SENATE BILL 496-FN

AN ACT establishing a per and polyfluoroalkyl substances fund and programs and making an appropriation therefor.

SPONSORS: Sen. Watters, Dist 4; Sen. Fuller Clark, Dist 21; Sen. Chandley, Dist 11; Sen. Levesque, Dist 12; Rep. Spang, Straf. 6

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill:

I. Establishes the per and polyfluoroalkly substances (PFAS) fund.

II. Establishes a low interest loan program for certain water and waste water systems affected by PFAS contamination.

III. Makes an appropriation to the department of environmental services for the remediation of PFAS contamination.

IV. Allows the department of environmental services to borrow money.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT establishing a per and polyfluoroalkyl substances fund and programs and making an appropriation therefor.

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

1 New Chapter; Per and Polyfluoroalkyl Substances (PFAS) Fund and Programs. Amend RSA by inserting after chapter 485-G the following new chapter:

CHAPTER 485-H

PER AND POLYFLUOROALKYL SUBSTANCES (PFAS)

FUND AND PROGRAMS

485-H:1 Purpose Statement. Communities across the state have been impacted by per and polyfluoroalkyl substances (PFAS) contamination, largely through no fault of their own. The cost of remediating this contamination for many communities would result in dramatically higher water and sewer rates for end users. The existence of these man-made chemicals, some of which are occurring at unhealthy levels in New Hampshire’s drinking water, require a strategy to protect, preserve, and enhance the water that New Hampshire citizens and environment rely upon.

485-H:2 Definitions. In this chapter:

I. “Community water system” means “community water system” as defined in RSA 485:1-a.

II. “Department” means the department of environmental services.

III. “Drinking water standard” means the maximum contaminant levels in accordance with RSA 485:16-e.

IV. “Fund” means the PFAS remediation loan fund established in RSA 485-H:10.

V. “Non-transient non-community water system” means “non-transient non-community water system as defined in RSA 485:1-a.

VI. “Wastewater residuals” means septage, sludge, or biosolids.

485-H:3 Implementation of Drinking Water Protection Program. The department shall provide low interest loans to community water systems and non-profit, non-transient public water systems whose testing of untreated source water shows confirmed exceedance of the state maximum contaminant level for PFAS, for remediation efforts begun after September 30, 2019.

I. Projects shall only be financed after the applicant demonstrates that the proposed plan for remediation is the most cost-effective solution, as reviewed and approved by the department. The applicant shall provide evidence in the application for funding that there are no no-cost or low-cost efforts such as blending of source water or shutting down an impacted source that would result in the system meeting applicable state maximum contaminant level with no unreasonable adverse effects. The applicant shall also show that there is no responsible party identified by the department
or that the responsible party, potentially including the applicant, has provided their appropriate
share of the funding for the proposed project.

II. Loans may be made for up to the total cost of the project, after any responsible party’s
contribution, addressing the contamination.

department shall provide low interest loans to publicly-owned and non-profit wastewater and/or
wastewater residual treatment or storage facilities that are required to treat effluent and residuals
to achieve PFAS standards prior to discharge or disposal.

I. Projects shall only be financed after the applicant demonstrates that the proposed plan for
remediation is the most cost-effective solution, as reviewed and approved by the department. The
applicant shall provide evidence in the application for funding that there are no no-cost or low-cost
efforts that would result in the system meeting standards with no unreasonable adverse effects. The
applicant shall also show that there is no responsible party identified by department or that the
responsible party, potentially including the applicant, has provided their appropriate share of the
funding for the proposed project.

II. Loans may be made for up to the total cost of the project, after any responsible party’s
contribution, addressing the contamination.

485-H:5 Loan Principal Forgiveness Based Upon Need.

I. The department shall forgive up to 10 percent of the loan principal to community water
systems and non-profit, non-transient non-community water systems using the same qualifying
standards for forgiveness used in the drinking water state revolving loan program established under
RSA 486:14.

II. The department shall forgive up to 10 percent of the loan principal for publicly-owned
and non-profit wastewater treatment facilities using the same qualifying standards for forgiveness
used in the clean water state revolving loan program established under RSA 486:14.

III. Total loan forgiveness under this section shall not exceed $5 million for both drinking
water and clean water combined.


I. Following the reimbursement of the department of justice for legal expenses related to
relevant litigation; the transfer of funds to the revenue stabilization reserve account pursuant to
RSA 7:6-e; the redemption of bonds issued or debt incurred pursuant to RSA 6:13-e, III(a); and
reimbursement of the general fund for any debt principal or interest payments made to support
bonds issued or debt incurred pursuant to RSA 6:13-e, III(a), any remaining funds from judgments or
settlements received by the state resulting from lawsuits against the manufacturers of PFAS shall
be deposited into the drinking water and groundwater trust fund established in RSA 6-D:1.

