

LEGISLATIVE COMMITTEE MINUTES

# **SB341**

# Bill as Introduced

SB 341-LOCAL - AS INTRODUCED

2022 SESSION

22-3097

08/05

SENATE BILL        **341-LOCAL**

AN ACT            relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

SPONSORS:        Sen. Daniels, Dist 11; Rep. Mooney, Hills. 21; Rep. Rung, Hills. 21; Rep. Notter, Hills. 21; Rep. Healey, Hills. 21

COMMITTEE:      Energy and Natural Resources

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ANALYSIS

This bill requires Saint Gobain Performance Plastics to pay for the remediation of water in certain wells in Merrimack that it contaminated.

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Explanation:     Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Findings. The general court finds that:

2 I. On April 1, 2016, the New Hampshire department of environmental services issued  
3 correspondence to Saint Gobain Performance Plastics stating, in relevant part, the following: This  
4 letter is a follow up to our meeting held on March 28, 2016, regarding environmental contamination,  
5 including but not necessarily limited to drinking water and groundwater contamination, near the  
6 Saint Gobain Performance Plastics (Saint Gobain) facility located at 701 Daniel Webster Highway in  
7 Merrimack, New Hampshire (the facility). As you are aware, a number of public water systems and  
8 private drinking water wells tested in recent weeks have been found to contain elevated levels of  
9 perfluorinated compounds (PFCs), in particular, perfluorooctanoic acid (PFOA). Several of these  
10 wells have shown levels of PFOA that are above the EPA Provisional Health Advisory of 0.4 ug/l.  
11 Based on the information available to date, the New Hampshire department of environmental  
12 services (NHDES) has determined that Saint Gobain is potentially responsible for the cleanup of the  
13 Site, restoration of impacted groundwater and drinking water, other actions necessary to protect  
14 public health and the environment, and any costs NHDES incurs for addressing the impacts of this  
15 contamination. At our meeting, we discussed a number of critical steps that need to be taken  
16 immediately to address the threats to public health and the environment posed by the PFC  
17 contamination. To begin identifying the full extent of the contamination, NHDES is initially  
18 sampling potentially contaminated wells and water sources, including surface waters and sediments,  
19 within an approximate one mile radius of the facility. To date, this sampling effort has detected  
20 impacts to private and public drinking water wells located both within and outside this one mile  
21 radius. At this time, we formally request that Saint Gobain commit to the following:

22 (a) Provide for the design, installation, operation, maintenance and monitoring of all  
23 water treatment system(s) necessary to effectively treat and remove PFC contamination from all  
24 affected public water systems.

25 (b) This may most effectively be accomplished by Saint Gobain by working in  
26 collaboration with the affected public water system suppliers, to ensure fully operational treatment  
27 not later than August 1, 2016, and will include, but may not necessarily be limited to, the following  
28 elements:

1 (1) Retain the services of a qualified professional engineer to design the treatment  
2 system(s) necessary to effectively treat and remove PFC contamination from all affected public water  
3 systems.

4 (2) Upon approval from NHDES and the public water supply owner(s), construct,  
5 install and make operational the approved treatment system(s).

6 (3) Provide for the necessary long term operation, maintenance, and monitoring of  
7 the installed treatment systems.

8 II. On July 25, 2019, the department of environmental services issued correspondence to  
9 Saint Gobain Performance Plastics stating the following: "Air deposition of per- and polufluoroalkyl  
10 substances (PFAS) released from the Saint Gobain Performance Plastics (Saint Gobain) facility  
11 located at 701 Daniel Webster Highway in Merrimack (Facility) has resulted in regional  
12 groundwater contamination. The New Hampshire department of environmental services (NHDES)  
13 and Saint Gobain have sampled water supply wells in an area defined as a preliminary-groundwater  
14 management zone ("preGMZ") that included numerous wells with perfluorooctanoic acid (PFOA)  
15 and/or perfluorooctane sulfonic acid (PFOS) in groundwater at levels that exceed the current  
16 combined ambient groundwater quality standard (AGQS) of 70 parts per trillion (ppt) for these two  
17 compounds. Pursuant to Env-Or 600, a responsible party needs to identify a GMZ (i.e., the  
18 subsurface volume in which groundwater contamination associated with a discharge is contained)  
19 with monitoring ultimately governed by a corresponding groundwater management permit (GMP).  
20 As such, further delineation of the extent of groundwater contamination, relative to the newly  
21 adopted PFAS standards, is necessary. In light of the fact that the new PFAS water quality  
22 standards are anticipated to become effective this fall, NHDES requests submission of a work plan  
23 to identify water supply wells that exceed the four new AGQS due to impacts by releases from the  
24 Saint Gobain facility, and to provide an alternate source of potable water that meets applicable  
25 federal and state water quality criteria where the new standards are exceeded."

26 III. In March 2016, PFAS were detected in the Merrimack Village Water District's public  
27 drinking water supply wells 4 and 5 at levels above 70 ppt.

