

Amendment to SB 496-FN

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

2
3 AN ACT establishing a per and polyfluoroalkyl substances fund and programs and making an
4 appropriation therefor.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7
8 1 New Chapter; Per and Polyfluoroalkyl Substances (PFAS) Fund and Programs. Amend RSA
9 by inserting after chapter 485-G the following new chapter:

10 CHAPTER 485-H

11 PER AND POLYFLUOROALKYL SUBSTANCES (PFAS)

12 FUND AND PROGRAMS

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

19 485-H:2 Definitions. In this chapter:

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

21 II. "Department" means the department of environmental services.

22 III. "Drinking water standard" means the maximum contaminant levels in accordance with
23 RSA 485:16-e.

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

25 V. "Non-transient non-community water system" means "non-transient non-community
26 water system as defined in RSA 485:1-a.

27 VI. "Wastewater residuals" means septage, sludge, or biosolids.

28 485-H:3 Implementation of Drinking Water Protection Program. The department shall provide
29 low interest loans to community water systems and non-profit, non-transient public water systems
30 whose testing of untreated source water shows confirmed exceedance of the state maximum
31 contaminant level for PFAS, for remediation efforts begun after September 30, 2019.

Amendment to SB 496-FN
- Page 2 -

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

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

11 485-H:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection. The
12 department shall provide low interest loans to publicly-owned and non-profit wastewater and/or
13 wastewater residual treatment or storage facilities that are required to treat effluent and residuals
14 to achieve PFAS standards prior to discharge or disposal.

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

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

24 485-H:5 Loan Principal Forgiveness Based Upon Need.

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

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

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

34 485-H:6 Contingent Reimbursement.

35 I. Following the reimbursement of the department of justice for legal expenses related to
36 relevant litigation; the transfer of funds to the revenue stabilization reserve account pursuant to
37 RSA 7:6-e; the redemption of bonds issued or debt incurred pursuant to RSA 6:13-e, III(a); and

Amendment to SB 496-FN
- Page 3 -

1 reimbursement of the general fund for any debt principal or interest payments made to support
2 bonds issued or debt incurred pursuant to RSA 6:13-e, III(a), any remaining funds from judgments or
3 settlements received by the state resulting from lawsuits against the manufacturers of PFAS shall
4 be deposited into the drinking water and groundwater trust fund established in RSA 6-D:1.

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

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

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

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

22 485-H:8 Duties of the Department.

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

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

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

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

31 (1) The project is or was necessary to comply with a state mandated PFAS standard
32 and the applicant for funding is a municipality, a community water system, or a non-profit, non-
33 transient public water system, or a publicly-owned or non-profit wastewater and/or wastewater
34 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.

Amendment to SB 496-FN
- 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.

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

18 2 New Subparagraph; PFAS Remediation Loan Fund. Amend RSA 6:12, I(b) by inserting after
19 subparagraph (358) the following new subparagraph:

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

22 3 Capital Appropriation; Department of Environmental Services. The sum of \$50,000,000 is
23 hereby appropriated to the department of environmental services for capital expenditures for the
24 remediation of per- and polyfluoroalkyl substances in the state's drinking water sources and waste
25 water residuals, which expenditures may include loans to public or private entities on such terms
26 and conditions as the department of environmental services shall determine. To provide funds for
27 the appropriation made in this section, the state treasurer is hereby authorized to borrow upon the
28 credit of the state not exceeding the sum of \$50,000,000 and for said purpose may issue bonds and
29 notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-13-e.
30 Notwithstanding the provisions of RSA 9:18, the appropriation made in this section shall not lapse.

31 4 New Section; Authority to Issue Bonds; General Fund. Amend RSA 6 by inserting after
32 section 13-d the following new section:

33 6:13-e Authority to Borrow; Certain Environmental Projects.

34 I. The state treasurer, as may be requested from time to time by the commissioner of the
35 department of environmental services, is hereby authorized to borrow upon the credit of the state
36 such sums as may be authorized by law from time to time to be borrowed under this section and may
37 issue general obligation bonds in the name and on behalf of the state of New Hampshire for such

Amendment to SB 496-FN
- Page 5 -

1 authorized purposes and amounts in accordance with the provisions of RSA 6-A. The state treasurer
2 is hereby further authorized to borrow all or any portion of amounts authorized to be borrowed
3 under this section either as a loan from banks or other financial institutions, within or without the
4 state, selected by the state treasurer or under the federal program established under the Water
5 Infrastructure Finance and Innovation Act, 33 U.S.C. chapter 52, as amended, and to enter into
6 agreements containing appropriate covenants and conditions as the state treasurer determines to be
7 necessary or desirable to secure favorable credit terms from said banks or other financial institutions
8 or under said program.

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

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

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

24 5 Municipal Immunity for Compliance with Best Practices; Pollutant Liability Standard.
25 Amend RSA 507-B:9, I to read as follows:

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

35 6 Effective Date. This act shall take effect upon its passage.

Amendment to SB 496-FN
- Page 6 -

2020-0458s

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.