



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2297/2
MCP:ahe&amn

2019 BILL

1 **AN ACT** *to amend* 292.31 (1) (d) (intro.); and *to create* 20.370 (4) (aa), 20.370 (4)
2 (ab), 20.370 (4) (ad), 20.370 (4) (ae), 20.370 (4) (ak), 160.07 (4) (f), 160.07 (7),
3 160.15 (4), 281.17 (8) (c), 285.27 (2) (bm), 292.31 (1) (d) 1m., 292.74 and 299.15
4 (2m) of the statutes; **relating to:** setting standards for certain contaminants,
5 providing information relating to off-site disposal of certain waste, extending
6 the time limit for emergency rule procedures, providing an exemption from
7 emergency rule procedures, granting rule-making authority, and making an
8 appropriation.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources to establish and enforce various standards for per- and poly-fluoroalkyl substances (PFAS). The PFAS group of substances includes several thousand chemicals; two of the most well known are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

The bill requires DNR to establish, by rule, acceptable levels and standards, monitoring requirements, and required response actions for any PFAS in drinking water, groundwater, surface water, air, solid waste, beds of navigable waters, and soil and sediment, if the department determines that the substance may be harmful to human health or the environment. These rules must cover, at a minimum, PFOA and

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PFOS, as well as perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluorobutane sulfonic acid (PFBS), and perfluoroheptanoic acid (PFHpA). For air emission standards, DNR must first determine that an emission standard for a substance is needed to provide adequate protection for public health and welfare, which is also required for other hazardous air contaminants under current law. The bill also requires DNR to consider all PFAS to be air contaminants and to require reporting of any emission of PFAS.

Under current law, DNR maintains a list of substances that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns. Under this bill, DNR is required to add to this list PFOA, PFOS, PFHxS, PFNA, PFBS, PFHpA, and all other PFAS that have a reasonable probability of entering the groundwater resources of the state and that are shown to involve public health concerns. Under current law, the Department of Health Services recommends enforcement standards for substances on this list, which DNR then proposes as DNR rules in its rule-making process. Until DNR establishes such rules, the bill requires DNR to apply any DHS-recommended groundwater enforcement standard for any PFAS as an interim standard for groundwater and as an interim maximum containment level for drinking water.

The bill also provides that DNR may, if it determines doing so is necessary to protect human health or the environment, require a person who possesses or controls PFAS to provide proof of financial responsibility for remediation and long-term care to address contamination by a potential discharge of PFAS or environmental pollution that may be caused by a discharge of PFAS.

In addition, the bill requires DNR to set criteria for certifying laboratories to test for PFAS, and to certify laboratories that meet these criteria. Before these criteria are set, the bill allows DNR to require testing for PFAS to be done according to nationally recognized standards.

Finally, the bill requires a person who generates solid or hazardous waste at a site or facility under investigation by DNR to provide DNR with access to information relating to any transportation to or treatment, storage, or disposal at another site, facility, or location.

For further information see the *state* 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.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

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2019-20 2020-21

1 **20.370 Natural resources, department of**

2 (4) ENVIRONMENTAL MANAGEMENT

3 (aa) PFAS — modeling GPR C 150,000 -0-

4 (ab) PFAS — emergency responder
5 survey GPR C 50,000 -0-

6 (ad) PFAS — general operations GPR B 574,700 574,700

7 (ae) PFAS — landfills GPR B 87,500 87,500

8 (ak) PFAS — investigation and
9 assistance GPR C 120,000 -0-

10 **SECTION 2.** 20.370 (4) (aa) of the statutes is created to read:

11 20.370 (4) (aa) *PFAS — modeling.* From the general fund, as a continuing
12 appropriation, the amounts in the schedule to create a model to assist in identifying
13 and prioritizing sites with likely contamination by perfluoroalkyl or polyfluoroalkyl
14 substances or environmental pollution caused by such substances.

