



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #601

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

[LFB 2023-25 Budget Summary: Page 452, #1]

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#### **CURRENT LAW**

In recent years, per- and polyfluoroalkyl substances (PFAS) have been found throughout Wisconsin in soils, surface water, groundwater, and wildlife. PFAS are a class of synthetic chemicals commonly found in nonstick surfaces, cookware, paint, and firefighting foam. The Environmental Protection Agency reports that there are at least 12,000 unique types of PFAS. They are temperature, water, and oil resistant. Epidemiological research and studies indicate that PFAS are toxic to humans, as they do not easily degrade and tend to accumulate in humans, animals, 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).

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.

Local governments are not liable for cleanup under the hazardous substances spills and solid waste management statutes for discharges of hazardous substances on or originating from property they acquired in certain ways. They are also exempt from the requirement to reimburse DNR for any cleanup expenses incurred by DNR at these sites under certain circumstances. The local government exemption from liability would apply if the local government acquired the property

through tax delinquency proceedings, condemnation or other specified methods. A local government is not eligible for the exemption from liability if it caused the discharge of the hazardous substance.

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 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.

2. Assembly Bill 43/Senate Bill 70 would create a municipal grant program with one-time funding of \$85,000,000 GPR in 2023-24 and ongoing funding of \$15,000,000 SEG in 2024-25 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.

3. 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;

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; and

g. Sampling and testing water for PFAS contamination in a public, private, or tribal elementary or secondary school, a state-licensed or state-certified childcare center, or a school district-sponsored childcare center.

4. 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.

5. 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.

6. DNR indicates there are currently at least 15 PFAS sites for which the municipality is the owner or responsible party of a cleanup, and perhaps an additional 60 sites where the municipality could apply on behalf of a site owner. However, it is not clear what level of funding would be needed, and over what period, to investigate and remediate all instances of PFAS contamination in Wisconsin lands and waters. It is likely that PFAS contamination will continue to be found throughout the state given the prevalence of products and uses in which they occur, as well as their resistance to breakdown and attenuation. Additionally, in many instances the identification of a party responsible for a PFAS discharge to the environment is difficult or impossible, due to the substances' widespread, long-term use. Therefore, it is likely that identification of multiple long-term public and private funding sources would be necessary for continued remediation of PFAS contamination.

7. The following sections describe general estimates provided by DNR for several of the activities that would be eligible under the PFAS municipal grant program as proposed:

*Site Investigations.* DNR reports that PFAS site investigations, an initial step of identifying remediation needs, are highly variable. They may be dependent on the degree and extent of contamination and the phase of investigation. The Department indicates that such costs could be several million dollars per site for complex sites, and several times that on a community-wide

basis, depending on the extent of contamination. DNR reports that significant variables influencing site investigation cost ranges would include: (a) project management; (b) data analysis and laboratory costs; (c) equipment rentals, including for heavy excavating or drilling equipment; (d) staffing or contract costs for field technicians; (e) surveying costs; (f) geology of the area being sampled; and (g) waste characterization and disposal.

*Sampling of Water Supplies.* DNR reports that sampling a single private water supply can cost between \$300 and \$500. Because potential PFAS-contaminated sites continue to be identified, DNR is not able to reliably estimate the number of private wells that would require sampling. There are approximately 700,000 to 800,000 private wells in Wisconsin. DNR reports that approximately 1,900 public drinking water systems are expected to be sampled in 2023, and based on trend data the Department anticipates that 5 to 10% of systems may be impacted by PFAS above the current Department of Health Services (DHS) health recommendations. It is anticipated that private and public water.

*Providing Temporary Water Supplies.* DNR states that providing emergency temporary water supplies to communities impacted by contamination can cost between \$300 and \$1,500 per year, per household. DNR says that providing bulk water can cost approximately \$3,000 for a home for a six-month period, and it is only allowable if the DHS issues an advisory. Further, DNR indicates that in-home water treatments can range in cost, based on type -- a carbon filter might cost \$50, and a reverse osmosis unit could cost more than \$200. Whole-home or point-of-entry treatment systems can cost between \$1,500 and \$5,000, and all in-home treatment systems would have ongoing operational and maintenance costs. DNR reports that some costs, depending on scale, may be eligible for federal Bipartisan Infrastructure Law funding.

