



State of Wisconsin
2019 - 2020 LEGISLATURE

104
LRB-5179/P3
MCP:amn

In 1/14
Out 1/14 or 1/15

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA-
PWS-

Ragen-

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

Analysis by the Legislative Reference Bureau

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

Establishing PFAS management zones

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

perfluorobutane sulfonic acid (PFBS), perfluoroheptanoic acid (PFHpA), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA).

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

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

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

^{move} DNR must hold a public meeting after it determines the boundaries of a proposed PFAS management zone. The public meeting must be held within 30 days before finalizing a PFAS management zone to provide information about contaminants and their possible sources and effects. The bill exempts DNR's creation of a PFAS management zone from the rule-making process.

Under the bill, a designation of a PFAS management zone expires one year after DNR promulgates any permanent rules establishing statewide maximum contaminant levels for any PFAS, or one year after any emergency rules establishing maximum contaminant levels for PFOA and PFOS within the zone expire, whichever occurs sooner.

Requirements within PFAS management zones

The bill requires DNR to establish, by emergency rule, maximum contaminant levels for PFOA and PFOS that apply to public water systems that draw water from groundwater or surface water within a PFAS management zone and requirements for those water systems to test their water for PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS and to submit the results of testing to DNR. DNR must consider the economic and technical feasibility of complying with the proposed maximum contaminant levels and must consult with potentially affected public water system operators.

^{meeting} If, after the public hearing, DNR determines that a PFAS management zone should be established, DNR must establish the final management zone within 30 days after the hearing.

The emergency rules must also include

material

In addition, the bill requires DNR to establish emergency rules requiring the testing of any biosolids from a publicly owned treatment works that are spread in a PFAS management zone, regardless of where the publicly owned treatment works is located. The bill provides that such rules may not create a standard for PFAS contained in biosolids that are spread in a PFAS management zone, although testing results may be used to inform future actions.

Notification and reporting

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

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

Grant and loan priorities

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

PFAS advisory committee

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

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

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

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

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

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

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

7 (d) "PFBS" means perfluorobutane sulfonic acid.

8 (e) "PFHpA" means perfluoroheptanoic acid.

9 (f) "PFHxS" means perfluorohexane sulfonic acid.

10 (g) "PFNA" means perfluorononanoic acid.

11 (h) "PFOA" means perfluorooctanoic acid.

12 (i) "PFOS" means perfluorooctanesulfonic acid.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 3. Likely sources of PFAS contamination.

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

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

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

13 7. Public roads or other physical boundaries.

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

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

22 (i) The department shall establish ^{such} a final PFAS management zone within 30
23 days after holding the public meeting under par. (h), based on the factors outlined
24 in this subsection.

If, after holding the public meeting under par. (h),
the department determines that a PFAS management
zone should be established,

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

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

7 1. A maximum contaminant level for PFOA and PFOS that applies to public
8 water systems that draw water from groundwater or surface water within a PFAS
9 management zone ^{and} *the emergency rules shall also include* requirements for such water systems to test their water for
10 PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS and to submit the results to the
11 department. In developing a maximum contaminant level under this subdivision,
12 the department shall consider, along with the protection of public health and welfare,
13 the economic and technical feasibility of compliance with any proposed level and
14 shall consult with potentially affected public water system operators.
15 Notwithstanding s. 160.15 (1), the department is not required to establish a
16 preventive action limit for any PFAS for which a maximum contaminant level is
17 established under this subdivision.

18 2. Requirements for testing biosolids from a publicly owned treatment works
19 that are spread in a PFAS management zone, regardless of where the publicly owned
20 treatment works is located. Emergency rules promulgated under this subdivision
21 may not create a standard for PFAS contained in biosolids that are spread in a PFAS
22 management zone, although testing results may be used to inform future actions.

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

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

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

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

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

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

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

4 (c) Results from PFAS testing in the PFAS management zone.

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

7 (e) Health risks associated with the overconsumption of PFAS and measures
8 the public may take to reduce the health risks of PFAS exposure. The department
9 shall consult with the department of health services, as provided by, in developing this information.

