



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5532/1
MCP&SWB:ahe&amn

2019 ASSEMBLY BILL 843

January 31, 2020 - Introduced by Representatives NYGREN and SWEARINGEN, cosponsored by Senator HANSEN. Referred to Committee on Environment.

1 **AN ACT** *to amend* 292.31 (1) (d) (intro.); and *to create* 25.17 (1) (kt), 25.46 (1)
2 (eb), 25.461, 36.50, 160.07 (7), 254.25, 281.15 (7), 281.17 (8) (c), 285.27 (2) (bm),
3 292.31 (1) (d) 1m., 292.66, 292.74 and 299.15 (2m) of the statutes; **relating to:**
4 PFAS standards and grant programs, providing blood testing for certain
5 individuals, requiring a cancer cluster study, extending the time limit for
6 emergency rule procedures, providing an exemption from emergency rule
7 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources to establish and enforce various standards for perfluoroalkyl and polyfluoroalkyl substances (PFAS). The PFAS group of substances includes several thousand chemicals; two of the most well known are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

Under current law, the Department of Health Services recommends groundwater enforcement standards for substances that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns, which DNR then proposes as DNR rules in its rule-making process. This bill requires DNR to create emergency rules establishing groundwater standards for PFOA and PFOS, as well as any other PFAS for which DHS submits a recommended groundwater enforcement standard.

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In addition, the bill requires DNR to establish surface water quality standards and maximum contaminant level drinking water standards for any PFAS for which DHS has submitted a recommended groundwater enforcement standard. DNR must also establish air emission standards for any known PFAS to provide adequate protection for public health and welfare, taking into account energy, economic, and environmental impacts and other costs related to the emission source. The bill also requires DNR to consider all PFAS to be air contaminants and to require reporting of any emission of PFAS.

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 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, or the state.

In addition, the bill requires the University of Wisconsin Board of Regents to provide a grant to a campus designated by the board to conduct research into technologies for destroying PFAS.

The bill also creates a PFAS municipal grant program, under which DNR must provide grants to municipalities to address PFAS contamination when the party responsible for the contamination is unknown, cannot be found, or is unable to pay for the activities funded under the grant. DNR may also provide grants to municipalities that are responsible parties under certain circumstances. Under the bill, grants provided under this program may be used to investigate potential PFAS environmental pollution or a potential PFAS discharge, treat or dispose of PFAS fire fighting foam containers from a municipal site or facility, sample a private water supply within three miles of a site or facility known to contain PFAS, provide a temporary emergency water supply, a water treatment system, or bulk water to replace water contaminated with PFAS, or remediate a PFAS discharge or PFAS environmental pollution. A municipality that receives a grant must provide matching funds or in-kind services in an amount equal to at least 20 percent of the grant.

The bill also requires DHS to create and administer a pilot program to provide free blood testing, beginning no later than September 1, 2020, for individuals living on or near sites or facilities contaminated with PFAS or other toxic compounds in the city of Marinette, the town of Peshtigo, the city of Peshtigo, or the town of Porterfield. The bill further requires any party responsible for contamination of such a site or facility to reimburse DNR for the cost of the testing; this money is then deposited into the environmental fund. The bill also requires DHS to conduct a cancer cluster study to investigate the incidence of PFAS-related cancers and other illnesses in the city of Marinette, the town of Peshtigo, the city of Peshtigo, and the town of Porterfield.

The bill also creates a new segregated fund, designated as the PFAS action fund, to collect all moneys received from settlement agreements in court actions, or proposed actions, resulting from PFAS contamination.

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In addition, the bill requires DNR to set criteria for certifying laboratories to test for PFAS, and to certify laboratories that meet these criteria. These criteria must be based on protocols established by the federal Environmental Protection Agency and the federal Department of Defense. Before these criteria are set, the bill allows DNR to require testing for PFAS to be done according to nationally recognized standards.

Finally, the bill also 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.

For further information see the *state* 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:

1 **SECTION 1.** 25.17 (1) (kt) of the statutes is created to read:

2 25.17 (1) (kt) PFAS action fund (s. 25.461);

3 **SECTION 2.** 25.46 (1) (eb) of the statutes is created to read:

4 25.46 (1) (eb) The moneys received from reimbursements under s. 254.25 (3)
5 for environmental management.

6 **SECTION 3.** 25.461 of the statutes is created to read:

7 **25.461 PFAS action fund.** There is established a separate nonlapsible trust
8 fund designated as the PFAS action fund, to consist of moneys that are received
9 under settlement agreements or orders in settlement of actions or proposed actions
10 for violations of chs. 280 to 299, or in settlement of actions initiated under 42 USC
11 9601 to 9675, resulting from environmental contamination from a perfluoroalkyl or
12 polyfluoroalkyl substance.

