

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 236, creating a statute of limitation on civil actions relative to damage caused by perfluoroalkyl and polyfluoroalkyl substances.

Hearing Date: May 11, 2021

Time Opened: 1:49 p.m.

Time Closed: 2:34 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill creates a statute of limitation on civil actions relative to damage caused by perfluoroalkyl and polyfluoroalkyl substances.

Sponsors:

Rep. Vail

Rep. Mullen

Rep. M. Murray

Rep. Chase

Rep. Mooney

Rep. Labranche

Rep. Healey

Rep. Meuse

Sen. Perkins Kwoka

Who supports the bill: 127 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 15 people signed up in opposition to the bill. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person signed in neutrally on the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Vail

- This bill creates a statute of limitation on civil actions relative to damage caused by perfluoroalkyl and polyfluoroalkyl substances (PFASs) and is part of an effort to create a system of response for the PFAs contamination.
- PFAs chemicals are bio-accumulative, environmentally persistent, and can be found in Teflon, firefighting gear/foam, Gore-Tex, food packaging, carpeting, etc.
- The slippery nature of the particles means they easily enter the soil and do not dissolve.
- Private wells have been rendered unusable due to the contamination.
- The zone of contamination is presently a 4.5 mile radius around Saint Gobain.

- People living in that zone must implement high filtration systems or use other sources of water.
- Saint Gobain has been providing bottled water to many residents, but the recycling of the bottles falls to Merrimack.
- There are other sources of contamination in other areas in NH beside Saint Gobain.
- Contamination in Amherst was caused by a different manufacturer.
- The Coakley Landfill is a superfund project leaching chemicals.
- Evidence implicates that PFAs impacts fetal development, increases risks for the development of endocrine disorders, it is linked to cancer, kidney disease, high cholesterol, tumors, and concentrates in breast milk.
- Cities and towns are being stuck with the remediation.
- Colluders have not provided information to residents about the long term impact or a cleanup plan.
- The manufacturing of PFAs is continuing with no end in site.
- The statute of limitations needs to be expanded to give more time to calculate the scope of the harm, to address the impact on vulnerable groups, to identify victims, to get a scope of the problem across the state, to protect communities from bearing the cost, to delineate a true zone of contamination, and to provide vital education to citizens and medical providers.
- Particularly thinks of the firefighters in the state that are now faced with these diseases because of the firefighting gear they wore and the foam.
- This bill will expand the statute of limitations for people to prove injury to six years.
- Senator Kahn asked what the current statute of limitations is.
 - Three years for personal injury.
- Senator Gannon asked how they arrived at six years.
 - That was discussed among a number of individuals in Merrimack.

Representative Mooney

- Merrimack is victim to possibly the worst case of environmental pollution in the state's history.
- The town has spent years trying to determine the effects of this.
- This bill is a much-needed measure to ensure a guideline for resident's reactions to the effects of PFAs.
- An extended statute of limitations is critical for those suffering injuries, who now find themselves balancing their health with the complications of legal recourse.
- Six years after the date of discovery is sufficient and the bill is written well to provide that direction.
- Senator Carson asked about the community meeting regarding the six years.
 - Was not present at the meeting. Believes it was likely a citizens group that meets with Saint Gobain or it was a meeting of Merrimack Citizens for Clean Water.

Representative Healey

- As time has gone by research has shown that PFAs is causing more and more harm.
- People need additional time to identify the physical damage to their bodies and seek protections under the law.
- Senator Kahn asked how the six years was determined.
 - These issues have existed since 2016. There are people today who are just discovering this issue in their town. Did not participate in that meeting.
- Senator Kahn asked why any limitation is there.
 - Agrees. Firefighters can go up to potentially 70 years. Is not averse to making this as long as possible.

Don Provencher (Merrimack Village Water District)

- Three years is not enough to understand the full impact of these chemicals.
- Would be in favor of keeping the statute of limitations as long as possible.
- Does not believe the description of when that statute of limitations starts matches with what people have been advised by their legal counsel.
- The cost for PFAs treatment has gone up significantly.
- Senator Kahn asked when the hearings were held for the potential for contamination in the town.
 - There have been hearings since it was discovered in spring of 2016.
- Senator Kahn asked if the reach of the contamination has been mapped out.
 - That is continuing to unfold. Is aware that a ground water management zone has been established in Merrimack; is not sure if that is going to change in the future. Since 2016 the drinking water standards for PFAs levels have consistently gone down. That indicates that as more information comes out it is clear it is more detrimental than originally thought.
- Senator Kahn asked if the reach of the contaminated ground water expanded since the original mapping.
 - Believes when it first came out the radius applied around the identified polluter for maybe a half mile. That subsequently grew. In March 2018 DES completed the management zone and since then additional wells have been found to have groundwater above the maximum contaminate levels. There was a consent decree that may have limited that zone, but as more wells outside that boundary are identified that shows there is additional contamination beyond that boundary.
- Senator Kahn asked what a reasonable statute of limitations would be.
 - Longer than three years. It took decades to understand the impact of tobacco and it will take time to identify how significant the harm of PFAs. In some instances, knowing about contamination can start the clock. In another three years, if that is not enough time, it could be extended again. In support of anything over three years. Would not be opposed to 10 years or longer.