15 **SECTION 3.** 20.370 (4) (ab) of the statutes is created to read:

16 20.370 (4) (ab) *PFAS — emergency responder survey.* From the general fund,
17 as a continuing appropriation, the amounts in the schedule to conduct a survey of
18 local and state emergency responders and the use of fire fighting foam containing
19 perfluoroalkyl or polyfluoroalkyl substances.

20 **SECTION 4.** 20.370 (4) (ad) of the statutes is created to read:

21 20.370 (4) (ad) *PFAS — general operations.* Biennially, from the general fund,
22 the amounts in the schedule for the administration and enforcement of activities
23 relating to perfluoroalkyl or polyfluoroalkyl substances.

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1 **SECTION 5.** 20.370 (4) (ae) of the statutes is created to read:

2 20.370 (4) (ae) *PFAS — landfills.* Biennially, from the general fund, the
3 amounts in the schedule for sampling and testing leachate and groundwater from
4 landfills for perfluoroalkyl and polyfluoroalkyl substances.

5 **SECTION 6.** 20.370 (4) (ak) of the statutes is created to read:

6 20.370 (4) (ak) *PFAS — investigation and assistance.* From the general fund,
7 as a continuing appropriation, the amounts in the schedule for investigating
8 emerging contaminants that are perfluoroalkyl or polyfluoroalkyl substances and
9 providing temporary potable water or treatment systems when no responsible party
10 for a contamination is available.

11 **SECTION 7.** 160.07 (4) (f) of the statutes is created to read:

12 160.07 (4) (f) In recommending an enforcement standard for a perfluoroalkyl
13 or polyfluoroalkyl substance, the department of health services may recommend
14 individual standards for each substance, a standard for these substances as a class,
15 or standards for groups of these substances.

16 **SECTION 8.** 160.07 (7) of the statutes is created to read:

17 160.07 (7) If the department of health services recommends an enforcement
18 standard for a perfluoroalkyl or polyfluoroalkyl substance or a group or class of such
19 substances under this section, the department shall apply the standard as an interim
20 enforcement standard for that substance, including through sampling, monitoring,
21 and testing, and any other actions required by rules promulgated by the department,
22 unless emergency or permanent rules that establish an enforcement standard for
23 that substance are in effect.

24 **SECTION 9.** 160.15 (4) of the statutes is created to read:

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1 160.15 (4) Notwithstanding sub. (1), if an interim enforcement standard for a
2 perfluoroalkyl or polyfluoroalkyl substance is applied under s. 160.07 (7), the
3 department shall apply an interim preventive action limit for that substance of 20
4 percent of the concentration established as the interim enforcement standard,
5 unless emergency or permanent rules that establish a preventive action limit for that
6 substance are in effect.

7 **SECTION 10.** 281.17 (8) (c) of the statutes is created to read:

8 281.17 (8) (c) If the department of health services recommends an enforcement
9 standard for a perfluoroalkyl or polyfluoroalkyl substance or a group or class of such
10 substances under s. 160.07, the department shall apply the standard as an interim
11 maximum contaminant level for public water systems, water suppliers, and
12 laboratories certified to analyze drinking water, in accordance with rules
13 promulgated by the department, unless emergency or permanent rules that
14 establish maximum contaminant levels for that substance are in effect.

15 **SECTION 11.** 285.27 (2) (bm) of the statutes is created to read:

16 285.27 (2) (bm) *Standard for PFAS.* The department shall determine whether
17 an emission standard for any known perfluoroalkyl or polyfluoroalkyl substance or
18 a group or class of such substances is needed to provide adequate protection for public
19 health or welfare under par. (b). If the department finds that the standard is needed
20 to provide adequate protection for public health or welfare, the department shall
21 promulgate an emission standard for that substance.

