

**2019 DRAFTING REQUEST**

**Bill**

For: **Robert Cowles (608) 266-0484** Drafter: **mpfotenh**  
 By: **Toni** Secondary Drafters:  
 Date: **12/18/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
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 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
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**Pre Topic:**

No specific pre topic given

**Topic:**

PFAS management zones

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 12/30/2019	anienaja 1/2/2020			
/P1	mpfotenh 1/5/2020	anienaja 1/6/2020	jmurphy 1/2/2020		State S&L
/P2	mpfotenh 1/8/2020	anienaja 1/10/2020	mbarman 1/6/2020		State S&L
/P3	mpfotenh 1/14/2020	anienaja 1/14/2020	lparisi 1/10/2020		State S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4	mpfotenh 1/27/2020	anienaja 1/27/2020	dwalker 1/14/2020		State S&L
/P5	mpfotenh 1/28/2020	anienaja 1/28/2020	dwalker 1/27/2020		State S&L
/P6			lparisi 1/28/2020		State S&L
/1			dwalker 1/31/2020	dwalker 1/31/2020	State S&L

FE Sent For:

<END>

→ At  
Intro.

## **Pfotenhauer, Mary**

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**From:** Herkert, Toni  
**Sent:** Tuesday, December 17, 2019 4:35 PM  
**To:** Pfotenhauer, Mary  
**Cc:** Henning, Anna; Kranner, Benjamin; Miller, Evan  
**Subject:** Drafting Instructions  
**Attachments:** PFAS Management Zones Designation.png

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

I hope all is well! We're hoping you can help us to get two preliminary drafts of two different bills related to creating PFAS Management Zones.

I know you've been in a couple of discussions now related to this idea, and hopefully you generally remember the premise of these bills. If not or if you have any questions, we'd be happy to sit down and chat about the ideas behind these drafting instructions further or answer any questions over the phone. Additionally, Anna and Ben from Leg Council have been great partners on getting these drafting instructions ready, and they may be able to help answer questions too (they are both copied).

While we understand that this may not be an easy policy to draft and the holidays do complicate things, but the sooner we could get a draft, the better because we are hoping to circulate this as early in January as possible.

Along with the drafting instructions for both bills below, we have attached a flow chart of sorts (not the best drafting, but hopefully informational) showing how we picture the expansion of Zones happening that may be useful in illustrating the step by step process below.

**The first bill draft should create a structure for PFAS Management Zones with the following details included:**

- We're hoping to provide a definition of PFAS Management Zones that's a bit lengthy, but provides the following information: "PFAS Management Zone" is defined as a geographical area characterized by elevated levels of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in surface water or groundwater used as a source for public or private drinking water. The purpose of PFAS Management Zones is to provide guidelines that target areas of the state most impacted by perfluoroalkyl or polyfluoroalkyl substances (PFAS) contamination to, in the short-term, protect public health and welfare and, in the long-term, research the best methods and most economically and technically feasible outcomes for implementing statewide standards, performing cleanup measures, including sediment remediation, and proper disposal methods at contaminated sites. The DNR shall use the information gathered from these zones to inform future processes, including rulemaking and other administrative actions. The PFAS Management Zones shall also be used to identify the path of contamination to inform future actions."

- The DNR begins the process to determine the maximum boundary of ‘PFAS Management Zones.’ PFAS Management Zones shall be established in the following manner:
  - For each location that the DNR measures PFOA and PFOS in excess of 70 ppt with the testing protocol established by this legislation (below) in surface water or groundwater used as a source of public or private drinking water, a PFAS Management Zone shall be established. For brevity, a measurement of PFOA and PFOS in excess of 70 ppt will henceforth be referred to as a “positive test.” Whether a surface or groundwater samples is considered to be from a source of drinking water shall be determined by the DNR.
    - The initial bounds of a PFAS Management Zone shall consist of the geographic area within a 1-mile radius of the location where a positive test was measured. Details on expanding the Zone are in the next set of bullets.
- For the Management Zones, we’re looking to follow this order for establishing the zones (also see the attachment for more information and ‘draft’ graphics showing a rough idea of how we picture the establishment of the zones):
  1. 1 positive test above 70 ppt for PFOA or PFOS.
  2. 1-mile radius in each direction from the test is now a zone (circle, not a square).
  3. Once the zone is established, 1-mile in each direction from the zone is now a ‘testing region.’ Testing and research in the region can be for all six PFAS compounds, but the five tests needed for an expansion (mentioned in the next step) *must* be a positive test of PFOA and PFOS.
  4. If five positive tests are found in the testing region, the Zone expands to what was previously the testing region (now 2-miles from the original test in each direction).
    - a) A new testing region is formed, again, 1-mile in each direction (now 2 to 3-miles from the original test location).
  5. The DNR may continue with steps 4 and 4a to expand and will continue expanding the Zone and the testing region in 1-mile increments until:
    - a) They cannot gain five positive new tests, or;
    - b) They find a discernable “path of the contamination” (i.e. down the river, with the flow of the groundwater table), at which time the DNR shall reassess the zone and release areas from the existing zone in the opposite direction of the path of the contamination if they do not have positive tests or find minimal evidence of contamination but were otherwise incorporated into the zone because of the cyclical way the zone was expanded. The Department shall continue to follow the path of the contamination in 1-mile increments and at a scientifically justifiable and reasonable width to ascertain the path of contamination until they cannot gain five positive new tests.
  6. Once they fail to gain five positive new tests to expand the zone, the maximum bounds of the zone are now established.
  7. The Zone described above, again, represents the maximum geographic extent of a PFAS Management Zone. The DNR shall establish boundaries for a PFAS Management Zone. Within these maximum boundaries, the DNR shall consider reducing boundaries for a PFAS Management Zone. They shall use the following factors largely from s. 160.21 and ATCP 30.34, among others:
    - a) Hydrogeological considerations, including soil characteristics, depth to groundwater, groundwater gradients and flow direction, based on positive test locations;