13 **SECTION 4.** 36.50 of the statutes is created to read:

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1 **36.50 PFAS disposal research grant.** The board shall provide a grant to a
2 campus designated by the board to conduct research into technologies for destroying
3 perfluoroalkyl and polyfluoroalkyl substances.

4 **SECTION 5.** 160.07 (7) of the statutes is created to read:

5 160.07 (7) The department shall use the procedure under s. 227.24 to
6 promulgate emergency rules establishing a groundwater enforcement standard for
7 any perfluoroalkyl or polyfluoroalkyl substance for which the department receives
8 a recommendation from the department of health services under sub. (3). The
9 department shall promulgate emergency rules under this subsection no later than
10 the first day of the 7th month beginning after the department receives the
11 recommendation from the department of health services. Notwithstanding s. 227.24
12 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect
13 until 3 years after the effective date of this subsection ... [LRB inserts date], or the
14 date on which permanent rules take effect, whichever is sooner. Notwithstanding
15 s. 227.24 (1) (a) and (3), the department is not required to provide evidence that
16 promulgating a rule under this subsection as an emergency rule is necessary for the
17 preservation of public peace, health, safety, or welfare and is not required to provide
18 a finding of emergency for a rule promulgated under this subsection.

19 **SECTION 6.** 254.25 of the statutes is created to read:

20 **254.25 Blood testing pilot program for individuals living near**
21 **contamination sites or facilities.** (1) In this section, "PFAS" means a
22 perfluoroalkyl or polyfluoroalkyl substance.

23 (2) The department shall create and administer a pilot program to provide, at
24 no charge, beginning no later than September 1, 2020, blood testing for PFAS for
25 individuals living on or near sites or facilities contaminated by PFAS or any other

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1 toxic compound in the city of Marinette, the town of Peshtigo, the city of Peshtigo,
2 and the town of Porterfield.

3 (3) The department of natural resources is entitled to recover the costs of
4 testing under sub. (2) from any party responsible for contamination of the nearby site
5 or facility with PFAS or any other toxic compound. Reimbursements to the
6 department of natural resources under this subsection shall be credited to the
7 environmental fund for environmental management.

8 **SECTION 7.** 281.15 (7) of the statutes is created to read:

9 281.15 (7) The department shall promulgate water quality standards for any
10 perfluoroalkyl or polyfluoroalkyl substance for which the department receives a
11 recommendation from the department of health services under s. 160.07 (3).

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

13 281.17 (8) (c) The department shall promulgate maximum contaminant level
14 drinking water standards for any perfluoroalkyl or polyfluoroalkyl substance for
15 which the department receives a recommendation from the department of health
16 services under s. 160.07 (3).

17 **SECTION 9.** 285.27 (2) (bm) of the statutes is created to read:

18 285.27 (2) (bm) *Standard for PFAS.* Emission standards for known
19 perfluoroalkyl or polyfluoroalkyl substances are needed to provide adequate
20 protection for public health and welfare under par. (b). The department shall
21 promulgate emission standards for any known perfluoroalkyl or polyfluoroalkyl
22 substances to provide adequate protection for public health and welfare, taking into
23 account energy, economic, and environmental impacts and other costs related to the
24 emission source.

25 **SECTION 10.** 292.31 (1) (d) (intro.) of the statutes is amended to read:

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SECTION 10

1 292.31 (1) (d) *Access to information.* (intro.) Upon the request of any officer,
2 employee, or authorized representative of the department, any person who
3 generated, transported, treated, stored, or disposed of solid or hazardous waste
4 ~~which that~~ may have been disposed of at a site or facility under investigation by the
5 department and any person who generated solid or hazardous waste at a site or
6 facility under investigation by the department that was transported to, treated at,
7 stored at, or disposed of at another site, facility, or location shall provide the officer,
8 employee, or authorized representative access to any records or documents in that
9 person's custody, possession, or control which relate to:

10 **SECTION 11.** 292.31 (1) (d) 1m. of the statutes is created to read:

11 292.31 (1) (d) 1m. The type and quantity of waste generated at the site or
12 facility that was transported to, treated at, stored at, or disposed of at another site,
13 facility, or location, and the dates and locations of these activities.