28 IV. In May 2016, the department of environmental services adopted an AGQS of 70 ppt for  
29 PFAS.

30 V. Wells 4 and 5 serve drinking water to customers in Merrimack and portions of Bedford  
31 and Amherst.

32 VI. That Merrimack Village District wells 4 and 5 are contaminated with PFAS and are  
33 within the Saint Gobain Performance Plastics preliminary Groundwater Management Zone, the  
34 boundaries of which were agreed to between Saint Gobain and the department of environmental  
35 services in the consent decree between the State of New Hampshire and Saint Gobain Performance  
36 Plastics dated March 20, 2018 which Groundwater Management Zone will be modified following

1 completion of additional site investigations and which will be included in a Groundwater  
2 Management Permit to be issue to Saint Gobain by the department of environmental services.

3 VII. The Merrimack Village Water District has incurred costs in addressing PFAS  
4 contamination impacting wells 4 and 5 and has constructed a "Water Treatment System" to treat the  
5 drinking water in wells 4 and 5 to remove PFAS contamination, said "Water Treatment System" was  
6 activated on October 21, 2020.

7 VIII. The Merrimack Village Water District and Saint Gobain Performance Plastics entered  
8 into a Settlement Agreement dated March 28, 2018 whereby Saint Gobain Performance Plastics paid  
9 for a portion of the construction and installation costs of the "Water Treatment System" and agreed  
10 to pay for a portion of the future operation and maintenance costs of the "Water Treatment System"  
11 limited to the first 5 years of operation.

12 IX. That the "Water Treatment System" operation and maintenance costs will continue for a  
13 period of time well beyond five years in order to continue to treat the drinking water of wells 4 and 5  
14 for PFAS. Considering that the PFOA concentration at wells 4 and 5 has been measured in excess of  
15 100 ppt, and that the half-life for PFOA is approximately 95 years, decrease of the current PFOA  
16 concentration will require approximately 3 half-lives, or 300 years to be reduced from 100 ppt, to 50  
17 ppt, to 25 ppt, to 12.5 ppt, before being reduced to the current 12 ppt MCL.

18 X. That as a result of the consent decree with the department of environmental services,  
19 Saint Gobain Performance Plastic paid for water line extensions and hook-ups for well-owners to  
20 connect to, and become customers of, the Merrimack Village Water District and that approximately  
21 58 of these connections use water primarily from wells 4 and 5.

22 XI. The general court adopted new standards for PFAS effective July 23, 2020, under RSA  
23 485:16-e, and that Merrimack Village District wells 4 and 5 are required to comply with these  
24 standards for its drinking water.

25 2 Remedy.

26 I. The general court finds that the on-going operation and treatment costs for the "Water  
27 Treatment System" for wells 4 and 5 owned and operated by the Merrimack Village Water District  
28 should not be borne by the Merrimack Village Water District ratepayers, who are not responsible for  
29 the contamination. Therefore, beginning on October 27, 2025 Saint Gobain Performance Plastics, its  
30 successors, transferee, subsidiaries, parent companies, or assigns shall pay, within 30 days of receipt  
31 of quarterly submissions from the Merrimack Village Water District, all costs associated with the  
32 continued operation, monitoring and maintenance, and any necessary additional modifications  
33 thereto, as determined by the Merrimack Village Water District, of the "Water Treatment System",  
34 and all additional incidental operation and maintenance costs of wells 4 and 5 caused by the  
35 installation of the "Water Treatment System."

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1           II. These payments from Saint Gobain Performance Plastics shall continue for so long as the  
2 Merrimack Village Water District and its successor organizations treats the water from wells 4 and  
3 5 in order to comply with any existing or future water quality standards set for PFAS.

4           III. This remedy shall not affect any rights of Saint Gobain Performance Plastics to seek  
5 reimbursement for all costs it incurs associated with the "Water Treatment System" against any and  
6 all other parties, if any, responsible under any and all applicable laws.

7 ~~NOT~~ IV. If any of the payments are not timely made by Saint Gobain Performance Plastics, the  
8 office of the attorney general shall seek such a remedy through any means appropriate.

9           3 Severability. If any provision of this act or the application thereof to any person or  
10 circumstance is held invalid, the invalidity does not affect other provisions or applications of the act  
11 which can be given effect without the invalid provision or application, and to this end the provisions  
12 of this act are severable.

13           4 Effective Date. This act shall take effect upon its passage.

# Committee Minutes



# SENATE CALENDAR NOTICE

## Energy and Natural Resources

Sen Kevin Avard, Chair  
Sen Bob Giuda, Vice Chair  
Sen James Gray, Member  
Sen David Watters, Member  
Sen Rebecca Perkins Kwoka, Member

Date: January 25, 2022

### HEARINGS

Tuesday		02/01/2022
(Day)		(Date)
Energy and Natural Resources	State House 103	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	<b>SB 424-FN</b> relative to renewable energy and natural gas.	
9:15 a.m.	<b>SB 341-LOCAL</b> relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.	
9:30 a.m.	<b>SB 271</b> relative to the Burgess BioPower facility.	
9:45 a.m.	<b>SB 452-FN</b> relative to lead in drinking water in schools and licensed child care facilities.	