*Conducting Emergency or Interim Remedial Action.* DNR reports that conducting emergency or remedial action can vary widely in cost depending on the action needed. For example, cleanup of aqueous film forming foam (AFFF)-contaminated debris or soil from a car or house fire could cost between \$25,000 and \$40,000. However, a contaminated waterway or sewer could be more expensive. DNR states that important variables to consider in determining these costs include initial response and assessment, surface soil scraping of impacted areas, disposal of impact soil and debris, treatment of impacted water, reporting requirements, equipment, and utility location.

8. There are some sources of state funding available for some of the activities proposed for the municipal grant program, including PFAS site investigation, conducting emergency or remedial action, and disposal of firefighting foams. [See separate Legislative Fiscal Bureau issue papers under "Natural Resources -- Waste, Remediation, and Air."] The funding under AB 43/SB 70 for the municipal grant program in general would significantly increase state funding otherwise appropriated for these purposes. The most significant federal funding to date is under the Infrastructure Investment and Jobs Act, under which Wisconsin received approximately \$26 million for state fiscal years 2022-23 and 2023-24 for addressing emerging contaminants in public and community water systems.

9. It is not likely that the environmental management account could support \$15 million in ongoing expenditures, given the account's current balances and ongoing revenues under current law. Although \$15 million or more could be supported by the account on a one-time basis in the 2023-25

biennium, an ongoing amount less than \$15 million each year would be necessary to maintain a stable account balance in future biennia.

10. Under AB 43/SB 70, DNR would have discretion in allocating \$100 million in the 2023-25 biennium toward the various purposes identified. It may be desirable to allow the agency to respond as needed to significant findings of contamination, or to augment federal funding for public water system upgrades under the safe drinking water loan program, given the uncertainty in how significantly different areas of the state may be affected by PFAS. The Committee could consider providing DNR \$85 million GPR in 2023-24 in a continuing appropriation and \$15 million beginning in 2024-25 in a continuing appropriation for the purposes described previously [Alternative 1].

11. The Committee could also approve single parts of the AB 43/SB 70 funding proposal, including providing \$85 million GPR [Alternative 2a] or \$15 million SEG in a continuing appropriation in 2023-24 [Alternative 2b]. The Committee could provide one-time SEG funding of lesser increments, including \$10 million [Alternative 3a] or \$5 million [Alternative 3b].

12. A means of the Legislature retaining additional discretion over the distribution of funds among varied program purposes would be to create different appropriations for the purposes specified in AB 43/SB 70. The Committee could specify separate appropriations as follows for the various PFAS funding provisions: (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; (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 or a water treatment system; (e) conducting emergency, interim, or remedial actions; (f) removing or treating PFAS in a public water system using the most cost-effective method to provide safe drinking water; and (g) sampling and testing water for PFAS contamination in schools and daycares. To allocate funding, the Committee could consider placing funding in the Committee's supplemental appropriation and require DNR to submit a plan for allocation and release of the funds under a request under s. 13.10 of the statutes [Alternative 4]. The Committee could also take no action [Alternative 5].

## ALTERNATIVES

1. Create a grant program for municipalities to investigate and respond to PFAS contamination statewide, funded by one-time GPR of \$85,000,000 in 2023-24 and a continuing appropriation with ongoing funding of \$15,000,000 SEG beginning in 2024-25. Specify eligible activities and grant applicants as under AB 43/SB 70, 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.

ALT 1	Change to Base
GPR	\$85,000,000
SEG	<u>15,000,000</u>
Total	\$100,000,000

2. Adopt the PFAS municipal grant provisions under Alternative 1, but provide only one of the following:

- a. GPR of \$85,000,000 in 2023-24 in a continuing appropriation; or

<b>ALT 2a</b>	<b>Change to Base</b>
GPR	\$85,000,000

- b. SEG funding of \$15,000,000 in 2023-24 in a continuing appropriation.

<b>ALT 2b</b>	<b>Change to Base</b>
SEG	\$15,000,000

3. Adopt the PFAS municipal grant provisions under Alternative 1, but provide one-time SEG funding in a continuing appropriation in 2023-24. Specify one of the following amounts:

- a. \$10,000,000

<b>ALT 3a</b>	<b>Change to Base</b>
SEG	\$10,000,000

- b. \$5,000,000

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

4. Create separate appropriations for PFAS funding provisions as described in a previous section. Specify that funding be placed in the Committee's supplemental appropriation and require DNR to request the funds and provide a detailed plan of use before the funds are released. (This alternative could be moved in addition to any of Alternatives 1 through 3.)

5. Take no action.

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