- b) The geographic extent of the PFAS contamination and mobility of the contaminants, based on positive test locations;
  - c) Likely sources of PFAS contamination;
  - d) Reliability of sampling data and frequency of PFAS detections in samples;
  - e) Present and anticipated uses of surface or groundwater;
  - f) Legal land description boundaries including political and property boundaries, and;
  - g) Public roads or other physical boundaries.
8. After establishing the path of contamination, if any, and reassessing the scope of the PFAS Management Zone in step 7 above to determine the Zone boundary, the DNR must hold a public meeting within a 30-day period before the formal establishment of a PFAS Management Zone. At the meeting, the DNR shall provide information about the contaminants, any known sources, any known impacts to public or private drinking water supplies, and any anticipated steps the DNR plans to take to address the contamination.
- For administrative purposes, PFAS Management Zones that overlap shall be considered a single, merged PFAS Management Zone.
  - Require the DNR to promulgate two emergency rules within nine months after the act takes effect. These emergency rules shall:
    1. Establish a Maximum Contaminant Level for PFOA and PFOS. The MCL(s) for PFOA/PFOS shall only be applicable for operators of a public water system that draw ground or surface water from within a PFAS Management Zone. The DNR must demonstrate the need for an MCL to protect public health and welfare. DNR must consider the economic and technical feasibility of compliance in developing an MCL. To this end, the DNR must consult with potentially impacted municipal utilities before submitting an emergency rule to the Rules Clearinghouse.
      - a) Notwithstanding the general timelines for emergency rules, the emergency rule creating MCL(s) for PFOA/PFOS shall extend until promulgation of permanent MCLs for these substances or until three-years after the effective date of the rule, whichever is sooner.
    2. Require testing of biosolids from publicly owned treatment works (POTWs) for PFOA/PFOS prior to landspreading in a PFAS Management Zone. The POTW itself need not be located in a PFAS Management Zone for the rule to apply. Data collected pursuant to this emergency rule shall be reported to the DNR. This provision shall not be construed to create a standard for PFAS in biosolids that are landspread.
      - a) Notwithstanding the general timelines for emergency rules, the emergency rule creating the testing procedure for biosolids for PFOA/PFOS shall extend until three years after the effective date of the rule, whichever is sooner.
  - Within PFAS Management Zones, DNR shall conduct testing for PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS in sediment, including lake and river bed, groundwater, surface water, drinking water, biosolids, and fish and wildlife tissue, as applicable. Other testing may be conducted as deemed to be a priority by the DNR.
    - Data collected through testing shall be used to advise permanent rulemaking that seeks to regulate PFAS.
  - PFAS testing conducted for the establishment of PFAS Management Zones and PFAS testing in established zones shall be completed by the DNR or a DNR-contracted entity and shall use commonly accepted PFAS test collection protocols.
    - PFAS testing must be conducted by the State Laboratory of Hygiene or a laboratory accredited for PFAS by the DNR under NR 149.

- Require the DNR to establish a committee under s. 227.13, to advise the DNR regarding the promulgation of permanent rules establishing groundwater, surface water, and drinking water standards for PFAS compounds. The committee shall include members of groups likely to be impacted by promulgation of PFAS standards, including local governments (or local government associations); representatives of municipal water utilities, and representatives of potentially-impacted businesses. This committee shall advise the DNR in the development of economically and technically attainable statewide standards for PFAS that still protect human health, including the development of any rule order pursuant to statements of scope approved prior to the effective date of the act.
- DNR shall disseminate information about the PFAS Management Zone program on its website, including all of the following:
  - The geographic scope of each PFAS Management Zone in effect;
  - Information on how the Zone was established (per the steps above), including information on any expansions or reductions of the Zone and the Department’s rationale for these decisions;
  - Results from PFAS testing in each PFAS Management Zone;
  - Directions for homeowners of a private well looking to test their own water, including protocols and laboratories for this testing;
  - Health risks with the overconsumption of PFAS and measures the public may take to reduce health risks of PFAS exposure, as consulted on with DHS, and;
  - Any other information deemed relevant by DNR.
- The DNR shall notify any local, county, or tribal governments within the PFAS Management Zone about the Zone’s establishment and shall again notify the local, county, or tribal governments once a webpage with more information becomes available.
- DNR shall submit a report to the Legislature, including JCRAR and relevant standing committees in natural resources, by one-year after the effective date and annually afterwards. The report shall include a summary of results from testing in PFAS Management Zones, plans for addressing PFAS contamination in PFAS Management Zones, the technical and economic feasibility of compliance with existing or potential PFAS standards, and other information deemed relevant by the Department.
- Amend the well compensation grant program to require the DNR to give priority under the program to wells in PFAS Management Zones for which a test demonstrates an exceedance of the PFOA/PFOS MCL promulgated by the DNR under the emergency rule. Notwithstanding s. 281.75 (11) (b) 2., Stats., water treatment and well replacement shall be given equal consideration when awarding grants for PFAS-contaminated wells.
- To the extent allowable under federal law, require the DNR to prioritize drinking water projects addressing PFAS contamination in PFAS Management Zones when awarding Safe Drinking Water Loan Program funds.
- To the extent allowable under federal law, require the DNR to prioritize wastewater projects voluntarily or mandatorily addressing PFAS contamination in or near PFAS Management Zones when awarding Clean Water Fund funds.
- PFAS Management Zones created under the bill shall dissolve 1-year after promulgation of a permanent rule establishing an MCL (or MCLs) for PFOA/PFOS or 1-year after the expiration of emergency rules, whichever is sooner. While the emergency rule for a PFOA/PFOS standard will expire upon promulgation of the permanent rule, the other provisions of the PFAS Management Zone program will continue for an additional year.

**The second bill draft should provide the appropriations and positions listed below for the PFAS Management Zones' structure:**

- 1 project position and adequate funding to serve as a PFAS Management Zone Coordinator. This position shall dissolve four and a half years after the enactment date of the legislation.
- 1 appropriated FTE from an existing position for the PFAS Management Zones, provided in a 13.10 supplemental.
- \$150,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for this biennium for testing of PFAS for designation of PFAS Management Zones and for testing of PFAS in PFAS Management Zones once established.
- \$50,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for this biennium for studying PFAS containment, treatment and remediation, and disposal techniques in PFAS Management Zones, testing regions, and adjacent areas.
- \$250,000 in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for grants to municipalities in PFAS Management Zones and testing regions to comply with testing requirements or other voluntary testing of drinking water, surface water, wastewater, groundwater, biosolids, and sediment, including lake and river bed, including \$125,000 GPR and \$125,000 re-appropriated from the Agricultural Chemical Cleanup Fund.
- \$50,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for the Well Compensation Grant Program, specifically targeted toward filtration for applicants in PFAS Management Zones.