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

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

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

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

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

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

1 PFAS management zones; plans for addressing PFAS contamination in PFAS
2 management zones; the technical and economic feasibility of compliance with
3 existing or potential PFAS standards; and any other information deemed relevant
4 by the department.

5 **(10) DISSOLUTION.** A PFAS management zone established under sub. (3) shall
6 dissolve one year after the department promulgates any permanent rules
7 establishing statewide maximum contaminant levels for any PFAS or one year after
8 any emergency rules establishing maximum contaminant levels for PFOA and PFOS
9 for the zone under sub. (4) expire, whichever occurs sooner.

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

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

12 281.58 **(7)** (b) 1g. Projects in or near a PFAS management zone established
13 under s. 281.18 (3) that the department determines are necessary to address
14 contamination by perfluoroalkyl or polyfluoroalkyl substances.

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

16 281.58 **(8e)** (a) The type of project and the order in which it is listed under sub.
17 (7) (b) ~~1. 1g. to 6., to the extent allowable under federal law.~~

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

19 281.58 **(12)** (a) 1. (intro.) Except as modified under par. (f) and except as
20 restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub.
21 (7) (b) ~~1. 1g. to 5.~~ is one of the following:

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

23 281.61 **(6)** PRIORITY LIST. The department shall establish a priority list that
24 ranks each safe drinking water loan program project. The department shall
25 promulgate rules for determining project rankings that, to the extent possible, give

1 priority to projects that address the most serious risks to human health, that are
2 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
3 300j-26, and that assist applicants that are most in need on a per household basis,
4 according to affordability criteria specified in the rules. For the purpose of ranking
5 projects under this subsection, the department shall treat a project to upgrade a
6 public water system to provide continuous disinfection of the water that it distributes
7 as if the public water system were a surface water system that federal law requires
8 to provide continuous disinfection. In establishing a priority list under this
9 subsection, the department shall, to the extent possible, give priority to projects that
10 address contamination by perfluoroalkyl or polyfluoroalkyl substances in PFAS
11 management zones established under s. 281.18 (3).

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

13 281.75 (1) (b) 1m. In a PFAS management zone established under s. 281.18 (3),
14 produces water containing PFOA or PFOS in excess of any primary maximum
15 contaminant level established by the department including any level established
16 under s. 281.18 (4).

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

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

Pfotenhauer, Mary

From: Herkert, Toni
Sent: Friday, January 24, 2020 6:35 PM
To: Pfotenhauer, Mary
Cc: Miller, Evan
Subject: LRBs 5179 and 5180 Drafting Instructions

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Mary,

I hope all is well! I'm sorry for the late message, but we wanted to get these drafting instructions off tonight so it's one less thing I have to take care of on Monday.

After speaking further with Rob and talking with some stakeholders, we're looking to change a few things in the PFAS Management Zone bills (LRBs 5179 and 5180) for a P5 and P3, respectively. Our changes are below, and please don't hesitate to reach out to Evan or I with any questions you may have.

Drafting Instructions for a P5 of LRB 5179

- ✓ Page 7, Line 3: Remove the language regarding the MCL from the topline.
- ✓ Page 7, Lines 7 to 17. The only portion we're looking to keep is the testing of the six PFAS compounds (minus the 'also' and 'such' on line 9), but otherwise we're looking to remove all of lines 7 and 8 and the first two words of line 9, and the last four words on line 11 and all of lines 12 to 17. Again, this just leaves the language: "The emergency rules shall ~~also~~ include requirements for ~~such~~ public water systems to test their water for PFOA, PFOS, PFHxS, PFHpA, and PFBS and submit the results to the department."
 - ƒ We'd also like to add language to the end of what remains on line 11 similar to the language on lines 21 to 22 that reads: "Emergency rules promulgated under this subdivision may not create a standard for PFAS in drinking water in a PFAS management zone, although testing results may be used to inform future actions."
- ✓ Page 7, Lines 18 to 22: Along with the existing requirement that biosolids spread in a PFAS management zone must be tested, we're looking to expand these testing requirements to require all wastewater systems with a service area overlapping with a management zone to test their biosolids before moving any biosolids offsite. However, we also want to add language that ensures that if both provisions qualify (i.e. biosolids are both potentially created inside of a zone *and* spread within a zone), that they only need to test the biosolids once.
- ✓ Page 9, Line 4: Can we add language to specify which tests must be posted to tests conducted by the DNR or a contracted entity? We're looking for it to read something like: "Results from PFAS testing under (3) and (5) in the PFAS management zone."
- ✓ Page 10, Line 3: Given that we're removing the temporary MCL but would like the department to continue reporting on technical and economic feasibility, can we remove the first three words of this line to read: "...compliance with ~~existing or potential~~ PFAS standards;..."?
- ✓ Page 10, Line 8: Can we simply remove the "establishing MCL for PFOA and PFOS" language and to instead just ensure that it's one-year after emergency rules will expire for testing under sub. (4)?