### EXECUTIVE SESSION MAY FOLLOW

#### Sponsors:

#### **SB 424-FN**

Sen. Bradley

Sen. Giuda

#### **SB 341-LOCAL**

Sen. Daniels

Rep. Healey

#### **SB 271**

Sen. Bradley

Sen. Ward

#### **SB 452-FN**

Sen. D'Allesandro

Sen. Whitley

Sen. Perkins Kwoka

Sen. Watters

Rep. Somssich

Rep. Mooney

Sen. Hennessey

Sen. Giuda

Sen. Watters

Sen. Cavanaugh

Sen. Avard

Rep. Vose

Rep. Rung

Sen. Watters

Sen. Rosenwald

Sen. Sherman

Sen. Sherman

Rep. Deshaies

Rep. Notter

Sen. Avard

Sen. Soucy

Sen. Prentiss

Daley Frenette 271-3042

Kevin A. Avard  
Chairman

**AMENDED  
SENATE CALENDAR NOTICE  
Energy and Natural Resources**

Sen Kevin Avard, Chair  
Sen Bob Giuda, Vice Chair  
Sen James Gray, Member  
Sen David Watters, Member  
Sen Rebecca Perkins Kwoka, Member

Date: January 26, 2022

**HEARINGS**

Tuesday	02/01/2022	
(Day)	(Date)	
Energy and Natural Resources	State House 103	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	<b>SB 341-LOCAL</b>	relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.
9:15 a.m.	<b>SB 271</b>	relative to the Burgess BioPower facility.
9:30 a.m.	<b>SB 452-FN</b>	relative to lead in drinking water in schools and licensed child care facilities.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**SB 341-LOCAL**

Sen. Daniels

Rep. Mooney

Rep. Rung

Rep. Notter

Rep. Healey

**SB 271**

Sen. Bradley

Sen. Hennessey

Sen. Watters

Sen. Avard

Sen. Ward

Sen. Giuda

**SB 452-FN**

Sen. D'Allesandro

Sen. Watters

Sen. Rosenwald

Sen. Soucy

Sen. Whitley

Sen. Cavanaugh

Sen. Sherman

Sen. Prentiss

Sen. Perkins Kwoka

Daley Frenette 271-3042

Kevin A. Avard  
Chairman

**AMENDED  
SENATE CALENDAR NOTICE  
Energy and Natural Resources**

Sen Kevin Avard, Chair  
Sen Bob Giuda, Vice Chair  
Sen James Gray, Member  
Sen David Watters, Member  
Sen Rebecca Perkins Kwoka, Member

Date: January 26, 2022

**HEARINGS**

Tuesday	02/01/2022	
(Day)	(Date)	
Energy and Natural Resources	State House 103	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	<b>SB 380-FN</b>	relative to solid waste rules and landfill containment tests.
9:15 a.m.	<b>SB 341-LOCAL</b>	relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.
9:30 a.m.	<b>SB 271</b>	relative to the Burgess BioPower facility.
9:45 a.m.	<b>SB 452-FN</b>	relative to lead in drinking water in schools and licensed child care facilities.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**SB 380-FN**

Sen. Hennessey  
Sen. Sherman

Sen. Watters  
Sen. Ricciardi

Sen. Bradley  
Sen. Birdsell

Sen. Prentiss  
Sen. Gannon

Sen. Whitley  
Rep. Tucker  
**SB 341-LOCAL**  
Sen. Daniels  
Rep. Healey  
**SB 271**  
Sen. Bradley  
Sen. Ward  
**SB 452-FN**  
Sen. D'Allesandro  
Sen. Whitley  
Sen. Perkins Kwoka

Rep. Egan  
Rep. Merner  
  
Rep. Mooney  
  
Sen. Hennessey  
Sen. Giuda  
  
Sen. Watters  
Sen. Cavanaugh

Rep. Suzanne Smith  
  
Rep. Rung  
  
Sen. Watters  
  
Sen. Rosenwald  
Sen. Sherman

Rep. Massimilla  
  
Rep. Notter  
  
Sen. Avard  
  
Sen. Soucy  
Sen. Prentiss

Daley Frenette 271-3042

Kevin A. Avard  
Chairman

**Senate Energy and Natural Resources Committee**  
*Daley Frenette 271-3042*

**SB 341-LOCAL**, relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

**Hearing Date:** February 1, 2022

**Members of the Committee Present:** Senators Avard, Giuda, Gray, Watters and Perkins Kwoka

**Members of the Committee Absent :** None

**Bill Analysis:** This bill requires Saint Gobain Performance Plastics to pay for the remediation of water in certain wells in Merrimack that it contaminated.

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**Sponsors:**

Sen. Daniels  
Rep. Notter

Rep. Mooney  
Rep. Healey

Rep. Rung

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**Who supports the bill:** Senator Daniels, Senate District 11, Kerri Choate, Representative Mooney, Hillsborough-District 21, Representative Mayville, Hillsborough-District 21, Representative Blasek, Hillsborough-District 21, Representative Healey, Hillsborough-District 21, Laurene Allen, Daniel Allen, Hon. Nancy A. Murphy, Carol Lenahan, Kurt Kuszek, Carol DiPirro, Representative Notter, Hillsborough-District 21, Michael Philbrook, Cynthia Parente, Michael Parente, Representative Rung, Hillsborough-District 21, Jessica Nord, David Weihrauch, Craig Holmy, Terri Brunelle, Gordon Gray, Patricia Teden, Tom Wilder, Susan Sinclair, Corrin Wilson, Barbara Garant, Lynne Weihrauch, Christopher Despres, Daniel Chapman, Gene Chouiniere, Norman Upsom.

