



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #462

### **PFAS Municipal Grant Program (Natural Resources -- Waste, Remediation, and Air)**

[LFB 2021-23 Budget Summary: Page 435, #2]

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#### **CURRENT LAW**

Chapter 292 of the statutes (remedial action for environmental contamination) generally requires persons who control or possess a hazardous substance that is discharged to the environment to "take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state." Site remediation includes an investigation to determine the extent of contamination, and plans for interim and long-term actions to restore the site and soils, groundwater, or surface water.

Additionally, state and federal law provides for the prevention and elimination of toxic substances in public and private water supplies intended for human consumption. Water supplies exceeding certain levels of contamination are required to be removed from service. Depending on the nature of the water source and the contamination, a responsible party could be liable for providing for the replacement of the affected water supply.

#### **DISCUSSION POINTS**

1. In recent years, per- and polyfluoroalkyl substances (PFAS) have been found throughout Wisconsin in soils, surface water, and groundwater. PFAS are a class of synthetic chemicals commonly found in nonstick surfaces, cookware, paint, and firefighting foam. The National Institutes of Health report there are at least 4,700 unique types of PFAS. They are temperature, water, and oil resistant. Research and studies indicate that PFAS are toxic to humans, as they do not easily degrade and tend to accumulate in humans and the environment. In parts of the state, PFAS have dispersed through the environment from such sources as: (a) discharges of firefighting foams in municipal and military firefighting uses; and (b) industrial waste discharged to municipal sewerage systems, and

then applied to land as septage (bio-solids).

2. In 2019, the Governor issued Executive Order No. 40 to address the public health risks of environmental contamination by PFAS in the state and instructed the Department of Natural Resources (DNR) to establish and lead a council to consider state and local responses to the proliferation of PFAS uses and the presence of PFAS in the environment. In December, 2020, the Wisconsin PFAS Action Council (WisPAC) published the PFAS Action Plan, including numerous recommendations to address PFAS contamination in the state. The PFAS Action Plan recommended creation of a municipal grant program to: (a) investigate potential PFAS contamination sources; (b) sample private water supplies; (c) provide temporary emergency water, water treatment, or bulk water supply; and (d) remediate PFAS contamination.

3. Assembly Bill 68/Senate Bill 111 would create a municipal grant program with ongoing funding of \$10,000,000 GPR for multiple activities to respond to suspected or known PFAS contamination. Eligible municipalities would include any city, village, town, county, utility district, lake protection district, sewerage district, or municipal airport, provided one of the following had occurred: (a) the municipality or a third party tested or trained with a Class B firefighting foam that contained intentionally added PFAS in accordance with applicable state and federal law, and within the boundaries of the municipality; (b) the municipality applied bio-solids to land under a DNR-issued wastewater permit; or (c) PFAS are impacting the municipality's drinking water supply, surface water, or groundwater within the municipality, and the responsible party is unknown, unwilling, or unable to take the necessary response actions.

4. DNR would award grants for any of the following activities:

- (a) Investigating potential PFAS impacts to the air, land, or water at a site or facility;
- (b) Treating or disposing of PFAS-containing firefighting foam containers from a municipal site or facility;
- (c) Sampling a private water supply within three miles of a site or facility known to contain PFAS or to have caused a PFAS discharge;
- (d) Providing a temporary emergency water supply, a water treatment system, or bulk water to replace water contaminated with PFAS;
- (e) Conducting emergency, interim, or remedial actions to mitigate, treat, dispose of, or remove PFAS contamination in the air, land, or waters of the state; and
- (f) Removing or treating PFAS in a public water system using the most cost-effective method to provide safe drinking water in areas where PFAS levels exceed either the maximum contaminant level or an enforcement standard for PFAS, or where the state has issued a health advisory for PFAS.

5. Applicants would be required to contribute matching funds equal to at least 20% of the amount of the grant, including either cash or in-kind contributions. Applicant municipalities would

be required to demonstrate the following: (a) financial and administrative commitment to performing and completing eligible activities; (b) the degree to which the project would have a positive impact on public health and the environment; and (c) other criteria on which DNR prioritizes available grant funds. DNR would be authorized to request that any applicant provide information necessary to determine the eligibility of the project, identify the funding requested, determine the priority of the project, and calculate the amount of a grant.

6. DNR would be authorized to issue emergency rules for the PFAS municipal grant program, without the finding of emergency or providing evidence that an emergency rule is necessary to preserve public health, peace, safety or welfare. DNR would not be required to prepare a scope statement and submit proposed emergency rules to the Governor.

7. The PFAS Action Plan recommended that DNR contract with a state-certified laboratory to offer discounted PFAS lab analysis rates for municipalities. DNR expects to partner with local governments, fire departments, municipal airports, and other municipal associations to carry out the grant program.

