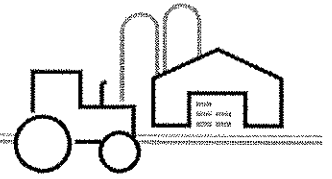




ELIJAH BEHNKE

STATE REPRESENTATIVE • 89th ASSEMBLY DISTRICT



06/10/2021

Testimony on Assembly Bill 392, Assembly Committee on Energy and Utilities

Chairman Kuglitsch and Members of the Assembly Committee on Energy and Utilities,

Thank you for holding a public hearing today and allowing me to testify in favor of Assembly Bill 392, which creates a municipal grant program, administered by the Department of Natural Resources, to address harmful substances known as PFAS.

This bill was based off of page 435 from Governor Evers' proposed budget. This bill would provide \$10,000,000 for a grant program in order to reduce or eliminate environmental contamination. The funding source would be moneys accepted from the federal government under the American Rescue Plan Act of 2021.

During my time on the campaign trail I talked to many constituents who brought the PFAS contamination issue to my attention. PFAS is a hazardous, carcinogenic substance that is harmful to Wisconsin families, Wisconsin wildlife, and Wisconsin farmers.

The contamination of PFAS is the worst in my district, but it is not only my district. Right here in Madison, the DNR is advising against eating more than one walleye per month that was caught from area lakes. There are reports of PFAS contamination from across the state as well. Because this contamination was unknown until 2017, farmers are now taking a hit on their livelihood. Steers are not meeting weight requirements, crops could be contaminated, and artificial insemination success rates have dropped 20 percent, leaving Wisconsin farmers vulnerable. Our farmers are the backbone of this state and our infrastructure.

Infrastructure is a general term for the basic physical systems of a business, region, or nation and includes transportation systems, communication networks, sewage, water, and electrical systems. There is no more important infrastructure than clean water for our citizens, children, and future. Strong infrastructure is for the greater good of the people. Nothing more is for the greater good of Wisconsinites than clean water.

Clean water is not a party issue. This is a bipartisan issue that can truly benefit all of Wisconsin. Ronald Reagan once said, "Preservation of our environment is not a liberal or conservative challenge, its common sense." It is my priority to work with everyone for the betterment of our state. Assembly Bill 392 is a great start to tackling the PFAS water contamination issue in this state.

Thank you again for holding this hearing on Assembly Bill 392 and allowing me to testify in favor of it. I am happy to answer any questions you many have.



TO: Members, Assembly Committee on Energy & Utilities

FROM: Scott Manley, Executive Vice President of Government Relations

DATE: June 10, 2021

RE: Support for Assembly Bill 392

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in support of Assembly Bill 392. We also appreciate the leadership of Representative Behnke for introducing this important bill.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. That mission includes supporting legislation that improves the environment while maintaining a fair, transparent, and cost-effective regulatory climate in our state.

Similar to a provision in the Governor's two-year budget proposal, AB 392 makes a substantial investment of \$10 million annually for municipal grants to address PFAS impacts in Wisconsin. However, the proposal also includes crucial additions to provide clarity and certainty to the state's regulated community, including local governments.

In particular, AB 392 includes the following provisions:

1. Ensures that a grant recipient or beneficiary cannot obtain grant funding and then subsequently sue a third-party for damages.
2. Maintains current law by clarifying that the Wisconsin DNR is the state's environmental regulator, not local governments.

Protection against PFAS-related Lawsuits

It should be emphasized that the concern regarding PFAS-related lawsuits is far from hypothetical. In January, the Wisconsin Department of Administration (DOA) put out a Request for Qualifications (RFQ) with the title "State of Wisconsin PFAS Litigation." Included in this document is the following statement:

This RFQ is an open solicitation for law firms to provide the State of Wisconsin (State) with their qualifications to provide legal counsel services for the investigation and

potential litigation against parties engaged in the manufacture, processing, distribution, use or disposal of per- and polyfluoralkyl substances (PFAS) or PFAS containing products.

In short, DOA sought bids for law firms to investigate and potentially sue businesses or local governments that use or are ever in contact with *any* of the more than 5,000 PFAS compounds. The RFQ also specifies that the contract will be on a *contingent fee basis*. This means that the law firm has a built-in financial incentive to sue as many businesses or local governments as possible on behalf of the state.

History has repeatedly shown that litigation over environmental cleanups necessarily adds cost and delay to the environmental remediation process. We believe that the limitations on suing a third-party after receiving financial resources for cleanup assistance are appropriate.

Regulatory Authority Related to PFAS

The legislation also clarifies that this proposed municipal grant program does not confer any additional local authority to regulate PFAS. This is necessary to ensure that Wisconsin's regulated community is not required to contend with a patchwork of new local regulations or ordinances for PFAS.

To clarify, current law does not allow local units of government to set PFAS standards; this is a function of the Wisconsin DNR. In addition, the DNR is already moving to regulate these substances in the state. The agency is currently in the process of promulgating five different rules to implement numeric standards for PFAS. A network of more than 1,900 different local regulations on PFAS would exacerbate the regulatory challenges already facing Wisconsin businesses.

Moreover, based on a review of the Governor's "Budget in Brief" document prepared by the Department of Administration, it cannot be reasonably inferred that the intent of the Governor's grant proposal was to give new PFAS regulatory authority to local governments. This legislation simply includes statutory language to clarify this.

Conclusion

Unlike other legislative efforts surrounding PFAS, this legislation helps address PFAS-related impacts while still protecting businesses and local governments from costly and frivolous lawsuits. WMC urges Members of the Committee to support AB 392. Thank you for the opportunity to testify on this legislation.