II. In addition to the loan forgiveness described in RSA 485-H:5, the department, upon
certification by the state treasurer that funds from judgments or settlements have been received and
used to redeem the bonds issued under RSA 6:13-e in full and the general fund has been reimbursed
for all interest and principal payments charged against it to support said bond, shall grant partial
loan forgiveness to the loan recipients, up to 50 percent of the loan principal.

(a) If insufficient funds are received by the state to cover 50 percent of the principal, the
reimbursements shall be prorated. In no instance shall the loan reimbursement exceed 50 percent of
the total loan amount, unless it received loan forgiveness under RSA 485-H:5, in which case the
combined maximum shall be 60 percent.

(b) In the event a loan recipient receives compensation from a responsible party, the
department shall not grant partial loan forgiveness that in combination with any compensation
would exceed 100 percent of the total cost of the remediation.

485-H:7 Drinking Water and Groundwater Trust Fund Exception. Notwithstanding any law to
the contrary, any funds deposited into the drinking water and groundwater trust fund established in
RSA 6-D:1 as a result of this chapter may be transferred to the department to be used for funding
PFAS remediation projects, including those at wastewater treatment facilities, at the discretion of
the fund’s advisory commission.

485-H:8 Duties of the Department.

I. The department shall perform the following duties to the limit of available funding:

(a) Establishing and administering the PFAS remediation loan program to assist
municipalities; community and non-profit, non-transient non-community water systems; and
publicly owned and non-profit wastewater treatment facilities with the cost of complying with state
maximum contaminant level for PFAS.

(b) Establishing and administering a loan forgiveness program to assist disadvantaged
communities with loan repayment.

(c) Awarding loan funds to projects that meet the following criteria:

(1) The project is or was necessary to comply with a state mandated PFAS standard
and the applicant for funding is a municipality, a community water system, or a non-profit, non-
transient public water system, or a publicly-owned or non-profit wastewater and/or wastewater
residual treatment or storage facility.

(2) The applicant has demonstrated, to the satisfaction of the department, that low
or no-cost solutions are neither viable nor effective.

(d) Awarding reimbursements to projects from the fund in a manner consistent with this
chapter.

II. Every year beginning December 1, 2020, the department shall prepare and file a report
with the general court evaluating the progress made relative to PFAS contamination, the efficiency
of the program established under this chapter, and whether it continues to provide the maximum
benefit to New Hampshire citizens, and providing any recommendations on potential additional
tasks for which the fund could be used to address PFAS contamination.
485-H:9 Rules. The department shall adopt rules, under RSA 541-A, relative to administering PFAS remediation loan programs for eligible projects necessary to meet state PFAS standards.

485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the department the PFAS remediation loan fund which shall be maintained by the state treasurer in distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer may invest the fund in accordance with RSA 6:8. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be non-lapsing and shall be continually appropriated to the department. The PFAS remediation loan fund shall be used to fund loans and reimbursements in accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative appropriations, donations, and other funds shall be credited to this fund.

2 New Subparagraph; PFAS Remediation Loan Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (358) the following new subparagraph:


3 Capital Appropriation; Department of Environmental Services. The sum of $50,000,000 is hereby appropriated to the department of environmental services for capital expenditures for the remediation of per- and polyfluoroalkyl substances in the state’s drinking water sources and waste water residuals, which expenditures may include loans to public or private entities on such terms and conditions as the department of environmental services shall determine. To provide funds for the appropriation made in this section, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of $50,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6:13-e. Notwithstanding the provisions of RSA 9:18, the appropriation made in this section shall not lapse.

4 New Section; Authority to Issue Bonds; General Fund. Amend RSA 6 by inserting after section 13-d the following new section:

6:13-e Authority to Borrow; Certain Environmental Projects.

I. The state treasurer, as may be requested from time to time by the commissioner of the department of environmental services, is hereby authorized to borrow upon the credit of the state such sums as may be authorized by law from time to time to be borrowed under this section and may issue general obligation bonds in the name and on behalf of the state of New Hampshire for such authorized purposes and amounts in accordance with the provisions of RSA 6-A. The state treasurer is hereby further authorized to borrow all or any portion of amounts authorized to be borrowed under this section either as a loan from banks or other financial institutions, within or without the state, selected by the state treasurer or under the federal program established under the Water Infrastructure Finance and Innovation Act, 33 U.S.C. chapter 52, as amended, and to enter into agreements containing appropriate covenants and conditions as the state treasurer determines to be
necessary or desirable to secure favorable credit terms from said banks or other financial institutions or under said program.