**Who opposes the bill:** Dave Juvet, BIA, Allen Brooks, Department of Justice.

**Who is neutral on the bill:** None.

**Summary of testimony presented:**

Senator Daniels, Senate District 11

- SB 341-LOCAL requires that Saint Gobain Performance Plastics pay for the remediation of water in certain wells in Merrimack that it contaminated with PFAS.

- Saint Gobain has been identified by DES as the potentially responsible party. Saint Gobain entered a maintenance agreement with Merrimack that is scheduled to end in 2025.
- SB 341-LOCAL outlines the history of this issue since 2016, the town's involvement in trying to resolve this issue, and the states involvement in lowering the acceptable PFAS level in 2020.
- Beginning in 2020, Saint Gobain agreed to remediation for 5 years. However, beginning October 27, 2025, the total cost of cleanup going forward would fall on the residents of Merrimack. DES predicts the total resolution of this pollution would take much longer, meaning that the cost of a long-term solution would be totally borne on the backs of Merrimack residents for generations to come.
- The issue is whether the residents of a community should be responsible for paying the cleanup costs of pollution made by a private company, even as that company continues to pollute.
- Saint Gobain is also responsible for remediation with a New York community, however, Saint Gobain is responsible in perpetuity until the pollution issue is resolved there. This is not the case in Merrimack, but SB 341-LOCAL would make it possible.
- On behalf of Merrimack, Senator Daniels asked the committee to vote OTP on SB 341-LOCAL so that relief can be brought to the community and that Saint Gobain be held responsible for the damage and the cleanup that needs to occur.

#### Dave Juvet, Business and Industry Association

- The BIA is opposed to SB 341-LOCAL. Saint Gobain is a member of the BIA. Mr. Juvet explained that BIA is not opposed to SB 341-LOCAL because of Saint Gobain itself, but because it sets a far reaching and bad public policy in New Hampshire. It is an attempt by the legislature to get involved in a legal settlement between a private business entity and a community.
- If this bill were to go forward, every business in New Hampshire and every business coming to New Hampshire would be concerned about the possibility of the legislature intruding into a legal agreement between the business and the community in which they reside.
- The proper way of addressing this issue is within the New Hampshire Court System and not the Legislature. It is inappropriate for the Legislature to have a bill directed at a single company representing a single problem that should and could be decided within the courts.
- Senator Giuda asked if the legal settlement offers the opportunity for future pleadings once new information comes to light. Mr. Juvet did not participate in any of the meetings that developed the agreement however, his understanding is that litigation is always possible and there is always a remedy up through the court system. Once the Supreme Court decides on an issue that generally ends a case, however Mr. Juvet was unsure.

- Senator Giuda asked if there was anyone present in the hearing that could answer his previous, however no one spoke up.
- Senator Avarad asked how this ended up in court. He asked who filed the complaint against Saint Gobain. Mr. Juvet was unable to answer the question.

Allen Brooks, Department of Justice

- The DOJ is opposed to SB 341-LOCAL. Mr. Brooks clarified they are only opposed to the language on page 4 lines 7-8. The lines say that if any of the payments are not timely made by Siant Gobain Performance Plastics, the Office of the Attorney General shall seek such a remedy through any means appropriate. They are opposed to this language because they believe it violates the separation of powers clause and that overall, it is up to the Attorney General to decide whether or not to take such action.
- Senator Avarad asked if adding the word “may” to the language would solve the issue. Mr. Brooks agreed that the change of language would solve the issue.
- Senator Giuda asked if the settlement would prevent further litigation in the future after more information on the issue comes to light. To Mr. Brooks understanding, there is a time after which Saint Gobain may not have to pay any remediation. The Town of Merrimack may have a different opinion. He also believes there is an indemnity provision that Saint Gobain would interpret to mean that the town would have to pay them back. He believes that there are issues that the parties will disagree with that the courts could help settle.

DF  
Date Hearing Report completed: February 4, 2022

# Speakers





# Senate Remote Testify

## Energy and Natural Resources Committee Testify List for Bill SB341 on 2022-02

Support: 32 Oppose: 0

<b><u>Name</u></b>	<b><u>Title</u></b>	<b><u>Representing</u></b>	<b><u>Position</u></b>
Choate, Kerri	An Elected Official	Myself	Support
Mooney, Rep. Maureen	An Elected Official	Merrimack	Support
Nayville, Mary	An Elected Official	Myself	Support
Blasek, Melissa	An Elected Official	Myself	Support
Healey, Robert	An Elected Official	Myself	Support
Allen, Laurene	A Member of the Public	Myself	Support
Allen, Daniel	A Member of the Public	Myself	Support
Murphy, Hon. Nancy A	A Member of the Public	Myself	Support
Lenahan, Carol	A Member of the Public	Myself	Support
kuszek, kurt	A Member of the Public	Myself	Support
DiPirro, Carol	A Member of the Public	Myself	Support
Notter, Jeanine	An Elected Official	Myself	Support
Philbrook, Michael	A Member of the Public	Myself	Support
Parente, Cynthia	A Member of the Public	Myself	Support
Parente, Michael	A Member of the Public	Myself	Support
Rung, Rosemarie	An Elected Official	Myself	Support
Nord, Jessica	A Member of the Public	Myself	Support
Weihrauch, David	A Member of the Public	Myself	Support
Holmy, Craig	A Member of the Public	Myself	Support
Brunelle, Terri	A Member of the Public	Myself	Support
Gray, Gordon	A Member of the Public	Myself	Support
Teden, Patricia	A Member of the Public	Myself	Support
Wilder, Tom	A Member of the Public	Myself	Support
Sinclair, Susan	A Member of the Public	Myself	Support
Wilson, Corrin	A Member of the Public	Myself	Support
Garant, Barbara	A Member of the Public	Myself	Support
Weihrauch, Lynne	A Member of the Public	Myself	Support
Despres, Christopher	A Member of the Public	Myself	Support
Chapman, Daniel	A Member of the Public	Myself	Support
Chouiniere, Gene	A Member of the Public	Myself	Support
Upson, Norman	A Member of the Public	Myself	Support
Mott-Smith, Wiltrud	A Member of the Public	Myself	Support