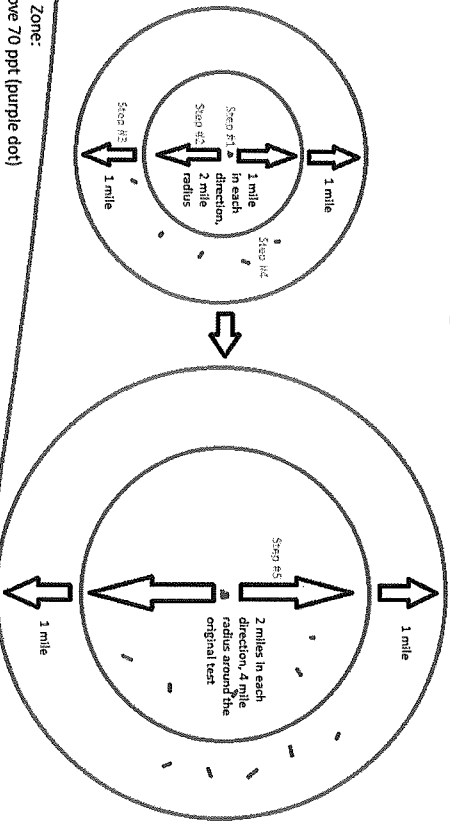
Thank you in advance for all of your help!

Toni and Evan

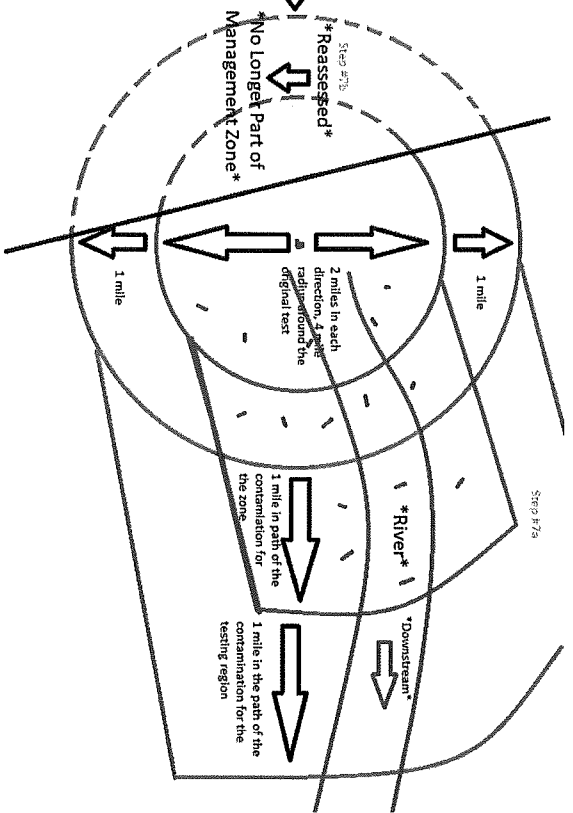
**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



# PFAS Management Zones



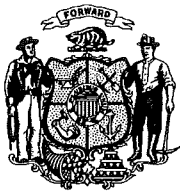
Step #6B  
Clear Path of the Contamination Established



- Steps to Designate a Zone:
- 1) 1 positive test above 70 ppt (purple dot)
  - 2) 1 mile in each direction from a test is now a zone (red circle)
  - 3) 1 mile in each direction from the zone is the testing region (green circle)
  - 4) 5 tests above 70 ppt of water (surface, ground, or drinking) in the testing region
  - 5) 2 miles in each direction from the original test is now a zone (red circle)
    - a) They are unable to gain five more positive tests above 70 ppt of PFOA or PFOS, at which point the final zone is established, or;
    - b) They find a clear 'path of the contamination' which follows the flow of a water table or river/stream
  - 6) The DNR will continue using the testing region (green circle) to expand the zone (red circle) and search for five more positive tests until:
    - a) Continue expanding the zone in 1 mile increments in the direction of the contamination until they can no longer produce five tests above 70 ppt, and;
    - b) Release portions of the zone that are in the opposite direction of the path of contamination and show little or no evidence of contamination
  - 7) If a find a path of the contamination, the DNR shall:
    - a) Continue expanding the zone in 1 mile increments in the direction of the contamination until they can no longer produce five tests above 70 ppt, and;
    - b) Release portions of the zone that are in the opposite direction of the path of contamination and show little or no evidence of contamination
  - 8) In either case, the final zone is established after they fail to gain five more positive tests between the management zone (red) and the testing region (green)

Region will keep expanding similar to above until the path of contamination has been followed and no more than four tests above 70 ppt can be gathered in a testing region, at which point the PFAS Management Zone has been established





State of Wisconsin  
2019 - 2020 LEGISLATURE

1/31  
LRB-5179?  
MCP...and

In 12/30  
Out 1/2 (firm)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA-  
xref-  
Pwf-

Gen

, extending the time limit for  
emergency rule procedures,  
providing an exemption from  
emergency rule procedures,  
and granting rule-  
making authority

1 **AN ACT ...; relating to: PFAS management zones.**

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state and local** 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:***

2 **SECTION 1.** 227.01 (13) (yv) of the statutes is created to read:

3 227.01 (13) (yv) Determines the boundaries of a PFAS management zone under

4 s. 281.18 (2).<sup>e3</sup>

5 **SECTION 2.** 281.18 of the statutes is created to read:

6 **281.18 PFAS management zones.**

7 (2) **DEFINITIONS.** In this section:

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 (k) "Testing region" means the area within one mile of the boundary of a PFAS  
16 management zone, in which the department may conduct testing and research  
17 relating to PFAS.

18 (2) PURPOSE. The purpose of this section is to define geographical areas in this  
19 state that are characterized by elevated levels of PFOA and PFOS in surface water  
20 or groundwater that is used as a source for public or private drinking water. The  
21 purpose of PFAS management zones is to provide guidelines that target areas of the  
22 state most impacted by PFAS contamination to, in the short-term, protect public  
23 health and welfare and, in the long-term, research the best methods and most  
24 economically and technically feasible outcomes for implementing statewide  
25 standards, performing cleanup measures, including sediment remediation, and

1 proper disposal methods at contaminated sites. The DNR shall use the information  
 2 gathered from these zones to inform future processes, including rulemaking and  
 3 other administrative actions. The PFAS management zones shall also be used to  
 4 identify the path of contamination to inform future actions.

*for*  
*by*  
*of contaminants*  
*department*  
*actions*

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

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

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

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

16 (d) The department may continue to expand the maximum boundary of an  
 17 initial PFAS management zone until it can no longer find five positive tests in a  
 18 testing region.

*25*

19 (e) If the department finds a discernable path of contamination, the  
 20 department shall remove from the initial PFAS management zone any areas that are  
 21 not in the path of contamination and that either do not contain positive tests or that  
 22 contain minimal evidence of contamination.

23 (f) The department shall consider removing from the initial PFAS management  
 24 zone other areas based on the following factors:

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

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

6           3. Likely sources of PFAS contamination.