- ✓ Page 11, Lines 14 to 16: Can we change this language so that, instead of an exceedance of the MCL to qualify for the well comp program, they just have to have detectable levels of PFAS? As such, we're looking to cut off everything on line 14 after PFOA and PFOS along with all of lines 15 and 16.
- ✓ Page 11, Line 20: Instead of having a standard for granting well compensation funding, we're looking to have a new sentence added after "...defined under sub. (1) (b) 1m." but before "For all other claims,..." to read something like: "For claims under sub. (1) (b) 1m., the department shall award completed claims based on the levels of contamination, with the highest levels of contamination receiving compensation first."
- ✓ Page 12: Can we add a nonstatutory provision to this legislation to require the DNR to work with potentially impacted parties to look at the technological and economic feasibility of meeting permanent standards, once promulgated, and ways to help municipal utilities achieve standards, including stepped implementation, community-based pilots, and assistance with financing.

Drafting Instructions for a P3 of LRB 5180

- Page 2, Line 11: Reduce from \$250,000 to \$200,000 for municipal testing.
 - Please make corresponding changes on pages 4 to 5, lines 22 to 24 and 1 to 2, to reduce the GPR/Ag Chem Cleanup Fund split to \$100,000 and \$100,000 each.
- Page 5, Lines 5 to 6: We're looking to make a few changes to the well comp program funding. These changes will increase the appropriation, make it annual, and ensure that, once the zones dissolve, funding is still allocated for PFAS substances that would be eligible given the provisions in the well comp program that allow substances exceeding permanent groundwater standards to qualify, but also allow zones to qualify given our additions in the first bill. These changes will, more explicitly:
 1. Make this an annual appropriation beginning instead in FY 2020-21;
 2. Raise the amount from \$50,000 to \$100,000, and;
 3. Make the amount for perfluoroalkyl or polyfluoroalkyl substance contamination as defined under s. 281.75 (broadly).

Thank you for all of your help so far on these drafts, and we appreciate your time and attention to PFAS Management Zones!

Hope you have a great weekend!

Toni

Toni R. Herkert Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles

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

perfluorobutane sulfonic acid (PFBS), perfluoroheptanoic acid (PFHpA), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA).

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

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

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

Under the bill, a designation of a PFAS management zone expires one year after DNR promulgates any permanent rules establishing statewide maximum contaminant levels for any PFAS, or one year after any emergency rules establishing maximum contaminant levels for PFOA and PFOS within the zone expire, whichever occurs sooner.

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The bill requires DNR to establish, by emergency rule, maximum contaminant levels for PFOA and PFOS that apply to public water systems that draw water from groundwater or surface water within a PFAS management zone. The emergency rules must also include requirements for those water systems to test their water for PFOA, PFOS, PFHxS, PFHpA, PFNA, and PFBS and to submit the results of testing to DNR. DNR must consider the economic and technical feasibility of complying with

the proposed maximum contaminant levels and must consult with potentially affected public water system operators. ^{In A}

In addition, the bill requires DNR to establish emergency rules requiring the testing of any biosolids from a publicly owned treatment works that are spread in a PFAS management zone, regardless of where the publicly owned treatment works is located. ^{if the biosolids} The bill provides that such rules may not create a standard for PFAS contained in biosolids that are spread in a PFAS management zone, although testing results may be used to inform future actions. ^{In B}

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

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

Grant and loan priorities

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

PFAS advisory committee

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

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

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

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

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

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

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

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

8 (e) “PFHpA” means perfluoroheptanoic acid.