# Testimony

## SB341 – Testimony of Senator Daniels

Good morning, Mr. Chairman, and members of the Committee. For the record I am State Senator Gary Daniels of District 11, representing the towns of Amherst, Merrimack, Milford, and Wilton, and am the prime sponsor of SB341, relative to requiring Saint Gobain Performance Plastics to pay for the remediation of water in certain wells in Merrimack that it has contaminated.

This bill requires that Saint Gobain Performance Plastics pay for the remediation of water in certain wells in Merrimack that it contaminated with PFAS. Saint Gobain has been identified by DES as the potentially responsible party. As such, Saint Gobain entered a maintenance agreement with Merrimack that is scheduled to end in 2025.

SB341 outlines the history of this issue since 2016, the town's involvement in trying to resolve this issue, and the state's involvement in lowering the acceptable PFAS level in 2020. Saint Gobain agreed to remediation for five years, starting in 2020, but beginning October 27, 2025, the total cost of cleanup going forward would fall on the residents of Merrimack. DES predicts that total resolution of this pollution would take much, much longer, meaning that the cost of a long-term solution would be totally borne on the backs of Merrimack residents for generations to come.

The issue here, Mr. Chairman, is whether the residents of a community should be forced to pay the cleanup costs of pollution made by a private company, even as that company continues to pollute.

The Merrimack community has done its part in trying to resolve this issue, but unlike Saint Gobain's remediation with a NY community, where Saint Gobain is responsible in perpetuity until the pollution issue is resolved, that is not the case here – but it should be, and SB341 would make that possible.

Options for litigation have been exhausted and the community of Merrimack comes to the state to seek its assistance in ensuring that this injustice does not continue. On behalf of the community, I respectfully ask that the committee find SB341 OTP so that relief can be brought to the community and that Saint Gobain be held responsible for the damage it has done to the community and the cleanup that needs to occur.

Thank you, Mr. Chairman

## Daley Frenette

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**From:** Michael Philbrook <mikephilbrook@gmail.com>  
**Sent:** Monday, January 31, 2022 5:50 PM  
**To:** Kevin Avard; Bob Giuda; James Gray; Rebecca Perkins Kwoka; David Watters; Daley Frenette  
**Subject:** Please support

Dear Representatives Avard, Guida, Gray, Perkins Kwoka, Watters, and Frenette,

I am writing to respectfully request your urgent support of SB341 that will create responsibly for the full costs of remediation and future operation costs of MVD Wells 4/5 so ratepayers aren't forever responsible for PFAS contamination.

Those of us taxpayers residing in Merrimack have been forced to bear the fiscal responsibility of remediating the damage that St. Gobain has caused to our water supply. We've had to purchase bottled water and home filtration systems for many years in order to ensure that we do not consume unhealthy water. Furthermore, we've had to absorb tax increases in order to fund the installation of water filtration systems in our schools and on our town's wells. How is it that private business can move into our town, poison our water supply, and then turn the cost of remediation over to we innocent residents while reaping massive profits off of our backs?

I am disabled so increased taxes and user fees are particularly painful for me, but despite one's personal or financial circumstances, we should not and must not continue to bear the financial burdens created by a private business that has flouted the law and thwarted efforts to comply with the installation of stack filters. We have tried time and again to play fair with this company yet they spit in our faces and continued to pollute up until very recently with no regard for the welfare of the citizens with whom they share a municipality, instead of being good corporate citizens and stepping up to the plate to do what's moral and just and as their ethical duty.

It is scientifically proven that Per- and Polyfluoroalkyl substances cause grave health consequences in the human body (the jury is still out on our pets but evidence suggests they, too, are in imminent danger). These FOREVER chemicals do NOT break down and therefore remain in the tissues and organs of our bodies for a lifetime. Our fate is set but those of us in Merrimack who are socially conscious stood up and demanded that our town do what is necessary to filter these chemicals out of our drinking water at our own personal expense.

It is our fervent hope that future generations will be spared the negative health consequences that many in our town have already endured.

Please. I urge you. Do the right thing – hold St. Gobain fiscally accountable for the damage they've wrought on we citizens of Merrimack. Please vote to pass SB341.

Thank you very much for your time and consideration.

