

# Senate Energy and Natural Resources Committee

## *Griffin Roberge 271-2878*

**SB 309-FN**, relative to standards for perfluorochemicals in drinking water, ambient groundwater, and surface water.

**Hearing Date:** January 23, 2018.

**Time Opened:** 11:54 a.m.

**Time Closed:** 12:25 p.m.

**Members of the Committee Present:** Senators Avar, Bradley, Innis, Fuller Clark and Feltes.

**Members of the Committee Absent:** None.

**Bill Analysis:** This bill:

I. Requires the commissioner of the department of environmental services to adopt a state drinking water standard relative to perfluorochemicals.

II. Requires the commissioner of the department of environmental services to establish ambient groundwater quality standards relative to perfluorochemicals.

III. Requires the commissioner of the department of environmental services to establish surface water quality standards relative to perfluorochemicals.

**Sponsors:**

Sen. Innis	Sen. Bradley	Sen. Avar
Sen. Fuller Clark	Sen. Gannon	Sen. Ward
Sen. Carson	Sen. Birdsell	Sen. Feltes
Rep. Messmer	Rep. H. Marsh	Rep. Emerick
Rep. Bean	Rep. Murray	

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**Who supports the bill:** Senator Dan Innis (District 24), Senator Sharon Carson (District 14), Senator Kevin Avar (District 12), Senator Regina Birdsell (District 19), Senator Ruth Ward (District 8), Representative Jim McConnell (Cheshire - District 12), Representative Marjorie Shepardson (Cheshire - District 10), Representative Suzanne Smith (Grafton - District 8), Representative Mindi Messmer (Rockingham - District 24), Patricia Martin, Tom Irwin (Conservation Law Foundation).

**Who opposes the bill:** Sarah Pillsbury (DES), Stefanie Lamb (BIA), Barbara Reid (NH Municipal Association).

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

## Summary of testimony presented in support:

*Senator Dan Innis*

*Senate District 24*

- SB 309-FN is a reintroduction of HB 463 (2017), which failed in a committee of conference because it did not have a fiscal note.
- SB 309-FN requires the DES to set a MCL on PFOA and PFOS in public water supplies. It requires the DES to review what other states have done and to use peer-reviewed science to create a standard.
- The bill provides for an annual review of the standard, allowing the standard to change. For example, the EPA once had an MCL of 700 parts per trillion (ppt) that is now 70 ppt.
- The fiscal note states that it costs \$180-\$400 per test per source in the state. There are 4,200 sites in the state. The overall cost may be high, but the cost to communities per well is low.
- Senator Fuller Clark asked if SB 309-FN is an important companion bill to her bill, SB 454. Senator Innis argued that one cannot be done without the other. There needs to be an appropriate standard and a continued monitoring of the growing science on the standard.
- Senator Fuller Clark said a main component of SB 309-FN is the annual review of current science on the issue of PFCs. SB 454 places a longer time line for DES to make a standard and initiate rulemaking. She asked if Senator Innis would have an opinion on adding other PFCs. Senator Innis said he did not have an opinion on that and would leave it to other testimony to address that issue.

*Representative Mindi Messmer - provided written testimony*

*Rockingham - District 24*

- Other states have sought to create more strict standards on PFCs.
- SB 309 would have DES initiate rulemaking to create standard for drinking water, surface water, and ambient groundwater.
- SB 309 should be amended to include the PFCs (PFNA and PFHxS) outlined in SB 454.
- In regards to opposing testimony, Vermont has set a lower standard and was challenged in court by Saint-Gobain. The state should not be getting concerned so much with legal proceedings. It should be focused on the public health. Coming to some agreement on a standard for a set of PFCs would be a great step. There is a cancer cluster in the Seacoast area where PFCs levels are high.
- Senator Fuller Clark said the EPA has set standards for drinking water, but no standards for surface water. She asked Representative Messmer to comment. Representative Messmer said water in the state is mostly derived from bedrock wells, which comes from surface water. Surface water is interconnected to drinking water. Many people on the Seacoast have bedrock wells. Looking at surface water in the state makes sense.