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

10 (g) “PFNA” means perfluorononanoic acid.

11 (h) “PFOA” means perfluorooctanoic acid.

12 (i) “PFOS” means perfluorooctanesulfonic acid.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 3. Likely sources of PFAS contamination.

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

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

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

13 7. Public roads or other physical boundaries.

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

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

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

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

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

8 1. A maximum contaminant level for PFOA and PFOS that applies to public
9 water systems that draw water from groundwater or surface water within a PFAS
10 management zone. The emergency rules shall also include requirements for such
11 water systems to test their water for PFOA, PFOS, PFH_xS, PFHpA, PFNA, and
12 PFBS and to submit the results to the department. In developing a maximum
13 contaminant level under this subdivision, the department shall consider, along with
14 the protection of public health and welfare, the economic and technical feasibility of
15 compliance with any proposed level and shall consult with potentially affected public
16 water system operators. Notwithstanding s. 160.15 (1), the department is not
17 required to establish a preventive action limit for any PFAS for which a maximum
18 contaminant level is established under this subdivision. Ins 7-17

19 2. Requirements for testing biosolids from a publicly owned treatment works
20 that are spread in a PFAS management zone, regardless of where the publicly owned
21 treatment works is located. Ins 7-20 Emergency rules promulgated under this subdivision
22 may not create a standard for PFAS contained in biosolids that are spread in a PFAS
23 management zone, although testing results may be used to inform future actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 testing in PFAS management zones; plans for addressing PFAS contamination in
2 PFAS management zones; the technical and economic feasibility of compliance with
3 existing or potential PFAS standards; and any other information deemed relevant
4 by the department.

5 (10) DISSOLUTION. A PFAS management zone established under sub. (3) shall
6 dissolve one year after the department promulgates any permanent rules
7 establishing statewide maximum contaminant levels for any PFAS or one year after
8 any emergency rules establishing maximum contaminant levels for PFOA and PFOS
9 for the zone under sub. (4) expire, whichever occurs sooner.

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

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

12 281.58 (7) (b) 1g. Projects in or near a PFAS management zone established
13 under s. 281.18 (3) that the department determines are necessary to address
14 contamination by perfluoroalkyl or polyfluoroalkyl substances.

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

16 281.58 (8e) (a) The type of project and the order in which it is listed under sub.
17 (7) (b) 1. 1g. to 6., to the extent allowable under federal law.

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

19 281.58 (12) (a) 1. (intro.) Except as modified under par. (f) and except as
20 restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub.
21 (7) (b) 1. 1g. to 5. is one of the following:

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

23 281.61 (6) PRIORITY LIST. The department shall establish a priority list that
24 ranks each safe drinking water loan program project. The department shall
25 promulgate rules for determining project rankings that, to the extent possible, give

1 priority to projects that address the most serious risks to human health, that are
2 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
3 300j-26, and that assist applicants that are most in need on a per household basis,
4 according to affordability criteria specified in the rules. For the purpose of ranking
5 projects under this subsection, the department shall treat a project to upgrade a
6 public water system to provide continuous disinfection of the water that it distributes
7 as if the public water system were a surface water system that federal law requires
8 to provide continuous disinfection. In establishing a priority list under this
9 subsection, the department shall, to the extent possible, give priority to projects that
10 address contamination by perfluoroalkyl or polyfluoroalkyl substances in PFAS
11 management zones established under s. 281.18 (3).

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

13 281.75 (1) (b) 1m. In a PFAS management zone established under s. 281.18 (3),
14 produces water containing ^{a detectable amount of} PFOA or PFOS ^{in excess of any primary maximum}
15 contaminant level established by the department including any level established
16 under s. 281.18 (4).

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

18 281.75 (5) (f) The In allocating money for the payment ^{that are} of claims under this
19 section, the department shall prioritize completed claims based on the type of
20 contamination defined under sub. (1) (b) 1m. ^(Ins 11-20) For all other claims, the department
21 shall allocate money for the payment of claims according to the order in which
22 completed claims are received. The department may conditionally approve a
23 completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay
24 the claim. The department shall allocate money for the payment of a claim which
25 is conditionally approved as soon as funds become available.