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

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

9           6. Legal land description boundaries, including political and property  
10 boundaries.

11          7. Public roads or other physical boundaries.

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

13          (g) The department shall hold a public meeting not more than 30 days before  
14 establishing a final PFAS management zone. At the meeting, the department shall  
15 provide information about the PFAS contaminants within the proposed PFAS  
16 management zone, any known sources of the contaminants, any known impacts to <sup>effects</sup>  
17 drinking water, and any anticipated steps the department plans to take to address  
18 the contamination.

19          (h) The department shall establish a final PFAS management zone within 30  
20 days after holding the public meeting under par. (g), based on the factors outlined in  
21 this subsection.

22          (i) For administrative purposes, PFAS management zones that overlap may be  
23 considered to be a single, merged PFAS management zone.

24          (4) MAXIMUM CONTAMINANT LEVELS. The department shall establish, by rule, a  
25 maximum contaminant level for PFOA and PFOS that applies to public water

1 systems that draw water from groundwater or surface water within a PFAS  
 2 management zone. The department shall demonstrate the need for any proposed  
 3 maximum contaminant level for the protection of public health and welfare. In  
 4 developing a maximum contaminant level under this subsection, the department  
 5 shall consider the economic and technical feasibility of compliance with any proposed  
 6 level and shall consult with potentially <sup>affected</sup> impacted public water system operators.

7 (5) BIOSOLIDS SPREADING. The department shall promulgate rules requiring the  
 8 testing of any biosolids from a publicly owned treatment works that are spread in a  
 9 PFAS management zone, regardless of where the publicly owned treatment works  
 10 is located. Rules promulgated under this subsection shall require testing data to be  
 11 submitted to the department. Rules promulgated under this subsection may not  
 12 create a standard for PFAS contained in biosolids that are spread in a PFAS  
 13 management zone.

14 (6) TESTING; USE OF RESULTS. The department shall conduct testing for PFOA,  
 15 PFOS, PFHxS, PFHpA, PFNA, and PFBS in sediment, including lake and river bed  
 16 sediment; groundwater; surface water; drinking water; biosolids; and fish and  
 17 wildlife tissue, as applicable. The department may conduct testing in other media  
 18 if the department determines that doing so is a priority. Data collected through  
 19 testing shall be used to advise permanent rulemaking that seeks to regulate PFAS.

20 (7) TESTING <sup>Collection AND</sup> LABORATORY AND METHOD. <sup>the collection of samples</sup> Any testing for PFAS <sup>testing</sup> conducted under  
 21 this section shall follow commonly-accepted PFAS collection protocols and shall be  
 22 completed by one of the following:

- 23 (a) The department <sup>or</sup>
- 24 (b) A 3rd party contracted by the department.
- 25 (c) The state laboratory of hygiene <sup>or</sup>

*Any testing conducted under this section shall be completed by*

*no 4/5*

1 (d) A laboratory accredited for PFAS testing by the department. *move to p. 10 (A)*

2 (8) PFAS ADVISORY COMMITTEE. The department shall establish an advisory  
3 committee under s. 227.13 to advise the department in the promulgation of  
4 permanent rules that establish any groundwater, surface water, or drinking water  
5 standards for PFAS in PFAS management zones. *not natural resources* The committee shall include

6 members of groups likely to be impacted by the promulgation of such standards,  
7 including local governments or local government associations; representatives of  
8 municipal water utilities; and representatives of businesses that may be impacted. *be affected*  
*affected*

9 The committee shall assist the department in developing economically and  
10 technically attainable statewide standards for PFAS that protect human health. *move to p. 10 (B)*

11 (9) INTERNET SITE. The department shall include all of the following  
12 information relating to PFAS management zones on its Internet site:

13 (a) The geographic boundaries of each PFAS management zone in effect.

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

17 (c) Results from PFAS testing in each PFAS management zone in effect.

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

20 (e) Health risks associated with the overconsumption of PFAS and measures  
21 the public may take to reduce the health risks of PFAS exposure. The department  
22 shall consult with the department of health services in developing this information.

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

24 (10) NOTIFICATION. The department shall notify any local, county, or tribal  
25 governments within an established PFAS management zone when the zone is

<sup>re-established</sup>  
 1 establishment and shall again notify the local, county, or tribal governments when  
 2 the department's Internet site is updated with information relating to the zone.

3 (11) REPORT. Not later than one year after the effective date of this subsection  
 4 ... [LRB inserts date], and every year thereafter, the department shall submit a  
 5 report to the joint committee on rules and regulations and to the chief clerk of each  
 6 house of the legislature for distribution to the appropriate standing committees  
 7 under s. 13.172 (3) having jurisdiction over matters relating to natural resources.  
 8 The report shall provide a summary of results from testing in PFAS management  
 9 zones, plans for addressing PFAS contamination in PFAS management zones, the  
 10 technical and economic feasibility of compliance with existing or potential PFAS  
 11 standards, and any other information deemed relevant by the department.

12 (12) DISSOLUTION. A PFAS management zone established under sub. (2) shall  
 13 dissolve one year after permanent rules establishing maximum contaminant levels  
 14 for the zone is promulgated or one year after any emergency rules establishing  
 15 maximum contaminant levels for the zone expire, whichever occurs sooner.

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

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

18 ~~x~~ 281.58 (7) (b) 1g. Projects in or near a PFAS management zone established  
 19 under s. 281.18 (2) that the department determines are necessary to address  
 20 contamination by perfluoroalkyl or polyfluoroalkyl substances.

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

22 < 281.58 (8e) (a) The type of project and the order in which it is listed under sub.  
 23 (7) (b) 1. 1g. to 6., to the extent allowable under federal law.

History: 1987 a. 399; 1989 a. 31, 336, 366; 1991 a. 32, 39, 189; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 425; Stats. 1995 s. 281.58; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 25, 347; 2009 a. 28; 2011 a. 32, 261; 2013 a. 7; 2015 a. 55; 2017 a. 59; 2017 a. 365 s. 111.

Cross-reference: See also ch. NR 162, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

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

2 SECTION 7. 281.58 (12) (a) 1. (intro.) of the statutes is amended to read:

3 ~~281.58 (12)~~ (a) 1. (intro.) Except as modified under par. (f) and except as  
4 restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub.  
5 (7) (b) 1. 1g. to 5. is one of the following:

History: 1987 a. 399; 1989 a. 31, 336, 366; 1991 a. 32, 39, 189; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 425; Stats. 1995 s. 281.58; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 25, 347; 2009 a. 28; 2011 a. 32, 261; 2013 a. 7; 2015 a. 55; 2017 a. 59; 2017 a. 365 s. 111.