Kind regards,

Michael Philbrook  
19 Essex Green  
Merrimack, NH 03054-3450  
(603) 943-4771

## Daley Frenette

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**From:** Carol DiPirro <cmdipirro@hotmail.com>  
**Sent:** Monday, January 31, 2022 5:19 PM  
**To:** Kevin Avard; Bob Giuda; James Gray; Rebecca Perkins Kwoka; David Watters; Daley Frenette  
**Subject:** In support of SB341

Merrimack Village District and its ratepayers are paying for remediation. A group of small town volunteers faced an International corporate giant and did not know how to negotiate the funding of this sort of project.

I support this bill, that will cover the full socst of remediation and future operations/expenses incurred by MVD for wells 4 and 5. The ratepayers did not pollute this water. We should not have to carry this burden forever.

Sincerely,  
Carol DiPirro

Sent from Mail for Windows



January 31, 2022

Saint-Gobain Performance Plastics  
701 Daniel Webster Highway  
Merrimack, NH 03054

Senator Kevin Avard, Chair  
Energy & Natural Resources Committee  
New Hampshire State Senate  
The State House  
Concord, NH 03301

Dear Chairman Avard and Members of the Senate Energy & Natural Resources Committee:

I am writing on behalf of Saint-Gobain Performance Plastics (SGPPL) to express our concerns with SB 341, relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District, and which states in its online analysis, *"This bill requires Saint-Gobain Performance Plastics to pay for the remediation of water in certain wells in Merrimack that it contaminated."* We wrote a similar letter when an identical bill was taken up in the House and we are reaching-out as you consider this bill in the Senate Energy and Natural Resources Committee.

In March of 2018, after two years of good faith discussions between SGPPL and the Merrimack Village District (MVD), we entered into a settlement agreement that resolved our dispute over potential responsibility for PFOA concentrations in MVD wells #4 and #5. The Agreement was the product of vigorous negotiation by both entities, during which time each was well represented by respected technical experts and highly competent legal counsel.

Having a settlement negotiated in good faith, undone legislatively or by administrative action, undermines the settlement process – a fundamental tenet of law and public policy – and sets a dangerous precedent for New Hampshire that could discourage parties from compromising with one another. Mutually compromising out of court is well recognized to be efficient in both cost and time, allowing steps such as remediation to proceed, rather than being delayed by costly legal fights.

From Day 1, despite MVD's view to the contrary, SGPPL disputed that it was primarily responsible for the contamination and its position was that other area sources of PFAS, e.g., a nearby landfill, were also potentially responsible. Despite this, and in the interest of moving the matter forward in line with the leadership role SGPPL has taken in the community on this issue, it initially assisted MVD by fully funding the preliminary engineering design of the treatment system in 2016.

The notion that other sources/parties were also potentially responsible remained at the forefront of the SGPPL-MVD settlement discussions, which ultimately resulted in a compromise agreement – again with the advice of counsel on both sides – with both parties agreeing as follows:

- SGPPL to fund the construction of the treatment system up to \$3.35M



- SGPPL to fund five (5) years of operation and maintenance (O&M) based on MVD's own estimates (\$534,500)
- SGPPL to reimburse MVD for related technical costs incurred of \$438,500
- MVD agreeing to complete the design, construct the treatment system and fund any excess construction costs and O&M costs beyond five years
- MVD fully releasing SGPPL from all other claims

This agreement was amenable to all parties and duly signed, again, a full two years after discussions began.

Following the election of new MVD commissioners later in 2018, the MVD initiated efforts to undo the settlement agreement and/or seek additional financial assistance from SGPPL. As a matter of sound public policy, settlement and compromise should be encouraged and be a reliable closure to a legal dispute. Put even more simply, new Boards of Commissioners cannot and should not be legislatively supported in their efforts to overturn decisions that were entrusted to their predecessors.

Bills targeted at a single party are bad policy as well as potentially subject to challenge. We urge the Energy & Natural Resources Committee to recognize the significant issues this bill presents and vote it Inexpedient to Legislate.

Sincerely,

Mark Rayfield  
CEO Saint-Gobain North America



BUSINESS & INDUSTRY ASSOCIATION  
New Hampshire's Statewide  
Chamber of Commerce

**David A. Juet**

**BIA Testimony on SB 341**

**NH Senate Energy & Natural Resources Committee**

**February 1, 2022**

Mr. Chairman, members of the Senate Energy & Natural Resources Committee, my name is David Juet, and I am the Senior Vice President of Public Policy and Interim President for the Business and Industry Association (BIA), New Hampshire's statewide chamber of commerce and leading business advocate. BIA represents more than 400 members in a variety of industries. Member firms employ 89,000 people throughout the state, which represents one in seven private workforce jobs, and contribute \$4.5 billion annually to the state's economy.

I am here to day to express BIA's opposition SB 341, relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District. We believe this legislation represents bad public policy and establishes a far reaching and dangerous precedent. This legislation is aimed at an individual company and seeks to alter and amend an existing legal settlement between that company and the Merrimack Water Village District. By altering a signed settlement agreement between two parties, this bill would do irreparable harm to the New Hampshire business community and would undermine the Granite State's reputation as a business-friendly environment.

This bill sets a dangerous precedent for New Hampshire. Settlement agreements can often avoid costly trials and promote cooperation that leads to faster action. However, businesses in New Hampshire will be less likely to cooperate in negotiations of this type, if they believe the state legislature could later disregard these agreements and impose their own requirements. While the focus of this bill is on a single settlement agreement, the ramifications of passage are immense for all businesses throughout the state.

