

2021 - 2022 LEGISLATURE

2021 ASSEMBLY BILL 392

June 8, 2021 - Introduced by Representative BEHNKE. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to create* 292.66 of the statutes; **relating to:** creating a PFAS municipal
2 grant program.

Analysis by the Legislative Reference Bureau

This bill creates a municipal grant program, administered by the Department of Natural Resources, to address perfluoroalkyl and polyfluoroalkyl substances (PFAS). Under the program, DNR must provide grants to cities, towns, villages, counties, utility districts, lake protection districts, sewerage districts, and municipal airports. DNR may award a grant only if the applicant tested or trained with a PFAS-containing fire fighting foam in accordance with applicable state and federal law, or if a third party tested or trained with PFAS-containing fire fighting foam within the boundaries of the municipality; the applicant applied biosolids to land under a water pollution permit issued by DNR; or PFAS are impacting the applicant's drinking water supply or surface water or groundwater within the municipality and the responsible party is unknown or is unwilling or unable to take the necessary response actions.

Under the bill, grants provided under this program may be used to investigate potential PFAS impacts in order to reduce or eliminate environmental contamination; treat or dispose of PFAS-containing fire fighting foam containers; sample a private water supply within one mile of a site or facility known to contain PFAS or to have caused a PFAS discharge; provide a temporary emergency water supply, a water treatment system, or bulk water to replace water contaminated with PFAS; conduct emergency, interim, or remedial actions to mitigate, treat, dispose of, or remove PFAS contamination; or remove or treat PFAS in public water systems in

areas where PFAS levels exceed the maximum contaminant level for PFAS in drinking water or an enforcement standard for PFAS in groundwater or in areas where the state has issued a health advisory for PFAS.

An applicant that receives a grant under this program must contribute matching funds equal to at least 20 percent of the amount of the grant. The applicant must apply for a grant on a form prescribed by DNR and must include any information that DNR finds is 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. In awarding grants under this program, DNR must consider the applicant's demonstrated commitment to performing and completing eligible activities, including the applicant's financial commitment and ability to successfully

administer grants; and the degree to which the project will have a positive impact on public health and the environment.

Under the bill, an applicant that receives a grant under this program waives the right to bring or maintain an action or claim against any person alleged to be responsible for the PFAS contamination that is the basis for the grant, and DNR may not issue a grant to an applicant that has received a monetary award from an action or claim brought against such a person. The bill also states that no action or claim may be brought against any person alleged to be responsible for the PFAS contamination that is the basis for a grant under this program by any person or with respect to any property that benefitted from the expenditure of such a grant.

The bill directs the governor to allocate \$10,000,000 per fiscal year for the grant program from the moneys accepted from the federal government under the federal American Rescue Plan Act of 2021.

Finally, the bill states that it may not be construed as a legislative grant of authority to a municipality to regulate PFAS substances or enter private property without the advance written consent of the property owner.

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:

SECTION 1. 292.66 of the statutes is created to read:

292.66 PFAS municipal grant program. (1) DEFINITIONS. In this section:

- (a) "Class B fire fighting foam" has the meaning given in s. 299.48 (1) (a).
- (b) "Municipality" means a city, village, town, county, utility district, lake protection district, sewerage district, or municipal airport.
- (c) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance.

(2) FINANCIAL ASSISTANCE. The department shall administer a program to provide grants to municipalities that meet the requirements under sub. (3) for the purpose of conducting any of the eligible activities under sub. (4).

(3) ELIGIBILITY PREREQUISITES. A grant may be awarded under sub. (2) only if one of the following has occurred:

(a) The municipality tested or trained with a class B fire fighting foam that contained intentionally added PFAS in accordance with applicable state and federal law, or a 3rd party tested or trained with a class B fire fighting foam that contained intentionally added PFAS within the boundaries of the municipality.

(b) The municipality applied biosolids to land under a permit issued by the department under s. 283.31.

(c) PFAS are impacting the municipality's drinking water supply or surface water or groundwater within the municipality and the responsible party is unknown or is unwilling or unable to take the necessary response actions.

(4) ELIGIBLE ACTIVITIES. The department may award a grant under sub. (2) for any of the following activities:

(a) Investigating potential PFAS impacts to the air, land, or water at a municipal site or facility for the purpose of reducing or eliminating environmental contamination.

(b) Treating or disposing of PFAS-containing fire fighting foam containers from a municipal site or facility.

(c) Sampling a private water supply within one mile 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 to 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 the maximum contaminant level for PFAS under ch. 281 or an enforcement standard for PFAS under ch. 160 or where the state has issued a health advisory for PFAS.

(5) APPLICATION. A municipality shall apply for a grant on a form prescribed by the department and shall include any information that the department finds 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) EVALUATION CRITERIA. The department, in awarding grants under this section, shall consider all of the following criteria:

(a) The municipality's demonstrated commitment to performing and completing eligible activities, including the municipality's financial commitment and ability to successfully administer grants.

(b) The degree to which the project will have a positive impact on public health and the environment.

(7) MATCHING FUNDS. The department may not distribute a grant under this section unless the applicant contributes matching funds equal to at least 20 percent of the amount of the grant. Matching funds may be in the form of cash, in-kind contributions, or both.

(8) WAIVER OF ACTION. (a) An applicant that receives a grant under this section waives the right to bring or maintain an action or claim against any person alleged to be responsible for the PFAS contamination that is the basis for the grant. An

applicant shall affirmatively acknowledge this waiver before receiving a grant under this section. The department may not issue a grant under this section to an applicant that has received a monetary award from an action or claim brought against any person alleged to be responsible for the PFAS contamination that is the basis for the grant.

(b) No action or claim may be brought against any person alleged to be responsible for the PFAS contamination that is the basis for a grant under this section by any person or with respect to any property that benefitted from the expenditure of such a grant.

(9) CONSTRUCTION; LOCAL AUTHORITY. Nothing in this section shall be construed as a legislative grant of authority to a municipality to regulate PFAS substances or enter private property without the advance written consent of the property owner.

SECTION 2. Nonstatutory provisions.

(1) FUNDING FOR PFAS MUNICIPAL GRANT PROGRAM. Of the moneys the governor accepts from the federal government under s. 16.54 pursuant to section 602 of the federal Social Security Act as amended by the federal American Rescue Plan Act of 2021, P.L. 117-2, the governor shall allocate \$10,000,000 per fiscal year for the grant program under s. 292.66.

(END)