount greater than 20 percent of the amount of the grant. The department shall accept applications for grants and provide grants under this paragraph on a rolling basis.

(3) LIMITATIONS. (a) The department may not require the recipient of a grant under sub. (2) to take action to address PFAS contamination unless testing demonstrates that PFAS levels exceed any applicable promulgated standard under state or federal law.

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

SECTION 9. 292.32 of the statutes is created to read:
292.32 Limitations on department actions relating to PFAS. (1) DEFINITIONS. In this section:

(a) "Construction project" means a building project that will affect one or more parcels.

(b) "PFAS" has the meaning given in s. 292.315 (1).

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

(3) CONSTRUCTION PROJECTS. Notwithstanding any

conflicting provisions of this chapter, the department may not prevent, delay, or otherwise impede any construction project or project of public works on the basis of a presence of PFAS contamination unless the department determines any of the following:

(a) The project poses a substantial risk to public health or welfare.

(b) There is a substantial risk that the project will create worsening environmental conditions.

(c) 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.

(d) The department is specifically required under the federal Clean Water Act to prevent, delay, or otherwise impede the project.

(4) PFAS TESTING ON NONSTATE LANDS. If department staff or a 3rd-party entity contracted by the department seeks to conduct voluntary testing under this chapter for PFAS, all of the following shall apply:

(a) If the department, or an entity contracted by the department, seeks to collect voluntary samples from lands not owned by the state based on permission from the landowner, such permission shall be in writing, and the department shall notify the landowner that such permission includes the authority to collect samples, to test those samples, and to publicly disclose the results of that testing. A landowner may revoke such permission at any time prior to the collection of samples.

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

(4m) ENFORCEMENT ACTIONS ON NONSTATE LANDS. The department may not commence any enforcement action against any person that meets the eligibility criteria for an innocent landowner grant under s. 292.34 (3) if the person grants permission to the department to remediate the land at the department's expense. For persons that are not eligible for an innocent landowner grant under s. 292.34 (3), the department may not commence any enforcement action based on the results of PFAS testing on samples taken from lands not owned by the state unless that testing demonstrates that PFAS levels exceed any promulgated standard under state or federal law. This subsection does not limit the ability of a landowner or other authorized party to voluntarily take remedial action based on test results collected by the department.

(5) PFAS TESTING REQUESTS. The department shall, in a timely manner, respond to requests from any person to conduct PFAS testing on samples taken from the person's property if practicable and if funds are

available to do so, if there is a reasonable belief that PFAS contamination may be present on the property, and if existing information such as public water supply testing data is not available. The department may contract with a 3rd party to respond to requests for testing under this subsection.

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

292.34 Innocent landowner grant program. (1) In this section, "PFAS" has the meaning given in s. 292.315 (1).

(1m) This section applies only to PFAS for which there is a state or federal standard, a public health recommendation from the department of health services under s. 160.07, or a health advisory issued by the federal environmental protection agency.

(2) The department shall administer a program under which the department may provide a grant to an eligible person who owns, leases, manages, or contracts for property that is contaminated by PFAS; to an eligible person that holds a department-issued solid waste facility license for property that is contaminated by PFAS; or to a person who is applying on behalf of multiple eligible persons that are located in the same geographic region and that will be conducting similar activities under sub. (4), if the applicant will be the entity conducting the activities under sub. (4).

(3) All of the following are persons eligible for a grant under this section:

(a) A person that spread biosolids or wastewater residuals contaminated by PFAS in compliance with any applicable license or permit.

(b) A person that owns land upon which biosolids or wastewater residuals contaminated by PFAS were spread in compliance with any applicable license or permit.

(c) 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.

(d) A solid waste disposal facility that accepted PFAS.

(e) A person that owns, leases, manages, or contracts for property on which the PFAS contamination did not originate.

(f) Any other person or category of persons submitted as a proposed eligible person by the department to the joint committee on finance. If the cochairpersons of the joint committee on finance do not notify the department within 14 working days after the date the proposal is submitted that the committee has scheduled a meeting to take place for the purpose of reviewing the proposal, the department shall consider the person or category of persons to be a person eligible for a grant under this sec-

tion. If, within 14 working days after the date the proposal is submitted, the cochairpersons of the joint committee on finance notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department may not consider the person or category of persons to be a person eligible for a grant under this section until the proposal is approved by the committee.

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

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

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

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

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

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

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

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

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

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

PSC 184.06 Emergency work. In case of an emergency resulting from the failure of power supply or from fire, storm, or similar events, a utility may begin necessary repair work without receiving prior commission au-

thorization. In case of an emergency resulting from the contamination of water supply, a utility may begin necessary repair, temporary treatment, or other emergency work to address the issue without receiving prior commission authorization. The utility shall promptly notify the commission of the emergency work and shall, within 30 days after commencing the work, furnish the commission with the information required under s. PSC 184.04 (3).

SECTION 14. Nonstatutory provisions.

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

(2) REMEDIAL ACTION AT SITES CONTAMINATED BY PFAS. The department of natural resources may begin response and remedial actions, including site investigations, at any site contaminated by perfluoroalkyl or polyfluoroalkyl substances where a responsible party has not been identified or where the responsible party qualifies as an innocent landowner under s. 292.34. The department of natural resources may contract with a 3rd party to conduct response and remedial actions under this subsection. The department of natural resources shall prioritize response and remedial actions at sites with the highest levels of perfluoroalkyl or polyfluoroalkyl substances and sites with the greatest threats to public health or the environment as a result of perfluoroalkyl or polyfluoroalkyl substances.

(3) PFAS TESTING LABORATORIES.

(a) The department of natural resources and the Board of Regents of the University of Wisconsin System shall enter into a memorandum of understanding to jointly ensure that the state laboratory of hygiene provides guidance and other materials, conducts training, and provides assistance to laboratories in this state that are certified under s. 299.11 (7) to test for contaminants other than perfluoroalkyl or polyfluoroalkyl substances to become certified under s. 299.11 (7) to test for perfluoroalkyl or polyfluoroalkyl substances, and to assist laboratories in this state that are certified under s. 299.11 (7) to test for perfluoroalkyl or polyfluoroalkyl sub-

stances in reducing the costs of such testing and shortening the timeline for receiving such testing results.

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

(c) The state laboratory of hygiene shall prepare a report on its efforts under this subsection and shall deliver the report to the joint committee on finance and the standing committees with jurisdiction over natural resources and the environment no later than August 31, 2025.

(4) PFAS STUDIES AND REPORTING.

(a) In this subsection, "PFAS" has the meaning given in s. 292.315 (1).

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

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

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

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

4. For sites contaminated by PFAS, in consultation with persons who are able and qualified to conduct environmental remediation in this state, study and analyze the cost, feasibility, and effectiveness of different methods for remediating PFAS that leave the contaminated medium in place and methods that remove the contaminated medium.

5. Study and analyze the migration of PFAS into the

bay of Green Bay, including where the PFAS are entering the bay and what effects PFAS may have in the bay.

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

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

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

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

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

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

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

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

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