



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBa0809/1
MCP:all

**SENATE AMENDMENT 2,
TO SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 312**

November 14, 2023 - Offered by Senators PFAFF, WIRCH, HESSELBEIN, AGARD,
CARPENTER, L. JOHNSON, LARSON, SMITH, SPREITZER and TAYLOR.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 7, line 1: delete the material beginning with that line and ending with
3 page 24, line 2, and substitute:

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

5 66.0811 (4) Notwithstanding subs. (2) and (3) and s. 66.0901 (11), a municipal
6 public utility or a metropolitan sewerage district created under ch. 200 may use
7 funds derived from its water or sewerage services for up to one-half the cost of
8 pretreatment or other perfluoroalkyl and polyfluoroalkyl substances source
9 reduction measures for an interconnected customer or other regular customer if the
10 costs incurred are less than the costs of the upgrades otherwise required at the
11 endpoint treatment facility and if the costs are approved by the governing body of the
12 municipality or the metropolitan sewerage district.

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

2 196.49 (7) With respect to a water public utility or a combined water and sewer
3 public utility, the commission may not investigate, impose a penalty against, or bring
4 an action to enjoin the public utility for failing to obtain a certificate of authority
5 before commencing a project for which one is required under this section if all of the
6 following apply:

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

12 (b) The public utility promptly notifies the commission of the work and, within
13 30 days after commencing the work, submits the appropriate application and
14 supporting documentation to the commission.

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

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

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

18 281.58 (8e) (bm) If the department, when ranking projects under this
19 subsection or determining an applicant's eligibility for assistance under this section,
20 considers whether an applicant that intends to extend service outside the boundaries
21 of a municipality because of water contamination is small or disadvantaged, the
22 department shall, to the extent allowable under federal law, determine the applicant
23 to be small or disadvantaged if the area receiving the extended service would
24 normally be determined to be small or disadvantaged, regardless of whether the
25 existing service area would normally be determined to be small or disadvantaged.

1 **SECTION 5.** 281.61 (6) of the statutes is amended to read:

2 281.61 **(6)** PRIORITY LIST. The department shall establish a priority list that
3 ranks each safe drinking water loan program project. The department shall
4 promulgate rules for determining project rankings that, to the extent possible, give
5 priority to projects that address the most serious risks to human health, that are
6 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
7 300j-26, and that assist applicants that are most in need on a per household basis,
8 according to affordability criteria specified in the rules. For the purpose of ranking
9 projects under this subsection, the department shall treat a project to upgrade a
10 public water system to provide continuous disinfection of the water that it distributes
11 as if the public water system were a surface water system that federal law requires
12 to provide continuous disinfection. If the department, when ranking projects under
13 this subsection or determining an applicant's eligibility for assistance under this
14 section, considers whether an applicant that intends to extend service outside the
15 boundaries of a local governmental unit because of water contamination is small or
16 disadvantaged, the department shall, to the extent allowable under federal law,
17 determine the applicant to be small or disadvantaged if the area receiving the
18 extended service would normally be determined to be small or disadvantaged,
19 regardless of whether the existing service area would normally be determined to be
20 small or disadvantaged.

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

22 281.75 **(5m)** REFERRAL TO THE INNOCENT LANDOWNER GRANT PROGRAM. If the
23 department determines that a claimant that submits a claim under this section on
24 the basis of contamination by perfluoroalkyl or polyfluoroalkyl substances would be
25 eligible for a grant under the innocent landowner grant program under s. 292.34, and

1 moneys are available under s. 292.34, the department shall refer the claim to the
2 program under s. 292.34 instead of reviewing the claim under this section. If the
3 claimant's claim is denied under s. 292.34, the department shall refer the claim back
4 to the program under this section.

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

6 281.75 (7) (c) 2. a. Equipment used for treating the water, including a filtration
7 device and up to 2 replacement filters;

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

9 **292.315 Municipal PFAS grant program. (1) DEFINITION.** In this section,
10 "PFAS" means any perfluoroalkyl or polyfluoroalkyl substance.

11 **(1m) APPLICABILITY.** This section applies only to PFAS for which there is a state
12 or federal standard, a public health recommendation from the department of health
13 services under s. 160.07, or a health advisory issued by the federal environmental
14 protection agency.