II. Notwithstanding the provisions of RSA 6-A:2, the maturity date of bonds issued pursuant to this section shall be not later than 30 years from the date of issue, as determined by the state treasurer; provided, that in determining the amount of bonds maturing later than 20 years from the date of issue, the state treasurer shall take into account the expected useful life of the projects being financed, as identified by the commissioner of the department of environmental services.

III. Payment of principal and interest on the borrowing authorized under paragraph I shall be paid when due from general fund revenue; provided, however, that pursuant to RSA 485-H:6, I, any borrowing under paragraph I shall be paid at or prior to maturity from any available funds derived from lawsuits against the manufacturers of PFAS, after reimbursement to the department of justice for legal expenses related to the litigation and the transfer of funds to the revenue stabilization reserve account pursuant to RSA 7:6-e.

IV. To the extent any borrowing under paragraph I cannot be immediately redeemed or prepaid when such funds are received by the state, the funds shall be held in a nonlapsing reserve to be established by the state treasurer for the future payment of the borrowing in accordance with its redemption or prepayment provisions.

5 Municipal Immunity for Compliance with Best Practices; Pollutant Liability Standard. Amend RSA 507-B:9, I to read as follows:

   I. Notwithstanding any other provision of law, the liability of any governmental unit or public employee for any personal injury, bodily injury, or property damage caused by or resulting from pollutant incidents including, but not limited to, per and polyfluorochemical contamination, shall only be based upon a showing by a preponderance of the evidence that the acts or omissions of the governmental unit were unreasonable. The acts or omissions of a governmental unit or public employee shall be conclusively presumed to be reasonable if they are in accord with the generally prevailing state of the art, scientific knowledge, and technology available to the governmental unit at the time the acts or omissions were undertaken or made by the governmental unit or public employee.

6 Effective Date. This act shall take effect upon its passage.
AN ACT relative to municipal water pollution control.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

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METHODOLOGY:

This bill makes public water systems, which are required to achieve compliance with the State’s administrative rules relative to maximum contaminant limits (MCLs) for perfluorochemicals (PFAS), eligible for a state contribution equal to 40% of the capital cost associated with compliance. The state contribution is 50% if the installation or construction increases user fees to 20 percent above the state average for residential customers. A state contribution of 40% would also be available for acquisition and construction of sewage disposal facilities by municipalities for compliance with the administrative rules pertaining to PFAS and for the disposal of PFAS contaminated media. The additional 10% state contribution is also if these costs result in user fees 20% higher than the State average. The bill allows for municipal immunity from unknowingly causing PFAS contamination. The bill also repeals the moratorium on state aid grants for drinking water, wastewater and landfills. The Department of Environmental Services cannot estimate the fiscal impact of this portion of the bill as there are likely eligible projects for which funding will be sought.
The Department states the sampling of public water systems has not been completed and the compliance costs are indeterminable at this time. The Department can provide the range of possible costs for public water system treatment and operation and maintenance costs that were developed as part of the rulemaking process. That analysis assumes 9% of sources of public water would need to be treated, estimated an associated water volume, and looked at a range of potential costs using data from currently treating systems. The cost estimate for treatment ranged from $65 million to $142.8 million with annual operating and maintenance costs estimated to be between $6.9 and $13.4 million. The Department indicates this is a high estimate assuming all contaminated sources will need treatment vs. blending water from other sources or taking the contaminated source off line. The Department states there is no way to differentiate between municipally or county owned facilities until the systems are actually sampled in accordance with the new rule. Currently, a minority of the systems have been sampled and it is not possible to estimate the aid these systems would receive. Until the sampling is complete, there is no way to estimate the number of systems that would be eligible for the higher state contribution of 50%.

Regarding aid to municipalities for acquisition and construction of sewage disposal facilities to comply with the new PFAS standards and disposal of wastewater residuals, the Department assumes the aid provided would be for the 33 municipalities that discharge some portion of their wastewater and/or residuals onto or into the ground in lagoons, large septic systems, rapid infiltration basins and spray irrigation under a groundwater discharge permit. A cost of $5 million was estimated for all groundwater discharge permitted facilities as part of the PFAS rulemaking related to ambient groundwater quality standards (AGQSs). Sufficient sampling has not occurred to determine cost estimates specific to municipal, county or state owned permitted facilities. The $5 million estimate included testing and, for discharges with PFAS above the AGQS, re-evaluation of the groundwater discharge zone, installation of additional monitoring wells, investigation of the PFAS source and treatment of impacted down-gradient wells. There is insufficient information to determine the incremental costs associated with residuals disposal if a municipality had to change their current disposal practices such as, if land application of residuals resulted in the violation of a PFAS AGQS.

AGENCIES CONTACTED:

   Department of Environmental Services