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 polyfluoroalkyl 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 bracketed 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  Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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...
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:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection. The 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:

   (359) Moneys deposited in the PFAS remediation loan fund established in RSA 485-
H:10.

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,
y 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 establishing a per and polyfluoroalkyl substances fund and programs and making an appropriation therefor.

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

<table>
<thead>
<tr>
<th>STATE:</th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Appropriation</td>
<td>$0</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

| Funding Source: | General | Education | Highway | [ X ] Other - PFAS Remediation Loan Fund |

<table>
<thead>
<tr>
<th>COUNTY:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LOCAL:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

METHODOLOGY:
This bill establishes a PFAS remediation loan program and PFAS fund administered by the Department of Environmental Services. The program would consist of low interest loans with need based principal forgiveness and contingent reimbursement. The loans would be available to community water systems and non-profit, non-transient, non-community water systems for the cost of complying with state per- and polyfluoroalkyl substances (PFAS) standards. Publicly-owned and non-profit wastewater and wastewater residual treatment and storage facilities would also be eligible for loans for the cost of required treatment of effluent and residuals to achieve state PFAS standards prior to discharge or disposal. The bill also makes a non-lapsing capital appropriation of $50,000,000 to the Department for expenditures associated with implementation of the program and authorizes the Treasurer to borrow up to $50,000,000. Lastly, the bill grants immunity to governmental units and public employees for PFAS contamination issues inadvertently resulting from activities that otherwise complied with best practices.
The Department indicates, although the initial appropriation is defined, the amount available for the fund is unknown. The demand for loans cannot be determined at this time because sufficient testing for levels of PFAS has yet to be completed and the revised State PFAS standards are not currently in effect. While sampling of public water systems has not been completed and costs are indeterminable, the Department can provide a range of potential costs for public water system treatment that were developed to accompany the recent Maximum Contaminant Level (MCL) rulemaking for these compounds. The methodology used assumed 9% of sources of public water would need to be treated, estimated an associated water volume and then looked at a range of potential costs using data available from systems that are currently being treated. This resulted in a cost estimate for treatment ranging from $65 million - $142.8 million. The Department believes this to be a very conservative, or high, estimate because it assumes all systems would use treatment versus blending or abandoning wells with high levels of PFAS. Additional sampling since the Fall of 2019 indicates that occurrence may be less than 9%.

In addition, landfills, contaminated sites and groundwater discharge sites must comply with the AGQS. The cost to those sites for compliance is also indeterminable, but the Department has published information on the potential costs for such facilities based on limited sampling. This information is posted on the Department’s Website at:


Based on the assumptions and analysis in the report, the following ranges of potential cost were derived:

<table>
<thead>
<tr>
<th>Type of Facility</th>
<th>Initial Corrective Action Costs</th>
<th>Annual Operating Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Hazardous Waste Sites</td>
<td>$2.3 to $4.4 million</td>
<td>$980k to $1.8 million</td>
</tr>
<tr>
<td>Municipal Landfills</td>
<td>$935k to $1.75 million</td>
<td>$465k to $770k</td>
</tr>
<tr>
<td>Groundwater Discharge Permit Sites</td>
<td>$5 million</td>
<td>$849k to $1.6 million</td>
</tr>
</tbody>
</table>

The Department's precise personnel needs for administering the programs in the long term are indeterminable as the eventual need and ultimate funding have not been determined. However, based on an estimate of the administrative workload increase required to implement the program within the scope of the proposed appropriation, it is anticipated that 3 new positions would be necessary to successfully implement these efforts. While not stated in the bill, the
Department assumes the PFAS Loan Remediation Fund would also pay for the administrative costs, including the additional positions required to immediately establish and administer the program.

The bill provides a nonlapsing capital appropriation in the amount of $50,000,000 to the Department of Environmental and authorizes the Treasurer to borrow up to $50,000,000. Payment of principal and interest on the borrowing shall be paid from the General Fund, however any borrowing shall be paid at or prior to maturity from any available funds from lawsuits against PFAS manufacturers after reimbursement to the Department of Justice for legal costs and transfer of a portion of revenue to the Revenue Stabilization Reserve Account in accordance with RSA 7:6-e.

The amortization schedule used by the Treasury Department to estimate expenditures uses a fixed rate coupon rate of 5%, a 20-year repayment term and assumes 60% of the principal is paid in the first 10 years and 40% in the remaining 10 years. Assuming the bonds would be issued in the Fall, the following payments would be made:

<table>
<thead>
<tr>
<th></th>
<th>FY 2021</th>
<th>FY 2022</th>
<th>FY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Expenditures</td>
<td>$1,250,000</td>
<td>$5,425,000</td>
<td>$5,275,000</td>
</tr>
</tbody>
</table>

Total interest on the borrowing, if paid as scheduled, would be $23.75 million.

AGENCIES CONTACTED:

Departments of Environmental Services and Treasury