New Hampshire's court systems were established to hear and render decisions on issues such as this. If there are individuals who believe that the settlement was unjust the court is the proper venue to render a decision, not the legislature.

The uncertain environment that this bill would create could hurt our state's ability to attract new businesses and retain existing ones. New companies may not consider moving to New Hampshire and existing businesses may leave to seek a more stable legal environment. That means less jobs here in New Hampshire for our citizens and less growth for our state.

BIA asks this committee to recognize that this bill is bad public policy and establishes a bad precedent for the state. We ask that you find SB 341 inexpedient to legislate. Thank you for the opportunity to share BIA's position on this legislation. I am happy to address any questions from the Committee.

# JOHN M. GREABE

ATTORNEY AT LAW

February 7, 2022

Honorable Kevin Avard, Chairman  
New Hampshire Senate  
Committee on Energy and Natural Resources  
State House, Room 115  
107 North Main Street  
Concord, NH 03301

**RE: SB 341-L: relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.**

Dear Chairman and Honorable Members of the Committee:

My name is John Greabe. I am a law professor who teaches Constitutional Law and Civil Procedure, among other subjects. I have been asked by the New Hampshire Business and Industry Association to share my opinion about HB 478 and SB 341. My opinion is that both are unconstitutional.

I am not, and have not been, involved in the legal cases from which these bills arise, and I have no opinion on those underlying cases. Rather, I offer a more general perspective that reflects the concerns of the State business community if the Legislature were to enact one of these bills or another like it. In my view, such legislation would intrude upon the role of the courts in violation of the State constitution and seriously undermine important rights and liberties guaranteed by the federal constitution. It also would almost surely impede State executive branch agencies in their efforts to achieve valuable, timely, and cost-effective settlements of a wide range of complicated enforcement cases.

There are two fundamental reasons why the provisions of HB 478 and SB 341 are unconstitutional. One is rooted in the State constitution and the other in the federal constitution.

First, HB 478 and SB 341 violate State separation-of-powers principles. Part one, article 37 of the New Hampshire Constitution states: "In the government of this State, the three essential powers thereof, to wit, the Legislative, Executive, and Judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit ...."

The New Hampshire Supreme Court consistently has interpreted article 37 to mean that the Legislature may not intrude upon the judicial function. In other words, the Legislature may not act like a court. But HB 478 and SB 341 would involve the Legislature in doing just that: acting like a court by performing functions assigned solely to the Judicial Branch. Insofar as these bills contain adverse findings and/or rulings—which are based solely on mere allegations and not determinations of either fact or law—and prescribe monetary and other remedies to be imposed on a single business without an adequate opportunity to be heard, they are unconstitutional.

In our system, deprivations of liberty and property, such as those worked by HB 478 and SB 341, must be accompanied by due process safeguards that are applied in our courts, but not in the Legislative process. Think here of impartial and independent courts that utilize various burdens of proof, rules of evidence designed to assure the court that the factfinder will have only reliable information before it,

# JOHN M. GREABE

ATTORNEY AT LAW

testimony under oath and subject to cross examination, and other procedural guarantees that must be satisfied before a court may issue a judgment like this against a party. These procedural safeguards are not present when a Legislature passes a bill. That is why we would find it abhorrent if the Legislature were to enact legislation naming an individual, accusing him of a crime, and prescribing a punishment without a judicial trial. But such a hypothetical law differs only in degree—and not in kind—from HB 478 and SB 341.

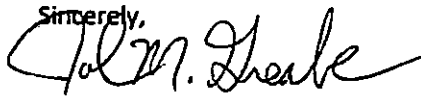
This leads to the second reason why these bills are unconstitutional: they undermine liberties protected by article one, section 10 of the U.S. Constitution. Article one, section 10 prohibits state legislatures from enacting bills of attainder. Such laws assign guilt or liability and impose punishment on specific parties without the due-process protections afforded by a judicial trial. As just explained, HB 478 and SB 341 operate to do exactly this. And insofar as their remedial provisions displace fully executed and judicially approved consent decrees and settlement agreements and purport to hold a single business solely liable for environmental contamination,<sup>1</sup> they also are at odds with a separate provision of article one, section 10: the Contract Clause, which prohibits states from passing any law "impairing the Obligation of Contracts." Indeed, these bills go significantly beyond the commitments agreed to by the parties in the court-approved Consent Decree and the settlement agreement. Thus, the bills effectively would displace, at least in part, both a court order to which the State Executive Branch, through the Attorney General, is a party, and a binding contract the local governmental agency joined as a party.

Let me conclude by expressing a policy concern. Consent decrees like this one that enable parties alleged to have violated State law to undertake remedial measures without lengthy litigation, and not requiring that the parties determine exactly the extent of the company's and other contributing parties' liability, are common and highly valuable tools of environmental law enforcement. They enable timely responses and ensure the availability of financial resources that might otherwise be consumed in protracted litigation. HB 478 and SB 341, which purport to change the terms of carefully negotiated contracts and interfere with the court's adjudication of the related case, will almost certainly have the unintended consequence of delaying or preventing such settlements in numerous other cases. This will interfere with the administration of State environmental laws by the Executive Branch agency that the Legislature established to administer these laws, the Attorney General who enforces these laws, and our State courts, which stand ready to resolve such cases in fairness and justice if the parties are unable to agree to a settlement.