Cross-reference: See also ch. NR 162, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

6 281.61 (6) PRIORITY LIST. The department shall establish a priority list that  
7 ranks each safe drinking water loan program project. The department shall  
8 promulgate rules for determining project rankings that, to the extent possible, give  
9 priority to projects that address the most serious risks to human health, that are  
10 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to  
11 300j-26, and that assist applicants that are most in need on a per household basis,  
12 according to affordability criteria specified in the rules. For the purpose of ranking  
13 projects under this subsection, the department shall treat a project to upgrade a  
14 public water system to provide continuous disinfection of the water that it distributes  
15 as if the public water system were a surface water system that federal law requires  
16 to provide continuous disinfection. In establishing a priority list under this  
17 subsection, the department shall, to the extent possible, give priority to projects that  
18 address contamination by perfluoroalkyl or polyfluoroalkyl substances in PFAS  
19 management zones established under s. 281.18 (2).

History: 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 159; 2009 a. 217; 2011 a. 19, 32; 2013 a. 7, 12; 2015 a. 55.

Cross-reference: See also ch. NR 166, Wis. adm. code.

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



1           × 281.75 (1) (b) 1m. In a PFAS management zone established under s. 281.18 (2),  
2 produces water containing PFOA or PFOS in excess of the primary maximum  
3 contaminant level <sup>e established</sup> promulgated by the department under s. 281.18 (4).

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

5           × 281.75 (5) (f) The In allocating money for the payment of claims under this  
6 section, the department shall prioritize completed claims based on the type of  
7 contamination defined under sub. (1) (b) 1m. For all other claims, the department  
8 shall allocate money for the payment of claims according to the order in which  
9 completed claims are received. The department may conditionally approve a  
10 completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay  
11 the claim. The department shall allocate money for the payment of a claim which  
12 is conditionally approved as soon as funds become available.

**History:** 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27; 2001 a. 16; 2005 a. 123, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32; 2013 a. 1; 2017 a. 69.

**Cross-reference:** See also ch. NR 123, Wis. adm. code.

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

14           × 281.75 (6) (a) Contamination of a private water supply, as defined under sub.  
15 (1) (b) 1., 1m., or 2., is required to be established by analysis of at least 2 samples of  
16 water, taken at least 2 weeks apart, in a manner which assures the validity of the  
17 test results. The samples shall be tested by a laboratory certified under s. 299.11.

**History:** 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27; 2001 a. 16; 2005 a. 123, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32; 2013 a. 1; 2017 a. 69.

**Cross-reference:** See also ch. NR 123, Wis. adm. code.

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

19           × 281.75 (11) (b) 2. An award may be issued for water treatment only if the  
20 contamination cannot be remedied by reconstruction or replacement of the private

1 water supply, or connection to another water supply is not feasible. This subdivision  
2 does not apply to contamination defined under sub. (1) (b) 1m.

History: 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27; 2001 a. 16; 2005 a. 123, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32; 2013 a. 1; 2017 a. 69.

Cross-reference: See also ch. NR 123, Wis. adm. code.

3 **SECTION 12. Nonstatutory provisions.**

4 (1) EMERGENCY RULES; MAXIMUM CONTAMINANT LEVELS AND BIOSOLIDS TESTING. No  
5 later than 9 months after the effective date of this subsection, the department of  
6 natural resources shall, using the procedure under s. 227.24, promulgate emergency  
7 rules to establish a maximum contaminant levels for PFOA and PFOS under s.  
8 281.18 (4) and to require testing of biosolids under s. 281.18 (5). Notwithstanding  
9 s. 227.24 (1) (a) and (3), the department is not required to provide evidence that  
10 promulgating a rule under this subsection as an emergency rule is necessary for the  
11 preservation of the public peace, health, safety, or welfare and is not required to  
12 provide a finding of emergency for a rule promulgated under this subsection.  
13 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this  
14 subsection remain in effect for 3 years or the date on which permanent rules take  
15 effect, whichever is sooner. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., for  
16 emergency rules promulgated under this subsection, the department is not required  
17 to prepare a statement of scope of the rules or to submit the proposed rules in final  
18 draft form to the governor for approval.

19 *Insp. 6 A* (2) PFAS ADVISORY COMMITTEE. *e including* The rules that the committee established under  
20 s. 281.18 (8), as created by this act, shall assist the department in developing shall  
21 include any rule promulgated pursuant to statements of scope approved prior to the  
22 effective date of this act. *Insp. 6 B*

23 (END)

## Pfotenhauer, Mary

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**From:** Herkert, Toni  
**Sent:** Friday, January 03, 2020 11:35 AM  
**To:** Pfotenhauer, Mary  
**Cc:** Miller, Evan  
**Subject:** RE: Drafting Instructions

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mary,

Sorry we missed that remaining question. We do not want to have permanent statewide MCL in this legislation. The permanent rulemaking is underway and we want that process to continue with setting the permanent statewide MCL.

Thanks for checking!  
Toni

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



---

**From:** Pfotenhauer, Mary <Mary.Pfotenhauer@legis.wisconsin.gov>  
**Sent:** Friday, January 03, 2020 10:28 AM  
**To:** Herkert, Toni <Toni.Herkert@legis.wisconsin.gov>  
**Cc:** Miller, Evan <Evan.Miller@legis.wisconsin.gov>  
**Subject:** RE: Drafting Instructions

Thanks!

For LRB-4179, I was also wondering whether you wanted permanent statewide MCL rules for PFAS in addition to the requested emergency MCL rules for PFAS in management zones?

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---

**From:** Herkert, Toni <Toni.Herkert@legis.wisconsin.gov>  
**Sent:** Friday, January 03, 2020 10:03 AM  
**To:** Pfotenhauer, Mary <Mary.Pfotenhauer@legis.wisconsin.gov>

Cc: Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>

Subject: RE: Drafting Instructions

Hi Mary,

Thank you so much for your quick turn around on this! We obviously really appreciate your attention to the PFAS bills since we are closing in on the end of session. I think the only outstanding question you needed us to answer was whether we wanted to substitute "adjacent areas" with "watersheds" or "adjacent watersheds." I think we want to modify our request just a little bit and in line 22 after "techniques in" add "watersheds with" PFAS management zones and testing regions under s. 281.18 and then remove "and adjacent areas."