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

16 (a) Grants to municipalities to test for PFAS levels at municipal water systems
17 and municipal wastewater treatment facilities, or to reimburse municipalities for
18 PFAS testing performed at properties owned, leased, managed, or contracted for by
19 those municipalities after applicable standards for the chemical being tested have
20 been promulgated. The department shall base the amount of grant awards under
21 this paragraph on the cost of testing and the amount of testing needed in each
22 community, while ensuring that funding is available to every eligible applicant that
23 submits a claim under this paragraph. The department may not require a
24 municipality that submits a claim for a grant under this paragraph to provide
25 information other than the basic information necessary to process the claim and may

1 not require the recipient of a grant under this paragraph to provide any matching
2 funds.

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

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

17 (d) Grants to municipalities to test for PFAS levels at locations that are owned,
18 leased, managed, or contracted for by a municipality and where PFAS may be
19 present, including airports, water systems, wastewater treatment facilities, or
20 contaminated lands, and to test for PFAS levels in leachate at solid waste disposal
21 facilities that are owned, leased, managed, or contracted for by a municipality. If the
22 property is not owned by the municipality, the department may not issue a grant
23 under this paragraph unless the property owner has given the municipality written
24 consent for the municipality to enter the property and conduct testing or the ability
25 to enter the property and conduct testing is permitted under an existing agreement

1 between the property owner and the municipality. The department may not provide
2 a grant under this paragraph to test for PFAS in a water system or wastewater
3 treatment facility if the applicant has received a grant under par. (a), unless the
4 applicant demonstrates that it has used all of the grant funds provided to it under
5 par. (a). The department shall accept applications for grants and provide grants
6 under this paragraph on a rolling basis. The department may not require the
7 recipient of a grant under this paragraph to provide matching funds in an amount
8 greater than 20 percent of the amount of the grant.

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

18 (f) Grants for capital costs or debt service, including for facility upgrades or new
19 infrastructure, to municipalities that are small or disadvantaged or in which rates
20 for water or wastewater utilities will increase by more than 20 percent as a direct
21 result of steps taken to address PFAS contamination. A grant provided under this
22 paragraph may not exceed 50 percent of the municipality's capital or debt service
23 costs, and no municipality may receive grants under this paragraph that total more
24 than 20 percent of the funding available for grants under this paragraph. The
25 department shall give priority under this paragraph to projects that are necessary

1 to address an exceedance of an applicable promulgated state or federal standard.
2 The department shall accept applications for grants and provide grants under this
3 paragraph on a rolling basis. A municipality may submit an application for a grant
4 under this program at the same time as submitting an application for financial
5 assistance under s. 281.58 or 281.61.

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

24 **(3) LIMITATIONS.** (a) The department may not require the recipient of a grant
25 under sub. (2) to take action to address PFAS contamination unless testing

1 demonstrates that PFAS levels exceed any applicable promulgated standard under
2 state or federal law or unless another applicable state or federal law allows the
3 department to require a grant recipient to take such action.

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

8 **SECTION 9.** 292.32 of the statutes is created to read:

9 **292.32 Limitations on department actions relating to PFAS. (1)**

10 **DEFINITIONS.** In this section:

11 (a) “Construction project” means a building project that will affect one or more
12 parcels.

13 (b) “PFAS” has the meaning given in s. 292.315 (1).

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

20 **(2) PROBABLE CAUSE REQUIRED FOR TESTING.** Notwithstanding any conflicting
21 provisions of this chapter, the department may not require the owner of a property
22 to conduct testing under this chapter for the presence of PFAS without probable
23 cause that the property had or currently has an amount of PFAS that is likely to pose
24 a substantial present or potential hazard to human health or the environment. For
25 purposes of this subsection, property does not include a property used for industrial

1 purposes, including manufacturing. For purposes of this subsection, a basis for
2 probable cause includes the reporting of a PFAS spill under this chapter or under
3 section 304 of the federal Emergency Planning and Community Right-to-Know Act.

4 **(3) CONSTRUCTION PROJECTS.** Notwithstanding any conflicting provisions of this
5 chapter, the department may not prevent, delay, or otherwise impede any
6 construction project or project of public works on the basis of a presence of PFAS
7 contamination unless the department determines any of the following:

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

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

11 (c) The entity proposing to complete the project is, as a result of reckless or
12 intentional conduct, responsible for the original contamination.