22 **SECTION 12.** 292.31 (1) (d) (intro.) of the statutes is amended to read:

23 292.31 (1) (d) *Access to information.* (intro.) Upon the request of any officer,
24 employee, or authorized representative of the department, any person who
25 generated, transported, treated, stored, or disposed of solid or hazardous waste

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1 ~~which~~ that may have been disposed of at a site or facility under investigation by the
2 department and any person who generated solid or hazardous waste at a site or
3 facility under investigation by the department that was transported to, treated at,
4 stored at, or disposed of at another site, facility, or location shall provide the officer,
5 employee, or authorized representative access to any records or documents in that
6 person's custody, possession, or control which relate to:

7 **SECTION 13.** 292.31 (1) (d) 1m. of the statutes is created to read:

8 292.31 (1) (d) 1m. The type and quantity of waste generated at the site or
9 facility that was transported to, treated at, stored at, or disposed of at another site,
10 facility, or location, and the dates and locations of these activities.

11 **SECTION 14.** 292.74 of the statutes is created to read:

12 **292.74 Financial responsibility for PFAS.** The department may, if it
13 determines doing so is necessary to protect human health or the environment,
14 require a person who possesses or controls a perfluoroalkyl or polyfluoroalkyl
15 substance to provide proof of financial responsibility for conducting emergency
16 response actions, remedial actions, environmental repair, and long-term care to
17 address contamination by a potential discharge of perfluoroalkyl or polyfluoroalkyl
18 substances or environmental pollution that may be caused by a discharge of such
19 substances. The department shall establish, by rule, the procedure for determining
20 whether requiring a proof of financial responsibility is necessary to protect human
21 health or the environment, and may establish requirements for types of financial
22 responsibility, methods for calculating amounts of financial responsibility, access
23 and default, bankruptcy notifications, and any other requirements the department
24 determines is necessary under this section. The proof of financial responsibility

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1 required under this section shall be in addition to any other proof of financial
2 responsibility or financial assurance required under this chapter.

3 **SECTION 15.** 299.15 (2m) of the statutes is created to read:

4 299.15 (2m) The department shall consider all known perfluoroalkyl or
5 polyfluoroalkyl substances to be air contaminants for purposes of sub. (2) (a) 2. The
6 reporting level for these substances is zero pounds per year.

7 **SECTION 16. Nonstatutory provisions.**

8 (1) EMERGENCY RULES FOR PFAS IN DRINKING WATER, GROUNDWATER, SURFACE
9 WATER, SOLID WASTE, BEDS OF NAVIGABLE WATERS, AND CONTAMINATED SOIL AND SEDIMENT.

10 (a) The department of natural resources shall promulgate emergency rules
11 under s. 227.24 establishing acceptable levels and standards, performance
12 standards, monitoring requirements, and required response actions for any
13 perfluoroalkyl or polyfluoroalkyl substance or group or class of such substances,
14 which the department determines may be harmful to human health or the
15 environment, in drinking water under s. 281.17 (8); groundwater under ss. 160.07
16 (5) and 160.15; surface water from point sources under ss. 283.11 (4) and 283.21 and
17 from nonpoint sources under s. 281.16; air under s. 285.27 (2) (bm), if the standards
18 are needed to provide adequate protection for public health or welfare; solid waste
19 and solid waste facilities under chs. 289 and 291; beds of navigable waters under s.
20 30.20; and soil and sediment under chs. 289 and 292.

21 (b) The department of natural resources shall promulgate emergency rules
22 under s. 227.24 to add any perfluoroalkyl or polyfluoroalkyl substance or group or
23 class of such substances that the department determines may be harmful to human
24 health or the environment to the list of toxic pollutants under s. 283.21 (1) (a) for
25 purposes of setting toxic effluent standards or prohibitions under s. 283.11 (4); to add

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1 to the list of hazardous constituents under s. 291.05 (4) any perfluoroalkyl or
2 polyfluoroalkyl substance or group or class of such substances for which the
3 department determines that the listing is necessary to protect public health, safety,
4 or welfare; and to administer and enforce ch. 292 in relation to remedial actions
5 involving perfluoroalkyl or polyfluoroalkyl substances or a group or class of such
6 substances.