Thanks for making us work through that scenario more thoroughly!  
Toni and Evan

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



---

**From:** Pfothenauer, Mary <[Mary.Pfothenauer@legis.wisconsin.gov](mailto:Mary.Pfothenauer@legis.wisconsin.gov)>

**Sent:** Friday, January 03, 2020 9:03 AM

**To:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>

**Cc:** Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>

**Subject:** RE: Drafting Instructions

Good morning:

Responses (and one question) below. A /P2 on this can probably get out on Monday.

Sincerely,

Mary Pfothenauer  
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[mary.pfothenauer@legis.wisconsin.gov](mailto:mary.pfothenauer@legis.wisconsin.gov)

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**From:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>

**Sent:** Thursday, January 02, 2020 8:08 PM

**To:** Pfothenauer, Mary <[Mary.Pfothenauer@legis.wisconsin.gov](mailto:Mary.Pfothenauer@legis.wisconsin.gov)>

**Cc:** Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>

**Subject:** RE: Drafting Instructions

Hi Mary,

Thanks, and Happy New Year to you as well!

We received the P1 earlier today of the structure, and really appreciate your work that lead to such a quick turn-around on this draft. We've only glanced at the bill so far, and plan on taking a deeper look tomorrow morning and, among other things, answering the question you have listed below.

As for the P1 of 5180, the funding bill, we were very pleased with the P1! I've included some drafting instructions below for a P2, but this hopefully shouldn't be too much and is pretty minimal changes overall.

### *Drafting Instructions for a P2 of LRB 5180*

- Page 1, Analysis: The P1 draft looked great overall, and we just have two changes. As such, with the P2 draft, we're also hoping we can see the LRB analysis. You bet. I'll send out a /P2 with an analysis.
- Page 2, Lines 8 to 13: We're pretty sure that we're reading this right, and that reading it right matches our intent. However, as we're not the most familiar with appropriation bills, we're looking to make sure that the sum sufficient appropriation in Section 2 would, for every year of the 4.5 years, be funded at the amount sufficient for the coordinator position salary and benefits as drafted. In other words, will this be funded throughout those 4.5 years without any further legislation required? That's correct!
- Page 2, Line 23: We know the words 'adjacent areas' matches our drafting instructions, and we apologize for the change, but can we use the term 'watersheds' instead of 'adjacent areas'? Do you want it to say "adjacent watersheds"?
- Page 3, Line 12: We're looking to change this line on municipal grants for PFAS testing slightly to specify that soil is separate from sediment to read something like "biosolids, soil, and sediment, including lake...". We'll also request corresponding changes in 5179. Will do.
- Page 4, Note 1: We didn't quite know that was possible, but we very much appreciate that addition. It looks great to us! You're welcome!

Thanks in advance for all of your help with these changes, and we'll be in touch shortly on 5179.

Toni

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



---

**From:** Pfothenauer, Mary <[Mary.Pfothenauer@legis.wisconsin.gov](mailto:Mary.Pfothenauer@legis.wisconsin.gov)>

**Sent:** Thursday, January 02, 2020 3:04 PM

**To:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>

**Cc:** Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>

**Subject:** RE: Drafting Instructions

Happy new year!

LRB-5179 (PFAS management zones) is in the pipeline to go out within the hour. There's only one issue from your email that I was unsure about; I decided to leave it for the /P2, so that you'd have a draft today that you could start marking up:

Do you want two separate sets of PFAS MCL rules, one set of emergency rules setting MCLs for PFAS for "operators of a public water system that draw ground or surface water from within a PFAS Management Zone," and one set of permanent rules setting MCLs for PFAS statewide?

Also, to answer your question about LRB-5180 (PFAS position funding), LFB's position seems to be that, at least for DNR, there are no "funded, vacant positions." Paul Ferguson and Kendra Bonderud have both been excellent resources on this topic for me in the past, and can likely explain it much better than I can if you'd like to know more about why this is the case.

Sincerely,

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**From:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>  
**Sent:** Monday, December 30, 2019 4:52 PM  
**To:** Pfothenauer, Mary <[Mary.Pfothenauer@legis.wisconsin.gov](mailto:Mary.Pfothenauer@legis.wisconsin.gov)>  
**Cc:** Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>  
**Subject:** Drafting Instructions

Hi Mary,

Thanks for your attention to this legislation and for the great questions! We've taken a look, combined your two emails into one (your comments on the fiscal bill are also copied below), and have written our responses in **green** after your **red** to match the festive spirit.

Please let us know if you have any more questions, and thanks again!

Toni

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**From:** "Pfothenauer, Mary" <[Mary.Pfothenauer@legis.wisconsin.gov](mailto:Mary.Pfothenauer@legis.wisconsin.gov)>  
**Date:** December 29, 2019 at 10:07:50 PM CST  
**To:** "Herkert, Toni" <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>  
**Subject:** RE: Drafting Instructions

Forgot to ask: because of the very short timeline for emergency rules, do you want to exempt DNR from some of the steps in the rulemaking process, like submitting a statement of scope or submitting the proposed rules to the governor for approval?

Thanks! For the emergency rules, yes, we would like to notwithstanding the requirements that are typically notwithstood in bills with these clauses. However, we wanted to make sure we said that we're not looking to exempt or subvert any steps in the permanent rulemaking process.

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---

**From:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>  
**Sent:** Tuesday, December 17, 2019 4:35 PM  
**To:** Pfotenhauer, Mary <[Mary.Pfotenhauer@legis.wisconsin.gov](mailto:Mary.Pfotenhauer@legis.wisconsin.gov)>  
**Cc:** Henning, Anna <[Anna.Henning@legis.wisconsin.gov](mailto:Anna.Henning@legis.wisconsin.gov)>; Kranner, Benjamin <[Benjamin.Kranner@legis.wisconsin.gov](mailto:Benjamin.Kranner@legis.wisconsin.gov)>; Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>  
**Subject:** Drafting Instructions

Hi Mary,

I hope all is well! We're hoping you can help us to get two preliminary drafts of two different bills related to creating PFAS Management Zones.

I know you've been in a couple of discussions now related to this idea, and hopefully you generally remember the premise of these bills. If not or if you have any questions, we'd be happy to sit down and chat about the ideas behind these drafting instructions further or answer any questions over the phone. Additionally, Anna and Ben from Leg Council have been great partners on getting these drafting instructions ready, and they may be able to help answer questions too (they are both copied).

While we understand that this may not be an easy policy to draft and the holidays do complicate things, but the sooner we could get a draft, the better because we are hoping to circulate this as early in January as possible.

Along with the drafting instructions for both bills below, we have attached a flow chart of sorts (not the best drafting, but hopefully informational) showing how we picture the expansion of Zones happening that may be useful in illustrating the step by step process below.