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

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

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

24 (b) The department may not publicly disclose the results of any PFAS testing
25 conducted on samples taken from lands not owned by the state unless the

1 department notifies the landowner of the test results at least 72 hours before publicly
2 disclosing the test results.

3 (5) PFAS TESTING REQUESTS. The department shall, in a timely manner, respond
4 to requests from any person to conduct PFAS testing on samples taken from the
5 person's property if practicable and if funds are available to do so, if there is a
6 reasonable belief that PFAS contamination may be present on the property, and if
7 existing information such as public water supply testing data is not available. The
8 department may contract with a 3rd party to respond to requests for testing under
9 this subsection.

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

11 **292.34 Innocent landowner grant program.** (1) In this section, "PFAS"
12 has the meaning given in s. 292.315 (1).

13 (1m) This section applies only to PFAS for which there is a state or federal
14 standard, a public health recommendation from the department of health services
15 under s. 160.07, or a health advisory issued by the federal environmental protection
16 agency.

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

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

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

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

6 (c) A fire department or municipality that responded to emergencies that
7 required the use of PFAS or that conducted training for such emergencies in
8 compliance with applicable federal regulations.

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

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

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

18 **(5)** The department shall accept applications for grants and award grants
19 under this section on a rolling basis. The department shall give priority to
20 applications for grants under this section that address PFAS contamination in wells
21 serving a private water supply, as defined in s. 281.75 (1) (f).

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

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

3 NR 811.12 (1) (g) 2. (intro.) ~~Test wells to be converted to permanent wells or test~~
4 ~~wells to be pumped at a rate of 70 gallons per minute or more for a period of more than~~
5 ~~72 hours~~ All of the following test wells shall be approved by the department prior to
6 their construction.;

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

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

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

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

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

18 **PSC 184.06 Emergency work.** In case of an emergency resulting from the
19 failure of power supply or from fire, storm, or similar events, a utility may begin
20 necessary repair work without receiving prior commission authorization. In case of
21 an emergency resulting from the contamination of water supply, a utility may begin
22 necessary repair, temporary treatment, or other emergency work to address the issue
23 without receiving prior commission authorization. The utility shall promptly notify
24 the commission of the emergency work and shall, within 30 days after commencing

1 the work, furnish the commission with the information required under s. PSC 184.04
2 (3).

3 **SECTION 14. Nonstatutory provisions.**

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

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

25 (3) PFAS TESTING LABORATORIES.

1 (a) The department of natural resources and the Board of Regents of the
2 University of Wisconsin System shall enter into a memorandum of understanding
3 to jointly ensure that the state laboratory of hygiene provides guidance and other
4 materials, conducts training, and provides assistance to laboratories in this state
5 that are certified under s. 299.11 (7) to test for contaminants other than
6 perfluoroalkyl or polyfluoroalkyl substances to become certified under s. 299.11 (7)
7 to test for perfluoroalkyl or polyfluoroalkyl substances, and to assist laboratories in
8 this state that are certified under s. 299.11 (7) to test for perfluoroalkyl or
9 polyfluoroalkyl substances in reducing the costs of such testing and shortening the
10 timeline for receiving such testing results.

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

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

25 (4) PFAS STUDIES AND REPORTING.

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

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

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

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

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

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

18 5. Study and analyze the migration of PFAS into the bay of Green Bay,
19 including where the PFAS are entering the bay and what effects PFAS may have in
20 the bay.

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

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

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

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

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

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

23 (7) FIRE FIGHTING FOAM. The department of natural resources shall survey or
24 resurvey local fire departments about their use and possession of PFAS-containing

1 fire fighting foam, send communications and information regarding such foam, and
2 contract with a 3rd party to voluntarily collect such foam.

3 **SECTION 15. Fiscal changes.**

4 (1) In the schedule under s. 20.005 (3) for the appropriation to the department
5 of natural resources under s. 20.370 (4) (mw), the dollar amount for fiscal year
6 2023-24 is increased by \$125,000,000 to address and prevent perfluoroalkyl and
7 polyfluoroalkyl substances contamination in this state and to increase the
8 authorized FTE positions for the department by 16.0 SEG positions for this purpose.

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

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

13

(END)