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

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

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

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

11 **SECTION 12. Nonstatutory provisions.**

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

23 →

Ans 12-22

(END)

1 INSERT A

 The bill provides that such rules may not create a standard for PFAS contained in drinking water in a PFAS management zone, although testing results may be used to inform future actions.

2

3 INSERT B

 or, for a publicly owned treatment works that has any part of its service area in a PFAS management zone, if the biosolids are to be moved off-site

4

5 INSERT 7-17

 Emergency rules promulgated under this subdivision may not create a standard for PFAS contained in drinking water in a PFAS management zone, although testing results may be used to inform future actions.

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10 INSERT 7-20

 or, for a publicly owned treatment works that has any part of its service area in a PFAS management zone, if the biosolids are to be moved off-site. If a publicly owned treatment works ^{that} has any part of its service area in a PFAS management zone moves biosolids off-site and spreads biosolids in a PFAS management zone, the requirements established under this subdivision may require testing for only one of these actions, not both.

17

18 INSERT 11-20

and, for these claims, shall allocate money for the payment of claims according to the level of contamination, with the highest levels of contamination receiving payment first.

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INSERT 12-22

(0) ACHIEVEMENT OF STANDARDS. The department of natural resources shall work with persons and entities likely to be affected by the promulgation of permanent rules that establish standards for PFAS to look at the technological and economic feasibility of meeting those standards and ways to help municipal utilities achieve these standards, including through stepped implementation, community-based pilot programs, and financial assistance.



1/28/20

-5179

Toni @ Cowles:

- p. 8 ln. 5 cause testing ⇒ require testing.

-MCP



State of Wisconsin
2019 - 2020 LEGISLATURE

11/6
LRB-5179/P5
MCP:amn

In 1/28
Out Today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

JA -
Pwf

Repr. -

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

Analysis by the Legislative Reference Bureau

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

Establishing PFAS management zones

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

perfluorobutane sulfonic acid (PFBS), perfluoroheptanoic acid (PFHpA), perfluorohexane sulfonic acid (PFHxS), and perfluorononanoic acid (PFNA).

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

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

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

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

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

Requirements within PFAS management zones

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

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

be moved off-site. The bill provides that such rules may not create a standard for PFAS contained in biosolids that are spread in a PFAS management zone, although testing results may be used to inform future actions.

Notification and reporting

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

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

Grant and loan priorities

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

PFAS advisory committee

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

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

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

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2 227.01 (13) (yv) Determines the boundaries of a PFAS management zone under
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5 **281.18 PFAS management zones. (1) DEFINITIONS.** In this section:
6 (a) “Discernable path of contamination” means the path that PFAS
7 contamination takes from its source, such as down a river or with the flow of the
8 groundwater table.

1 (b) "Drinking water" means surface water or groundwater used as a source of
2 public or private drinking water, as determined by the department.

3 (c) "PFAS" means a perfluoroalkyl substance or polyfluoroalkyl substance.

4 (d) "PFBS" means perfluorobutane sulfonic acid.

5 (e) "PFHpA" means perfluoroheptanoic acid.

6 (f) "PFHxS" means perfluorohexane sulfonic acid.

7 (g) "PFNA" means perfluorononanoic acid.

8 (h) "PFOA" means perfluorooctanoic acid.

9 (i) "PFOS" means perfluorooctanesulfonic acid.

10 (j) "Positive test" means a test of a drinking water sample that shows levels of
11 PFOA and PFOS in excess of 70 parts per trillion.

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

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

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

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

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

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

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

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

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

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

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

3 3. Likely sources of PFAS contamination.

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

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

6 6. Legal land description boundaries, including political and property
7 boundaries.

8 7. Public roads or other physical boundaries.