8. DNR contends that there are currently few resources available to support municipalities in efforts to treat and mitigate PFAS contamination. In general, because state law requires responsible parties to pay for costs of site remediation following a spill or discharge of a hazardous substance, there are limited sources of public funding for such purposes. Municipal water utilities and wastewater treatment facilities would be able to use the clean water fund program and safe drinking water loan program for financial assistance to address PFAS-contaminated drinking water or wastewater effluent. However, state standards for PFAS in these media are currently under administrative rule promulgation. Until standards are established, PFAS-related upgrades are not eligible uses under the clean water fund program. Such projects could receive financial assistance under the safe drinking water loan program to address a future exceedance of a pollutant, but such projects would be categorized as lower priority due to PFAS standards not yet being established.

9. Under administrative code Chapter NR 738, DNR may provide temporary emergency water supplies to persons with water supplies that have been adversely affected by contamination from a site or facility subject to cleanup requirements under the hazardous substance spills statute or environmental repair statute. Temporary emergency supplies include potable water obtained in bottles, by tank truck or by other similar means, or a temporary connection to an existing water supply, supplied at a capacity sufficient to satisfy water use functions impaired by the contaminated supply.

10. The environmental fund pays for temporary emergency water supplies if the following criteria are met: (a) the source of potable water is from a contaminated well or contaminated water supply; (b) the contamination is known or is suspected by DNR to be from environmental pollution or a hazardous substance discharge subject to the spills or environmental repair statutes; (c) water sampling is conducted in accordance with specific requirements; and (d) DNR or the Department of Health Services has issued a drinking water advisory notice for the water supply. DNR paid a cumulative total of approximately \$268,900 as of June 30, 2020, for temporary emergency water supplies, including \$400 in 2019-20. The environmental management account also pays for permanent replacement water supplies instead of temporary emergency water supplies under certain circumstances.

11. DNR has approximately \$3.3 million of an authorized \$50 million in general obligation bonding to fund the state's cost-share for cleanup of federal Superfund and leaking underground storage tank sites, and state-funded cleanups under the environmental repair statutes. Bonding authority can be used for public-purpose projects such as cleanup of contaminated groundwater, soils and sediments, and activities such as investigation, remedial design and cleanup of a specific site when the responsible party is unknown, unable, or unwilling to fund the cleanup.

12. DNR also has base funding of \$2,292,700 each year in a continuing appropriation from the environmental management account of the segregated (SEG) environmental fund. (A separate provision of AB 68/SB 111 would provide the appropriation additional funding of \$600,000 each year to address PFAS contamination.) The appropriation is used for DNR expenditures related to DNR-led cleanups of contaminated sites where the responsible party is unknown or cannot or will not clean up the site; (b) the state share at certain federally-funded site cleanups; (c) emergency spill response and cleanups; (d) response and cleanup of abandoned containers of hazardous substances where the responsible party cannot be identified; (e) provision of temporary emergency water supplies; and (f) replacement of contaminated private wells under certain circumstances.

13. The PFAS Action Plan notes that multiple PFAS municipal grant and loan programs have been implemented in other states. In April, 2020, Michigan officials announced a \$4 million program for municipal airports to monitor and test for contamination from Class B firefighting foams. New York in 2018 provided \$200 million for water systems to upgrade treatment capabilities to remove emerging contaminants, including PFAS, from public water supplies. In May, 2020, Massachusetts also initiated a \$2 million grant program for water treatment upgrades to address PFAS.

14. The DNR remediation and redevelopment program's online database currently lists 78 sites associated with PFAS contamination in more than 30 municipalities, including such sites as manufacturers of PFAS-containing products, airports, military installations, landfills, and sites with no known responsible party or sources. DNR has identified eight military sites that are confirmed or likely to have PFAS contamination. DNR cannot currently estimate how many of eight commercial airports in the state, 90 general aviation airports, 50 open landfills, hundreds of closed landfills, or other sites may have PFAS contamination.

15. DNR does not have a specific estimate for how \$10 million annually would be allocated in the municipal grant program. The Department contends that each community's unique characteristics of hydrogeology, geography, known PFAS sources, and current resources, would determine what amounts of funding would be requested and for which activities.