14 **SECTION 12.** 292.66 of the statutes is created to read:

15 **292.66 PFAS municipal grant program.** (1) DEFINITIONS. In this section:

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

17 (b) "Responsible party" means a generator, an owner or operator, a transporter,
18 or a person who possesses or controls a PFAS that is discharged or disposed of or who
19 possesses or controls environmental pollution caused by PFAS, or a generator, an
20 owner or operator, a transporter, or a person who causes the discharge or disposal of
21 a PFAS or who causes environmental pollution caused by PFAS.

22 (2) GRANTS. (a) The department shall administer a program to provide grants
23 to municipalities that are not responsible parties or that meet the requirements
24 under par. (b) for the purpose of conducting any of the eligible activities under sub.
25 (3). Except as provided under par. (b), the department may award a grant under this

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1 subsection only if the responsible party is unknown, cannot be located, or is
2 financially unable to pay the cost of the eligible activity.

3 (b) The department may provide a grant to a municipality that is a responsible
4 party only if one of the following applies:

5 1. The discharge of PFAS or environmental pollution caused by PFAS resulted
6 from the municipality testing or training with a Class B fire fighting foam or using
7 a Class B fire fighting foam as part of an emergency fire fighting or fire prevention
8 operation, if the testing, training, or use occurred prior to August 1, 2020. In this
9 subdivision, "Class B fire fighting foam" means a foam designed for use on a
10 flammable liquid fire, and may include a dual action Class A and B foam.

11 2. The discharge of PFAS or environmental pollution cause by PFAS resulted
12 from the municipality applying biosolids to land or making any other discharge, if
13 the land application or discharge was done in accordance with a pollution discharge
14 elimination system permit issued under ch. 283 and was done prior to the effective
15 date of this subdivision [LRB inserts date].

16 (3) **ELIGIBLE ACTIVITIES.** The following activities are eligible for an award of a
17 grant under sub. (2):

18 (a) Investigating potential PFAS environmental pollution or a potential PFAS
19 discharge at a site or facility for the purpose of reducing or eliminating
20 environmental contamination.

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

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

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

3 (e) Remediating a PFAS discharge or PFAS environmental pollution.

4 **(4) MATCHING FUNDS.** The department may not provide a grant under sub. (2)
5 unless the municipality contributes matching funds of or in-kind services equal in
6 value to at least 20 percent of the amount of the grant.

7 **(5) RULES.** The department shall promulgate rules to administer the program
8 under this section, including criteria that limit the amount of awards provided.

9 **SECTION 13.** 292.74 of the statutes is created to read:

10 **292.74 Financial responsibility for PFAS.** The department may, if it
11 determines doing so is necessary to protect human health or the environment,
12 require a person who possesses or controls or who causes the discharge of a
13 perfluoroalkyl or polyfluoroalkyl substance to provide proof of financial
14 responsibility for conducting emergency response actions, remedial actions,
15 environmental repair, and long-term care to address contamination by a potential
16 discharge of perfluoroalkyl or polyfluoroalkyl substances or environmental pollution
17 that may be caused by a discharge of such substances. The department shall
18 establish, by rule, the procedure for determining whether requiring a proof of
19 financial responsibility is necessary to protect human health or the environment,
20 and may establish requirements for types of financial responsibility, methods for
21 calculating amounts of financial responsibility, access and default, bankruptcy
22 notifications, and any other requirements the department determines is necessary
23 under this section. The proof of financial responsibility required under this section
24 shall be in addition to any other proof of financial responsibility or financial

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1 assurance required under this chapter. This section does not apply to a municipality,
2 fire department, fire district, water utility, wastewater utility, or the state.

3 **SECTION 14.** 299.15 (2m) of the statutes is created to read:

4 299.15 (2m) The department shall consider all known perfluoroalkyl or
5 polyfluoroalkyl substances to be air contaminants for purposes of sub. (2) (a) 2. The
6 reporting level for these substances is any amount greater than zero pounds per year.

7 **SECTION 15. Nonstatutory provisions.**

8 (1) TESTING LABORATORIES; EMERGENCY RULES.

9 (a) The department of natural resources shall use the procedure under s. 227.24
10 to promulgate, no later than the first day of the 7th month beginning after the
11 effective date of this paragraph, emergency rules establishing criteria for certifying
12 laboratories to test for any perfluoroalkyl or polyfluoroalkyl substances, including
13 the standards and methods for such testing, and shall certify laboratories that meet
14 these criteria. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules
15 promulgated under this paragraph remain in effect until 3 years after the effective
16 date of this paragraph or the date on which permanent rules take effect, whichever
17 is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural
18 resources is not required to provide evidence that promulgating a rule under this
19 paragraph as an emergency rule is necessary for the preservation of public peace,
20 health, safety, or welfare and is not required to provide a finding of emergency for a
21 rule promulgated under this paragraph.