**The first bill draft should create a structure for PFAS Management Zones with the following details included:**

- We're hoping to provide a definition of PFAS Management Zones that's a bit lengthy, but provides the following information: "PFAS Management Zone" is defined as a geographical area characterized by elevated levels of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in surface water or groundwater used as a source for public or private drinking water. The purpose of PFAS Management Zones is to provide guidelines that target areas of the state most impacted by perfluoroalkyl or polyfluoroalkyl substances (PFAS) contamination to, in the short-term, protect public health and welfare and, in the long-term, research the best methods and most economically and technically feasible outcomes for implementing statewide standards, performing cleanup measures, including sediment remediation, and proper disposal methods at contaminated sites. The DNR

shall use the information gathered from these zones to inform future processes, including rulemaking and other administrative actions. The PFAS Management Zones shall also be used to identify the path of contamination to inform future actions.”

- The DNR begins the process to determine the maximum boundary of ‘PFAS Management Zones.’ PFAS Management Zones shall be established in the following manner:
  - For each location that the DNR measures PFOA and “and”? or “or”? “and”, please PFOS in excess of 70 ppt with the testing protocol established by this legislation (below) in surface water or groundwater used as a source of public or private drinking water, a PFAS Management Zone shall be established. For brevity, a measurement of PFOA and PFOS in excess of 70 ppt will henceforth be referred to as a “positive test.” Whether a surface or groundwater samples is considered to be from a source of drinking water shall be determined by the DNR.
    - The initial bounds of a PFAS Management Zone shall consist of the geographic area within a 1-mile radius of the location where a positive test was measured. Details on expanding the Zone are in the next set of bullets.
- For the Management Zones, we’re looking to follow this order for establishing the zones (also see the attachment for more information and ‘draft’ graphics showing a rough idea of how we picture the establishment of the zones):
  1. 1 positive test above 70 ppt for PFOA or PFOS.
  2. 1-mile radius in each direction from the test is now a zone (circle, not a square).
  3. Once the zone is established, 1-mile in each direction from the zone is now a ‘testing region.’ Testing and research in the region can be for all six PFAS compounds, but the five tests needed for an expansion (mentioned in the next step) *must* be a positive test of PFOA and PFOS.
  4. If five positive tests are found in the testing region, the Zone expands to what was previously the testing region (now 2-miles from the original test in each direction).
    - a) A new testing region is formed, again, 1-mile in each direction (now 2 to 3-miles from the original test location).
  5. The DNR may continue with steps 4 and 4a to expand and will continue expanding the Zone and the testing region in 1-mile increments until:
    - a) They cannot gain five positive new tests, or;
    - b) They find a discernable “path of the contamination” (i.e. down the river, with the flow of the groundwater table), at which time the DNR shall reassess the zone and release areas from the existing zone in the opposite direction of the path of the contamination if they do not have positive tests or find minimal evidence of contamination but were otherwise incorporated into the zone because of the cyclical way the zone was expanded. The Department shall continue to follow the path of the contamination in 1-mile increments and at a scientifically justifiable and reasonable width to ascertain the path of contamination until they cannot gain five positive new tests.



6. Once they fail to gain five positive new tests to expand the zone, the maximum bounds of the zone are now established.
  7. The Zone described above, again, represents the maximum geographic extent of a PFAS Management Zone. The DNR shall establish boundaries for a PFAS Management Zone. Within these maximum boundaries, the DNR shall consider reducing boundaries for a PFAS Management Zone. They shall use the following factors largely from s. 160.21 and ATCP 30.34, among others:
    - a) Hydrogeological considerations, including soil characteristics, depth to groundwater, groundwater gradients and flow direction, based on positive test locations;
    - b) The geographic extent of the PFAS contamination and mobility of the contaminants, based on positive test locations;
    - c) Likely sources of PFAS contamination;
    - d) Reliability of sampling data and frequency of PFAS detections in samples;
    - e) Present and anticipated uses of surface or groundwater;
    - f) Legal land description boundaries including political and property boundaries, and;
    - g) Public roads or other physical boundaries.
  8. After establishing the path of contamination, if any, and reassessing the scope of the PFAS Management Zone in step 7 above to determine the Zone boundary, the DNR must hold a public meeting within a 30-day period before the formal establishment of a PFAS Management Zone. At the meeting, the DNR shall provide information about the contaminants, any known sources, any known impacts to public or private drinking water supplies, and any anticipated steps the DNR plans to take to address the contamination.
- For administrative purposes, PFAS Management Zones that overlap shall “may”? (what if different watersheds, for example, mean that it makes more sense to keep them separate?) We like this change to the “may”. Let’s substitute that for the shall. be considered a single, merged PFAS Management Zone.
  - Require the DNR to promulgate two emergency rules within nine months after the act takes effect. These emergency rules shall:
    1. Establish a Maximum Contaminant Level for PFOA and PFOS. The MCL(s) for PFOA/PFOS shall only be applicable for operators of a public water system that draw ground or surface water from within a PFAS Management Zone. The DNR must demonstrate the need for an MCL to protect public health and welfare. DNR must consider the economic and technical feasibility of compliance in developing an MCL. To this end, the DNR must consult with potentially impacted municipal utilities before submitting an emergency rule to the Rules Clearinghouse.
      - a) Notwithstanding the general timelines for emergency rules, the emergency rule creating MCL(s) for PFOA/PFOS shall extend until promulgation of permanent MCLs for these substances or until three-years after the effective date of the rule, whichever is sooner.
    2. Require testing of biosolids from publicly owned treatment works (POTWs) for PFOA/PFOS prior to landspreading in a PFAS Management Zone. The

POTW itself need not be located in a PFAS Management Zone for the rule to apply. Data collected pursuant to this emergency rule shall be reported to the DNR. This provision shall not be construed to create a standard for PFAS in biosolids that are landspread.