7 (c) Notwithstanding any finding required under par. (a) or (b), emergency rules
8 promulgated under pars. (a) and (b) shall include, at a minimum, perfluorooctane
9 sulfonic acid, perfluorooctanoic acid, perfluorohexane sulfonic acid,
10 perfluorononanoic acid, perfluorobutane sulfonic acid, and perfluoroheptanoic acid
11 and shall include provisions for enforcing these standards, including requiring
12 sampling, monitoring, testing, and response actions.

13 (d) Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated
14 under pars. (a) and (b) remain in effect until July 1, 2022, or the date on which
15 permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a)
16 and (3), the department of natural resources is not required to provide evidence that
17 promulgating a rule under this subsection as an emergency rule is necessary for the
18 preservation of public peace, health, safety, or welfare and is not required to provide
19 a finding of emergency for a rule promulgated under this subsection.

20 (2) WATER QUALITY STANDARDS FOR PFAS. The department of natural resources
21 shall promulgate, under s. 281.15, water quality standards for perfluorooctane
22 sulfonic acid, perfluorooctanoic acid, perfluorohexane sulfonic acid,
23 perfluorononanoic acid, perfluorobutane sulfonic acid, and perfluoroheptanoic acid
24 and any other perfluoroalkyl or polyfluoroalkyl substance or group or class of such

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1 substances that the department determines may be harmful to human health and
2 necessary to protect a water's designated use.

3 (3) LIST OF GROUNDWATER CONTAMINANTS. The department of natural resources
4 shall add to the list of groundwater contaminants under s. 160.05 any perfluoroalkyl
5 and polyfluoroalkyl substance or group or class of such substances that is shown to
6 involve public health concerns and that has a reasonable probability of entering the
7 groundwater and shall categorize and rank those substances according to the
8 provisions of s. 160.05.

9 (4) TESTING LABORATORIES; EMERGENCY RULES.

10 (a) The department of natural resources shall promulgate emergency rules
11 under s. 227.24 establishing criteria for certifying laboratories to test for any
12 perfluoroalkyl or polyfluoroalkyl substances, including the standards and methods
13 for such testing, and shall certify laboratories that meet these criteria.
14 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this
15 subsection remain in effect until July 1, 2022, or the date on which permanent rules
16 take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the
17 department of natural resources is not required to provide evidence that
18 promulgating a rule under this subsection as an emergency rule is necessary for the
19 preservation of public peace, health, safety, or welfare and is not required to provide
20 a finding of emergency for a rule promulgated under this subsection.

21 (b) Before emergency rules are promulgated under par. (a), the department of
22 natural resources may require testing for a perfluoroalkyl or polyfluoroalkyl
23 substance to be done according to any nationally recognized procedures.

24 (5) POSITION AUTHORIZATIONS; NATURAL RESOURCES. The authorized FTE
25 positions for the department of natural resources are increased by 7.5 GPR positions

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1 on the effective date of this subsection, to be funded from the appropriation under
2 s. 20.370 (4) (ad), for the purpose of administering the provisions of this act.

3 **SECTION 17. Fiscal change.**

4 (1) POSITION AUTHORIZATIONS; HEALTH SERVICES. In the schedule under s. 20.005
5 (3) for the appropriation to the department of health services under s. 20.435 (1) (a),
6 the dollar amount for fiscal years 2019-20 and 2020-21 is increased by \$248,600 in
7 each fiscal year to increase the authorized FTE positions for the department by 4.0
8 GPR research scientist positions for the purpose of recommending enforcement
9 standards for perfluoroalkyl and polyfluoroalkyl substances under s. 160.07.

10 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of s. 20.370 (4) (aa), (ab), (ad), (ae), and (ak) and SECTIONS 16
13 (5) and 17 (1) of this act take effect on July 1, 2019, or on the 2nd day after publication
14 of the 2019 biennial budget act, whichever is later.

15 (2) The treatment of s. 281.17 (8) (c) takes effect on the first day of the 7th month
16 beginning after publication.

17 (END)