16. According to DNR, the typical costs of the eligible activities under the program in AB 68/SB 111 vary widely. General PFAS site investigations can vary in cost, depending on bids by consultants. Emergency or interim remedial action activities may typically include PFAS foam removal from residential dwellings and waterways, or providing emergency water supplies. DNR indicates foam sampling and removal contracting may cost \$2,500 for individual instances. DNR estimates that private water supply sampling may cost \$1,500 per well. Temporary emergency water consists of bottled water, and DNR estimates a cost of between \$400 and \$1,000 to provide the water to residents for one year, depending on household size. Other advanced water treatment systems may

cost \$5,000 to \$15,000 to install and \$1,000 to \$3,000 annually for operation and maintenance. Other grant-eligible activities are potentially significantly more expensive. DNR estimates that private well replacements may cost up to \$25,000 and \$50,000 each. Utility-scale drinking water treatment systems vary by the size of the utility, but would cost between \$100,000 and \$300,000 annually, in addition to installation costs, according to DNR.

17. DNR contends that PFAS contamination is likely widespread in the state, to varying degrees. Exact levels and prevalence of contamination are not fully understood due to a lack of comprehensive collection, testing, and mitigation efforts and the funding to support these efforts. DNR intends for the municipal grant program, along with the accompanying PFAS position and funding provisions in AB 68/SB 111, to establish statewide PFAS investigation and mitigation efforts. However, the PFAS Action Plan noted that municipalities may have limited funding to investigate and clean up PFAS, particularly contamination resulting from use of firefighting foams by local fire departments. Additionally, for sites that have no responsible party identifiable, or one who is willing or able to conduct clean-up activities, the PFAS Action Plan argues that local governments may be better able to address their specific issues if provided support from the state.

18. Given the health and environmental hazards of PFAS, and the widespread occurrence of known or suspected contamination needing investigation and remediation, the Committee could provide \$10 million GPR in ongoing funding for a PFAS municipal grant program [Alternative 1]. The Committee could also consider other funding sources. As noted in a separate paper, the environmental management account of the environmental fund is estimated to have an available July 1, 2021, balance of \$23.9 million, with available balances increasing over the biennium. Environmental management SEG could be provided for the PFAS municipal grant program, although the account would not be expected to be able to support the level of ongoing funding proposed in AB 68/SB 111. The Committee could consider amounts of \$5 million [Alternative 2] or \$2.5 million annually on an ongoing basis to use SEG funding instead of GPR [Alternative 3].

19. Given the uncertainty surrounding the number of likely applicants and costs for which grantees would seek funding, the Committee could also consider approving one-time funding in 2021-22 to assess the demand and operation of the PFAS municipal grant program in the 2021-23 biennium before committing to ongoing funding. The Committee could consider one-time amounts of \$10 million [Alternatives 4a and 4b] or \$5 million [Alternatives 5a and 5b]. The Committee could also take no action [Alternative 6].

## **ALTERNATIVES**

1. Create a grant program for municipalities to investigate and respond to PFAS contamination statewide, funded by a continuing appropriation with ongoing funding of \$10,000,000 GPR each year. Specify eligible activities and grant applicants as under AB 68/SB 111, and require a 20% match from grant recipients, including cash or in-kind amounts. Authorize DNR to promulgate emergency rules, without the finding of an emergency, and waive requirements for a statement of scope and that emergency rules be submitted to the Governor in final draft form.

<b>ALT 1</b>	<b>Change to Base</b>
GPR	\$20,000,000

2. Adopt the PFAS municipal grant provisions under Alternative 1, but provide ongoing funding of \$5,000,000 each year in a continuing appropriation. Specify funding from one of the following sources:

- a. GPR; or

<b>ALT 2a</b>	<b>Change to Base</b>
GPR	\$10,000,000

- b. Environmental management SEG.

<b>ALT 2b</b>	<b>Change to Base</b>
SEG	\$10,000,000

3. Adopt the PFAS municipal grant provisions under Alternative 1, but provide ongoing funding of \$2,500,000 each year in a continuing appropriation. Specify funding from one of the following sources:

- a. GPR; or

<b>ALT 3a</b>	<b>Change to Base</b>
GPR	\$5,000,000

- b. Environmental management SEG.

<b>ALT 3b</b>	<b>Change to Base</b>
SEG	\$5,000,000

4. Adopt the PFAS municipal grant provisions under Alternative 1, but provide one-time funding of \$10,000,000 in 2021-22. Specify one of the following funding sources:

- a. GPR; or

<b>ALT 4a</b>	<b>Change to Base</b>
GPR	\$10,000,000

- b. Environmental management SEG.

<b>ALT 4b</b>	<b>Change to Base</b>
SEG	\$10,000,000

5. Adopt the PFAS municipal grant provisions under Alternative 1, but provide one-time funding of \$5,000,000 in 2021-22. Specify one of the following fund sources:

- a. GPR; or

<b>ALT 5a</b>	<b>Change to Base</b>
GPR	\$5,000,000

- b. Environmental management SEG.

<b>ALT 5b</b>	<b>Change to Base</b>
SEG	\$5,000,000

6. Take no action.

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