For the reasons I have expressed, I do not believe that HB 478 or SB 341, or another similar such bill, would withstand judicial scrutiny if enacted.

Thank you.

Sincerely,



<sup>1</sup> HB 478 and SB 341 directly contradict two judicially enforceable agreements with a business, namely, a 2018 Consent Decree with the State of New Hampshire that was approved by a State Superior Court, and a separate settlement agreement with a local government agency. These agreements contain continuing enforcement provisions, enabled the parties to avoid the significant costs and delay of litigation, and agree instead to devote significant resources to addressing the environmental problem.

## Daley Frenette

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**From:** Kirsten Koch <kkoch@biaofnh.com>  
**Sent:** Thursday, March 10, 2022 2:34 PM  
**To:** Rebecca Perkins Kwoka  
**Cc:** Daley Frenette; David Juvet; Michael Skelton; Cameron Lapine; Kevin Avard; James Gray; Bob Giuda; David Watters  
**Subject:** SB 341 - Answer to Question

Dear Senator Perkins Kwoka,

After the Senate Energy and Natural Resources Committee executive session yesterday, I sought an answer to your question from the legal counsel involved in the settlement agreement between Saint Gobain Performance Plastics and the Town of Merrimack. Here is what I have been told:

**Have all legal remedies been exhausted? The short answer is no.** The settlement agreement purposely leaves open the possibility for future litigation, additional claims, and the potential to hold more companies in the area liable for damages. The settlement agreement provides the right for the Town of Merrimack to seek recourse in the courts if: (1) the contaminants continue to exceed maximum standards; and (2) if contamination exceeds newly established maximum standards, or if the contamination includes chemicals that have since been added to the list in the standards.

The settlement agreement does include a release for Saint Gobain Performance Plastics on contamination of the two chemicals that are the subject of the settlement. However, this would not preclude other companies from liability for contamination of those two named chemicals in the same effected area(s), nor would it preclude Saint Gobain from liability of contamination of other chemicals, if discovered.

In addition, I have been told that Allen Brooks of the Attorney General's office had made it clear to both parties at the time of the settlement that, although they had come to an agreement, the AG's office can still intervene for additional enforcement, if necessary, in the future.

Lastly, I want to clarify that the DOJ's concerns, while valid, are on an entirely separate matter from those of the business community. The DOJ testimony narrowly addressed their concerns regarding the impact this bill would have on their operations as a department going forward--the same way any department would share their specific concerns without taking a public policy position. On the other hand, the business community has public policy concerns about the implications of this bill. This bill would set a precedent of the legislature overturning private settlement agreements. The bill directly conflicts with the state and federal constitution, specifically the separation of powers and that SB 341 would be a bill of attainder, retroactively assigning guilt and liability without due process.

Thank you for your continued consideration of BIA's opposition to SB 341. Please do not hesitate to reach out with any further questions.

Best regards,

**Kirsten Koch**

*Director of Public Policy*

**Business & Industry Association of New Hampshire**

122 North Main Street | Concord, NH 03301

(603) 224-5388 x112 | [kkoch@BIAofNH.com](mailto:kkoch@BIAofNH.com) | [www.BIAofNH.com](http://www.BIAofNH.com)



**Small Business Day, presented by Bangor Savings Bank is coming up on Friday, March 11, 2022. Register for the free webinar [here](#).**

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# Voting Sheets



# Senate Energy & Natural Resources Committee

## EXECUTIVE SESSION RECORD

### 2021-2022 Session

Bill # 341-L

Hearing Date: 2/1

Executive Session Date: 3/15

Motion of: Inform Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Avard, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins Kwoka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Avard

Notes: \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, March 15, 2022

THE COMMITTEE ON Energy and Natural Resources

to which was referred **SB 341-LOCAL**

AN ACT

relative to treatment of PFAS contaminants in the  
drinking water of the Merrimack Village Water  
District.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

Senator Kevin Avard  
For the Committee

Daley Frenette 271-3042

**ENERGY AND NATURAL RESOURCES**

**SB 341-LOCAL**, relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

Interim Study, Vote 5-0.

Senator Kevin Avard for the committee.

## General Court of New Hampshire - Bill Status System

**Docket of SB341**

Docket Abbreviations

**Bill Title:** relative to treatment of PFAS contaminants in the drinking water of the Merrimack Village Water District.

*Official Docket of SB341.:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/15/2021	S	To Be <b>Introduced</b> 01/05/2022 and Referred to Energy and Natural Resources; <b>SJ 1</b>
1/25/2022	S	<b>Hearing:</b> 02/01/2022, Room 103, SH, 09:15 am; <b>SC 5</b>
3/15/2022	S	Committee Report: Referred to Interim Study, 03/24/2022; <b>SC 12</b>
3/24/2022	S	Sen. Daniels Moved Laid on Table, MA, VV; 03/24/2022; <b>SJ 6</b>
3/24/2022	S	Pending Motion Interim Study; 03/24/2022; <b>SJ 6</b>

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 NH House

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 NH Senate
 

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# Other Referrals

## Senate Inventory Checklist for Archives

Bill Number: SB 341-L

Senate Committee: Energy

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

\_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Daley  
Committee Aide

6/24/22  
Date

Senate Clerk's Office \_\_\_\_\_