- a) Notwithstanding the general timelines for emergency rules, the emergency rule creating the testing procedure for biosolids for PFOA/PFOS shall extend until three years after the effective date of the rule, whichever is sooner.
- Within PFAS Management Zones, DNR shall conduct testing for PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS in sediment, including lake and river bed, groundwater, surface water, drinking water, biosolids, and fish and wildlife tissue, as applicable. Other testing may be conducted as deemed to be a priority by the DNR.
  - Data collected through testing shall be used to advise permanent rulemaking that seeks to regulate PFAS.
- PFAS testing conducted for the establishment of PFAS Management Zones and PFAS testing in established zones shall be completed by the DNR or a DNR-contracted entity and shall use commonly accepted PFAS test collection protocols. This bullet point seems to contradict the next sentence. Should testing be done by DNR, a DNR-contracted entity, the State Lab of Hygiene, or an accredited lab? Or may it be done by any of these 4 entities? Our apologies, perhaps this wasn't stated the clearest. The samples for testing are *collected* by the DNR or a DNR-contracted entity and shall use commonly accepted PFAS sample collection protocols, and the *tests* of the samples must be completed by the State Laboratory of Hygiene or a laboratory accredited for PFAS by the DNR under NR 149. Simply put, the first two are in the field, the second two are in a lab.
  - PFAS testing must be conducted by the State Laboratory of Hygiene or a laboratory accredited for PFAS by the DNR under NR 149.
- Require the DNR to establish a committee under s. 227.13, to advise the DNR regarding the promulgation of permanent rules establishing groundwater, surface water, and drinking water standards for PFAS compounds. Will this committee advise in the promulgation of rules only in PFAS management zones? Or will the committee advise in the promulgation of ANY rule that sets a PFAS standard for drinking water/groundwater/surface water? Any rulemaking process related to PFAS, including but not limited to, the current permanent rulemaking processes on drinking water, surface water, and groundwater, wherein by the scopes site PFAS. We want to also include potential future rulemaking on solid or hazardous waste or remediation but not specify those directly. The committee shall include members of groups likely to be impacted by promulgation of PFAS standards, including local governments (or local government associations); representatives of municipal water utilities, and representatives of potentially-impacted businesses. This committee shall advise the DNR in the development of economically and technically attainable statewide standards for PFAS that still protect human health, including the development of any rule order pursuant to statements of scope approved prior to the effective date of the act.
- DNR shall disseminate information about the PFAS Management Zone program on its website, including all of the following:

- The geographic scope of each PFAS Management Zone in effect;
  - Information on how the Zone was established (per the steps above), including information on any expansions or reductions of the Zone and the Department's rationale for these decisions;
  - Results from PFAS testing in each PFAS Management Zone;
  - Directions for homeowners of a private well looking to test their own water, including protocols and laboratories for this testing;
  - Health risks with the overconsumption of PFAS and measures the public may take to reduce health risks of PFAS exposure, as consulted on with DHS, and;
  - Any other information deemed relevant by DNR.
- The DNR shall notify any local, county, or tribal governments within the PFAS Management Zone about the Zone's establishment and shall again notify the local, county, or tribal governments once a webpage with more information becomes available.
  - DNR shall submit a report to the Legislature, including JCRAR and relevant standing committees in natural resources, by one-year after the effective date and annually afterwards. The report shall include a summary of results from testing in PFAS Management Zones, plans for addressing PFAS contamination in PFAS Management Zones, the technical and economic feasibility of compliance with existing or potential PFAS standards, and other information deemed relevant by the Department.
  - Amend the well compensation grant program to require the DNR to give priority under the program to wells in PFAS Management Zones for which a test demonstrates an exceedance of the PFOA/PFOS MCL promulgated by the DNR under the emergency rule. Notwithstanding s. 281.75 (11) (b) 2., Stats., water treatment and well replacement shall be given equal consideration when awarding grants for PFAS-contaminated wells.
  - To the extent allowable under federal law, require the DNR to prioritize drinking water projects addressing PFAS contamination in PFAS Management Zones when awarding Safe Drinking Water Loan Program funds.
  - To the extent allowable under federal law, require the DNR to prioritize wastewater projects voluntarily or mandatorily addressing PFAS contamination in or near PFAS Management Zones when awarding Clean Water Fund funds.
  - PFAS Management Zones created under the bill shall dissolve 1-year after promulgation of a permanent rule establishing an MCL (or MCLs) for PFOA/PFOS (does the MCL rule stop being effective when the PFAS management zone dissolves? In other words, are the permanent rules only effective for 1 year?) The timeframe by which the zones dissolves should reference statewide, permanent rulemaking standards which will not be tied to the existence or lack of existence of a zone. Once the permanent rules are established, the zone will remain for one-year solely for the purpose of information gathering and longer-term monitoring, not for standards as the standards will now already be established on a statewide basis. In other words, statewide rules begin the process of dissolving zones, and the statewide MCL is the new standard in and outside of the zones, and whether or not the zones exist. or 1-year after the expiration of emergency rules (the expiration of the emergency rules establishing an MCL?) yes, whichever is sooner. While the

emergency rule for a PFOA/PFOS standard will expire upon promulgation of the permanent rule, the other provisions of the PFAS Management Zone program will continue for an additional year.

**The second bill draft should provide the appropriations and positions listed below for the PFAS Management Zones' structure:**

- 1 project position and adequate funding to serve as a PFAS Management Zone Coordinator. This position shall dissolve four and a half years after the enactment date of the legislation. ~~Do you want to make this a 4.5-year project position? Or just prohibit funding for the position after 4.5 years?~~
- 1 appropriated FTE from an existing position for the PFAS Management Zones, provided in a 13.10 supplemental. I've had a lot of conversations with Fiscal Bureau about the "existing positions" issue, and their conclusion is that there are no "unfunded vacant positions," and that a draft either needs to cut a specific existing position, or create a new position. (In other words, if it's not funded, the position doesn't exist.) For this draft, I can create a new position, but have the funding come from a 13.10 supplemental appropriation. Just to be clear, it's not possible to be able to generally reference that the Department shall use a funded, but vacant position to instead create this new Management Zones-related position? In other words, we can't just move the vacant position authority and associated funding within the Department without expanding the size of the Department's staff? If we cannot, then we'll stick with what you suggested.
- \$150,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for this biennium for testing of PFAS for designation of PFAS Management Zones and for testing of PFAS in PFAS Management Zones once established.
- \$50,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for this biennium for studying PFAS containment, treatment and remediation, and disposal techniques in PFAS Management Zones, testing regions, and adjacent areas.
- \$250,000 in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for grants Do you want DNR to administer this grant program? Yes. Do you want to place any limitations on these grants? (i.e., max amount of grants, eligibility requirements, etc) No. to municipalities in PFAS Management Zones and testing regions to comply with testing requirements or other voluntary testing of drinking water, surface water, wastewater, groundwater, biosolids, and sediment, including lake and river bed, including \$125,000 GPR and \$125,000 re-appropriated from the Agricultural Chemical Cleanup Fund.
- \$50,000 GPR in FY 2019-2020 as a continuing appropriation (shouldn't lapse) for the Well Compensation Grant Program, specifically targeted toward filtration for applicants in PFAS Management Zones.

Thank you in advance for all of your help!

Toni and Evan

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