- Senator Gannon asked about the clock beginning earlier.
 - This is interpreted based on the way a judge sees it to some extent. Concerned that that interpretation, although it may not be consistent, there is always that risk there. Has been told that what could be construed as the starting of the statute of limitations is earlier than what others might agree with.

Councilor Healey (Merrimack)

- These are called forever chemicals because they persist for years in the environment and in the body.
- In the body it has a cumulative effect, and it can take years before it starts to show the negative effects.
- In these cases, people have to be able to rule out other causes for their illnesses in order to qualify.
- The ideal would be to not have a statute of limitations but believes there was a concern that that would not be approved.

Summary of testimony presented in opposition:

David Creer (BIA)

- This bill is not necessary.
- The standard statute of limitations is three years, but it does not begin to toll until an individual has an injury and they link it to the cause of the injury.
- Three years is common with medical malpractice. If an individual undergoes surgery and 15-20 years later discovers that the doctor left his watch in the abdomen, the person has three years from that point to file a lawsuit.
- Senator French asked if this bill would create any problems.
 - Statute of limitations exist because it is deemed to be good public policy to not hang the threat of lawsuits over peoples' heads indefinitely. They also help to ensure expedient, appropriate, and quality justice occurs. As time goes on evidence is lost and memories fade. A statute of limitations encourages people to get a remedy as soon as possible.
- Senator French asked if PFAs cases are different than most instances where statute of limitations apply.
 - PFAs is an emotional issue. The issue with it being a latent injury, is really no different than medical malpractice. There is no benefit to expanding this to six years. It does signal to everyone in the State that we are trying to make it as hard as possible for businesses to do their business here.

Neutral Information Presented:

Allen Brooks (Attorney General's Office)

- Concerned that as written the bill may inadvertently create a limitation on state actions where there is currently none.

- Currently, state plaintiffs are covered by a specific statute of limitations under RSA 508:4-h.
- RSA 508:4-h addresses putting limitations on the state but also ensuring the state's ability to move forward on cases.
- This bill addresses civil actions for PFAs, but is concerned that the term civil action is broad enough that a defendant could argue that that includes civil actions by the state.
- Recommends amending the bill, not to change its intent, but to make sure the state is not precluded from taking action.
- Discussed with the sponsors changing it from 'civil' to 'personal' action to match the existing statute of limitations, but they were not comfortable with that.
- Recommends adding a sentence at the end bill that says, 'Nothing in this section shall be construed as limiting any action brought by the State.'
- Senator French asked if there is currently a statute of limitations for PFAs exposure of three years.
 - Believes they are referring to RSA 508:4. It would depend on the specific action, but that three years is generally for personal actions.
- Senator French asked if it would be possible to remove all statutes of limitations in relation to PFAs exposure.
 - That is a policy decision for the Legislature to make. These limitations are created by statute and they can be taken away by statute.
- Senator Kahn asked for clarification on the distinction being drawn between civil and personal action.
 - The state litigated before the enactment of RSA 508:4-h, in a case called Lake Winnepesaukee Resort. In that case the defendant thought the state had taken too long to bring the case and the statute of limitations applied. This went to the Supreme Court, and the court ruled that 'personal action' does not look like the action the state is bringing because it is bringing a penalty action by statute. Personal action does not cover state actions. The intent of the drafters of the bill was to not have this apply to any action the state might bring.
- Senator Kahn asked if this exemption needs to extend to RSA 508 as well.
 - Does not believe so. RSA 508 as written already tries to address these issues where it says, 'shall not apply to any situation where remediation has not yet occurred'. So as long as the contamination is still in the ground we can fix it.
- Senator Kahn asked what the statute of limitations is on the legal or insurance claims for firefighters.
 - Does not know that and would be hesitant to make a statement on that.
 - Mr. Lehmann stated that the statute of limitations for firefighters applies in the form of workers compensation, and they can file until they are 65 years old. Believes Commerce currently has a bill that extends it to 70 years old.

- Senator Gannon asked under Winnepesaukee, if there is a limitation currently for State action.
 - The limitation now is RSA 508:4-h.

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Date Hearing Report completed: May 19, 2021