

Sen. Watters, Dist 4
Sen. Morse, Dist 22
April 27, 2021
2021-1218s
06/05

Amendment to HB 235

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT addressing impacts to other water users from new sources of water for community
4 water systems and relative to the PFAS fund and programs.

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6 Amend the bill by replacing all after section 1 with the following:

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8 2 PFAS Fund and Program; Purpose. Amend RSA 485-H:1 to read as follows:

9 485-H:1 Purpose Statement. Communities across the state have been impacted by
10 *perfluorochemicals (a class of chemicals that are part of a larger group of chemicals*
11 *called* per and polyfluoroalkyl substances (PFAS) contamination, largely through no fault of their
12 own. The cost of remediating this contamination for many communities would result in dramatically
13 higher water and sewer rates for end users. The existence of these man-made chemicals, some of
14 which are occurring at unhealthy levels in New Hampshire's drinking water, require a strategy to
15 protect, preserve, and enhance the water that New Hampshire citizens and environment rely upon.

16 3 PFAS Fund and Program; Definitions. Amend RSA 485-H:2, III and IV to read as follows:

17 III. "*PFAS drinking* water standard" means the maximum contaminant levels in
18 accordance with RSA 485:16-e.

19 IV. "*PFAS loan* fund" means the PFAS remediation loan fund established in RSA 485-H:10.

20 4 PFAS Program; Drinking Water Protection; Groundwater. RSA 485-H:3 and 485-H:4 are
21 repealed and reenacted to read as follows:

22 485-H:3 Implementation of Drinking Water Protection Program.

23 I. The department shall provide low-interest loans to municipalities, community water
24 systems, and non-profit, non-transient non-community water systems whose testing of untreated
25 source water shows an exceedance of a PFAS drinking water standard. Such loans shall be provided
26 for the projects described below begun after September 30, 2019.

27 II. The department shall provide the loans described in paragraph I for projects needed to
28 meet a PFAS drinking water standard if the applicant demonstrates, and the department agrees,
29 that the project is the most cost-effective way to meet PFAS drinking water standards and if the
30 project meets the other provisions of this chapter and department rules adopted pursuant to this
31 chapter.

1 III. The department shall adopt rules, and include conditions in loan documents, to ensure
2 that the applicant has made and will make reasonable efforts to obtain and use funds from any
3 potentially liable third party prior to and after taking a loan from the PFAS loan fund, and that any
4 money received from a potentially liable third party after the loan is provided is applied to early
5 repayment of such loan to the extent reasonable. In addition, the department shall adopt rules
6 establishing criteria to ensure that an applicant shall not be eligible for loans for any project or
7 portion of a project to the extent the negligence of the applicant caused the contamination that
8 resulted in the exceedance of a PFAS drinking water standard.

9 IV. If the department forgives any part of a loan related to costs for a project for which a
10 third party might otherwise be liable, the right to recover payment from such third party shall be
11 subrogated to the department to the extent of such forgiveness. Any money recovered by the
12 department from such third party shall be deposited in the PFAS loan fund.

13 V. Loans may be made for up to the total cost of the project minus any contribution from a
14 liable or potentially liable third party or any other portion deemed ineligible under this chapter and
15 department rules.

16 485-H:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection.

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

20 II. The department shall provide the loans described in paragraph I if the applicant
21 demonstrates, and the department agrees, that the project is the most cost-effective way to meet
22 applicable PFAS standards and if the project meets the other provisions of this chapter and
23 department rules adopted pursuant to this chapter. The applicant shall provide evidence in the
24 application for funding that there is not a more cost-effective way to meet applicable PFAS
25 standards.

26 III. The department shall adopt rules, and include conditions in loan documents, to ensure
27 that the applicant has made reasonable efforts to obtain and use funds from any liable or potentially
28 liable third party prior to and after taking a loan from the PFAS loan fund, and that any money
29 received from a liable or potentially liable third party at a later time is applied to early repayment of
30 the loan from the PFAS loan fund to the extent reasonable. In addition, the department shall adopt
31 rules establishing criteria to ensure that an applicant shall not be eligible for loans for any project or
32 portion of a project to the extent the negligence of the applicant caused the contamination that
33 resulted in the exceedance of an applicable PFAS standard.

34 IV. If the department forgives any part of a loan related to costs for a project for which a
35 third party might otherwise be liable, the right to recover payment from such third party shall be
36 subrogated to the department to the extent of such forgiveness. Any money recovered by the
37 department from such third party shall be deposited in the PFAS loan fund.