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

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

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

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

23 **(4) EMERGENCY RULES FOR TREATMENT WORKS AND PUBLIC WATER SYSTEMS.** (a) No
24 later than 9 months after the effective date of this paragraph ... [LRB inserts date],

1 the department shall, using the procedure under s. 227.24, promulgate emergency
2 rules to establish the following:

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

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

19 (b) Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to
20 provide evidence that promulgating a rule under this subsection as an emergency
21 rule is necessary for the preservation of the public peace, health, safety, or welfare
22 and is not required to provide a finding of emergency for a rule promulgated under
23 this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules
24 promulgated under this subsection remain in effect for 3 years after the effective date
25 of this paragraph [LRB inserts date], or the date on which permanent rules take

1 effect, whichever is sooner. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., for
2 emergency rules promulgated under this subsection, the department is not required
3 to prepare a statement of scope of the rules or to submit the proposed rules in final
4 draft form to the governor for approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 PFAS management zones; the technical and economic feasibility of compliance with
2 PFAS standards; and any other information deemed relevant by the department.

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

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

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

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

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

11 281.58 (8e) (a) The type of project and the order in which it is listed under sub.
12 (7) (b) ~~1. 1g. to 6., to the extent allowable under federal law.~~

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

14 281.58 (12) (a) 1. (intro.) Except as modified under par. (f) and except as
15 restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub.
16 (7) (b) ~~1. 1g. to 5.~~ is one of the following:

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

18 281.61 (6) PRIORITY LIST. The department shall establish a priority list that
19 ranks each safe drinking water loan program project. The department shall
20 promulgate rules for determining project rankings that, to the extent possible, give
21 priority to projects that address the most serious risks to human health, that are
22 necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to
23 300j-26, and that assist applicants that are most in need on a per household basis,
24 according to affordability criteria specified in the rules. For the purpose of ranking
25 projects under this subsection, the department shall treat a project to upgrade a

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

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

8 281.75 (1) (b) 1m. In a PFAS management zone established under s. 281.18 (3),
9 produces water containing a detectable amount of PFOA or PFOS.

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

11 281.75 (5) (f) The In allocating money for the payment of claims under this
12 section, the department shall prioritize completed claims that are based on the type
13 of contamination defined under sub. (1) (b) 1m. and, for these claims, shall allocate
14 money for the payment of claims according to the level of contamination, with the
15 highest levels of contamination receiving payment first. For all other claims, the
16 department shall allocate money for the payment of claims according to the order in
17 which completed claims are received. The department may conditionally approve a
18 completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay
19 the claim. The department shall allocate money for the payment of a claim which
20 is conditionally approved as soon as funds become available.

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

22 281.75 (6) (a) Contamination of a private water supply, as defined under sub.
23 (1) (b) 1., 1m., or 2., is required to be established by analysis of at least 2 samples of
24 water, taken at least 2 weeks apart, in a manner which assures the validity of the
25 test results. The samples shall be tested by a laboratory certified under s. 299.11.

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

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

6 **SECTION 12. Nonstatutory provisions.**

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

18 (2) ACHIEVEMENT OF STANDARDS. The department of natural resources shall
19 work with persons and entities likely to be affected by the promulgation of
20 permanent rules that establish standards for PFAS to look at the technological and
21 economic feasibility of meeting those standards and ways to help municipal utilities
22 achieve these standards, including through stepped implementation,
23 community-based pilot programs, and financial assistance.

24

(END)

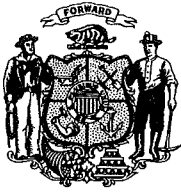
Walker, Dan

From: Pfothenauer, Mary
Sent: Friday, January 31, 2020 9:13 AM
To: LRB.Legal
Subject: -5179 and -5180

Per Evan in the Cowles office: please jacket -5179 and -5180 for the Senate. -5179 is ready now. -5180 is working its way through editing and will be ready momentarily.

Thanks!

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Wisconsin Legislative Reference Bureau
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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5179/P6

MCP:amn

1
No changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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

Establishing PFAS management zones

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

Walker, Dan

From: LRB.Legal
To: Sen.Cowles
Subject: Draft review: LRB -5179/1
Attachments: 19-5179/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Mary Pfothenauer, Legislative Attorney, at (608) 504-5854, at mary.pfothenauer@legis.wisconsin.gov, or at One East Main Street, Suite 200.

We will jacket this draft for introduction in the Senate.

If a jacket is needed immediately, please let us know in your response e-mail so we know to immediately jacket the proposal for you.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.