*Tom Irwin*

*Director, New Hampshire Conservation Law Foundation*

- Recommends bringing PFNA and PFHxS from SB 454 to SB 309. Many of the objections to SB 454 is that the MCL would be set in statute, removing it from DES's jurisdiction. The process in SB 309 makes sense and provides important guidance to DES.
- There should be a public comment period within the process of DES reviewing the standards.
- With respect to surface water quality, there have been samples in the Great Bay that record high levels of PFCs. DES has notified local legislators to inform them that the Coakley Landfill is a primary cause of these PFCs. However, in meetings with DES, DES states that they do not have a regulatory tool to set a surface water quality standard. SB 309 will offer policy guidance to the DES to set such a standard.
  - o Senator Avard noted DES testimony where it was stated that DES cannot use a standard that is less protective of the EPA's standard. Thus, if the EPA does not have a surface water standard, DES cannot get any less protective.
  - o Mr. Irwin argued DES can get more protective than the EPA, but DES cannot get less protective than the EPA. Taking the step to get more protective than the EPA on

- surface water would not jeopardize the state's role under the Clean Water Act.
- There is a role for the legislature to play in giving the DES some guidance in setting up standards for drinking water, surface water, and ambient groundwater.

## **Summary of testimony presented in opposition:**

*Stefanie Lamb*

*Vice President of Public Policy, Business & Industry Association (BIA)*

- There is language in SB 309 that raises concern with the phrase "reasonably protect" and "reasonably supported." This language is broad on how to define "reasonable."
- The water quality standard should be based on sound science and methodology. DES does not currently have a criteria for setting up a standard.

*Barbara Reid - provided written testimony*

*Government Finance Advisor, NH Municipal Association*

- DES is the appropriate body to set a standard on water quality for PFCs. However, there is great financial uncertainty with SB 309. A fiscal note prepared by DES states the additional costs to municipalities, while indeterminate, could be "significant" and cost "millions of dollars." There should be a risk-benefit analysis.
- Limited local resources may not be able to keep up with these proposed standards. There is a prohibition of unfunded mandates in the state constitution.
- Senator Fuller Clark asked about NHMA's concerns of health care costs going forward if a standard is not created. Ms. Reid stated that the NHMA is concerned about societal costs as well. Other options should be explored to address water quality. She referenced the NH Drinking Water and Groundwater Trust Fund that can address water issues in the state.

*Sarah Pillsbury - provided written testimony*

*Drinking Water and Groundwater Bureau Administrator, DES*

- While appreciative of SB 309's intent, DES is supportive of HB 485 and HB 1101. These bills accomplish the same goals for AGQs and MCLs as SB 309. The HBs set and/or revise MCLs and AGQs for PFOA and PFOS, as well as PFNA and PFHxS, by the end of 2018.
  - HB 485 and HB 1101 will allow DES to review CDC studies on the PFCs.
  - Two new positions will be established to perform analysis of the science and the NH Safe Drinking Water Act would be amended to specify the other important considerations that are needed to set MCLs using methodology that is consistent with other states and the EPA.
- SB 309 also goes further in looking to establish a standard for surface water. If SB 309 passed, NH would be the first state to have its own surface water quality standard and would need approval from the EPA. The EPA does not have its own standard for surface water.
  - HB 1590 has a similar objective. Significant research would be required to identify if the science and studies exist to set surface water standards. Due to the Clean Water Act, NH must closely abide by EPA standards and get their approval for any changes.
- SB 309 does not contain all the components needed to establish the surface water, drinking water, and ambient groundwater standards (AGQs), such as: the use of the best peer-reviewed science available to establish health based criteria, a full understanding of the impact and practicality of setting the standards, and the resources and time for needed analysis.
- SB 309 also fails to align the process for setting a maximum contaminant limit (MCL) with other states and the EPA.
- Senator Avard asked if a new standard could be challenged in court. Ms. Pillsbury said it could. That is a reason why the standard should be set in accordance with federal and state laws.
- Senator Avard said surface water can also be contaminated from the air. Ms. Pillsbury said many cities emit pollutants that can carry all the way to NH.

**Neutral Information Presented:** None.

**Future Action:** Pending.

GJR

Date Hearing Report completed: January 23, 2018.