Amendment to HB 235

- Page 3 -

1 V. Loans may be made for up to the total cost of the project minus any contribution from a
2 liable or potentially liable third party or any other portion deemed ineligible under this chapter and
3 department rules.

4 5 Loan Forgiveness. Amend RSA 485-H:5 to read as follows:

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

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

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

13 III. Total loan forgiveness under this section shall not exceed \$5 million [~~for both drinking~~
14 ~~water and clean water combined~~].

15 6 PFAS Program; Rules; Loan Fund. Amend RSA 485-H:7 through 485-H:10 to read as follows:

16 485-H:7 Drinking Water and Groundwater Trust Fund Exception. Notwithstanding any law to
17 the contrary, any funds deposited into the drinking water and groundwater trust fund established in
18 RSA 6-D:1 as a result of this chapter may be transferred to the department to be used for funding
19 PFAS remediation projects, including those at wastewater treatment facilities, at the discretion of
20 the *drinking water and groundwater trust* fund's advisory commission.

21 485-H:8 Duties of the Department.

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

23 (a) Establishing and administrating the PFAS remediation loan program to assist
24 municipalities; community and non-profit, non-transient non-community water systems; and
25 publicly owned and non-profit wastewater treatment facilities with the cost of complying with [~~state~~
26 ~~maximum contaminant level for~~] *applicable PFAS standards*.

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

29 (c) Awarding loan funds to projects that meet *the provisions of this chapter*
30 *including* the following criteria:

31 (1) The project is or was necessary to comply with a [~~state-mandated~~] *PFAS*
32 *drinking water standard or other applicable* PFAS standard and the applicant for funding is a
33 municipality, a community water system, or a non-profit, non-transient public water system, or a
34 publicly-owned or non-profit wastewater and/or wastewater residual treatment or storage facility.

35 (2) The applicant has demonstrated, to the satisfaction of the department, that [~~low~~
36 ~~or no-cost solutions are neither viable nor effective~~] *the project is the most cost-effective way to*
37 *meet PFAS drinking water standards and other applicable PFAS standards*.

Amendment to HB 235

- Page 4 -

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

3 II. Every year beginning December 1, 2020, the department shall prepare and file a report
4 with the general court evaluating the progress made relative to PFAS contamination, the efficiency
5 of the program established under this chapter, and whether it continues to provide the maximum
6 benefit to New Hampshire citizens, and providing any recommendations on potential additional
7 tasks for which the fund could be used to address PFAS contamination.

8 485-H:9 Rules. The department shall adopt rules, under RSA 541-A, relative to administering
9 ~~[PFAS remediation loan programs for eligible projects necessary to meet state PFAS standards]~~ **this**
10 **chapter.**

11 485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the
12 department the PFAS remediation loan fund which shall be maintained by the state treasurer in
13 distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer
14 may invest the **PFAS remediation loan** fund in accordance with RSA 6:8. Any earnings on fund
15 moneys shall be added to the **PFAS remediation loan** fund. All moneys in the **PFAS remediation**
16 **loan** fund shall be non-lapsing and shall be continually appropriated to the department. The PFAS
17 remediation loan fund shall be used to fund loans and reimbursements in accordance with this
18 chapter. Funds from any bond proceeds, grants, loan repayments, legislative appropriations,
19 donations, and other funds **related to the PFAS remediation loan fund** shall be credited to ~~[this]~~
20 **the PFAS remediation loan** fund.

21 7 Drinking Water and Groundwater Trust Fund. Amend RSA 485-F:3, III to read as follows:

22 III. Costs paid from the drinking water and groundwater trust fund for the action described
23 in paragraph I(a) and recovered by the state under RSA 147-B:10, shall be deposited to the trust
24 fund. In addition, upon payment from the trust fund for any costs for which a third party would
25 otherwise be liable, the right to recover payment from such third party shall be assumed by the
26 drinking water and groundwater advisory commission to the extent of payment made from the trust
27 fund. **Except as provided in RSA 485-H:6**, any money so recovered shall be repaid to the trust
28 fund. No party shall receive multiple compensation for the same injury, and any such compensation
29 shall be repaid to the trust fund.

30 8 Effective Date.

31 I. Section 1 of this act shall take effect 60 days after its passage.

32 II. The remainder of this act shall take effect upon its passage.

2021-1218s

AMENDED ANALYSIS

This bill requires the department of environmental services to adopt rules concerning small groundwater withdrawals from new sources of water. The bill also clarifies the administration of the PFAS fund and program by the department of environmental services.

UNAPPROVED