22 (b) Before emergency rules are promulgated under par. (a), the department of
23 natural resources may require testing for a perfluoroalkyl or polyfluoroalkyl
24 substance to be done according to any nationally recognized procedures.

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1 (c) Emergency rules promulgated under par. (a) for drinking water shall be
2 based on federal environmental protection agency protocols, if any, for testing for
3 perfluoroalkyl and polyfluoroalkyl substances. In promulgating emergency rules
4 under par. (a) for nondrinking water, the department of natural resources shall take
5 into consideration the latest version of the federal department of defense's Quality
6 Systems Manual for Environmental Laboratories.

7 (2) PFAS MUNICIPAL GRANT PROGRAM; EMERGENCY RULES. The department of
8 natural resources shall use the procedure under s. 227.24 to promulgate, no later
9 than the first day of the 7th month beginning after the effective date of this
10 subsection, emergency rules to create and administer the program under s. 292.66.
11 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this
12 subsection remain in effect until 3 years after the effective date of this subsection or
13 the date on which permanent rules take effect, whichever is sooner.
14 Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not
15 required to provide evidence that promulgating a rule under this subsection as an
16 emergency rule is necessary for the preservation of public peace, health, safety, or
17 welfare and is not required to provide a finding of emergency for a rule promulgated
18 under this subsection.

19 (3) NOTIFICATION. The department of natural resources shall notify the
20 legislative reference bureau when the federal Environmental Protection Agency
21 promulgates regulations relating to air stack testing methods for any perfluoroalkyl
22 or polyfluoroalkyl substance and the effective date of those regulations. The
23 legislative reference bureau shall publish a notice in the Wisconsin Administrative
24 Register that specifies the effective date of the treatment of ss. 285.27 (2) (bm) and
25 299.15 (2m), as determined under SECTION 16 (1) of this act.

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1 (4) **CANCER CLUSTER STUDY.** The department of health services shall conduct a
2 cancer cluster study to investigate the incidence of known and suspected
3 perfluoroalkyl-related and polyfluoroalkyl-related cancers and other illnesses in
4 the city of Marinette, the town of Peshtigo, the city of Peshtigo, and the town of
5 Porterfield. The department shall begin this study within 90 days after the effective
6 date of this subsection. The department shall submit a report describing the results
7 of the study to any relevant local health departments and to the chief clerk of each
8 house of the legislature for distribution to the appropriate standing committees in
9 the manner provided under s. 13.172 (3) having jurisdiction over matters relating to
10 natural resources, and shall make the results of the study available on its Internet
11 site.

12 (5) **POSITION AUTHORIZATIONS; NATURAL RESOURCES.** The authorized FTE
13 positions for the department of natural resources are increased by 9.0 SEG positions,
14 to be funded from the appropriation under s. 20.370 (4) (mq), for the purpose of
15 administering the provisions of this act. No more than \$191,700 in fiscal year
16 2019-20 and no more than \$766,200 in fiscal year 2020-21 may be expended for this
17 purpose. The positions shall be placed in the department's environmental
18 management division as follows: 1.0 program and policy manager in the office of
19 emerging contaminants; 1.0 natural resources administrative policy coordinator; 1.0
20 advanced water supply specialist in the drinking and groundwater program; 1.0
21 emerging contaminants coordinator in the remediation and redevelopment program;
22 2.0 advanced hydrogeologists in the remediation and redevelopment program; 1.0
23 advanced hydrogeologists in the waste and materials management program; 1.0
24 advanced wastewater specialist in the water quality program; and 1.0 advanced
25 environmental toxicologist in the great waters program.

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1 (6) POSITION AUTHORIZATIONS; HEALTH SERVICES. The authorized FTE project
2 positions for the department of health services are increased by 1.0 GPR advanced
3 toxicologist position and 1.0 GPR research scientist position to be funded from the
4 appropriation under s. 20.435 (1) (a), for the purpose of recommending enforcement
5 standards for perfluoroalkyl and polyfluoroalkyl substances under s. 160.07.

6 **SECTION 16. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of ss. 285.27 (2) (bm) and 299.15 (2m) takes effect on the first
9 day after the effective date of the federal Environmental Protection Agency's
10 regulations relating to air stack testing methods for one or more perfluoroalkyl or
11 polyfluoroalkyl substance.

12 **(END)**