

Sen. Sherman, Dist 24
Sen. Bradley, Dist 3
May 27, 2020
2020-1261s
01/10

Amendment to HB 1264

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

AN ACT extending the commission on the seacoast cancer cluster investigation, setting the maximum contaminant levels for certain perfluorochemicals in drinking water, establishing a per and polyfluoroalkyl substances fund and programs and making an appropriation therefor, and requiring insurance coverage for PFAS and PFC blood tests.

Amend the bill by replacing all after section 2 with the following:

3 Perfluorochemicals; Drinking Water. RSA 485:16-e is repealed and reenacted to read as follows:

485:16-e Perfluorochemicals.

I. The maximum contaminant levels for the following shall be:

(a) Perfluorooctanoic acid (PFOA): 12 parts per trillion.

(b) Perfluorooctanesulfonic acid (PFOS): 15 parts per trillion.

(c) Perfluorohexanesulfonic acid (PFHxS): 18 parts per trillion.

(d) Perfluorononanoic acid (PFNA): 11 parts per trillion.

II. By November 1, 2020, and at least annually thereafter, the commissioner of the department of environmental services shall report to the speaker of the house of representatives and the president of the senate, the chairperson of the house committee on science, technology, and energy, the chairperson of the senate committee on energy and natural resources, the chairperson of the joint legislative committee on administrative rules, and the governor, with a recommendation regarding the adjustment of the maximum contaminant levels set in paragraph I.

III. The commissioner of the department of environmental services may adopt maximum contaminant levels different than those set forth in paragraph I if, accounting for an adequate margin of safety to protect human health at all life stages, including but not limited to pre-natal development, the commissioner determines the maximum contaminant levels in paragraph I need adjustment for the protection of human health.

4 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 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: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

Amendment to HB 1264
- Page 3 -

1 efforts that would result in the system meeting standards with no unreasonable adverse effects. The
2 applicant shall also show that there is no responsible party identified by department or that the
3 responsible party, potentially including the applicant, has provided their appropriate share of the
4 funding for the proposed project.

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

7 485-H:5 Loan Principal Forgiveness Based Upon Need.

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

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

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

17 485-H:6 Contingent Reimbursement.

18 I. Following the reimbursement of the department of justice for legal expenses related to
19 relevant litigation; the transfer of funds to the revenue stabilization reserve account pursuant to
20 RSA 7:6-e; the redemption of bonds issued or debt incurred pursuant to RSA 6:13-e, III(a); and
21 reimbursement of the general fund for any debt principal or interest payments made to support
22 bonds issued or debt incurred pursuant to RSA 6:13-e, III(a), any remaining funds from judgments or
23 settlements received by the state resulting from lawsuits against the manufacturers of PFAS shall
24 be deposited into the drinking water and groundwater trust fund established in RSA 6-D:1.

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

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

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

Amendment to HB 1264
- Page 4 -

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

6 485-H:8 Duties of the Department.

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

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

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

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

15 (1) The project is or was necessary to comply with a state mandated PFAS standard
16 and the applicant for funding is a municipality, a community water system, or a non-profit, non-
17 transient public water system, or a publicly-owned or non-profit wastewater and/or wastewater
18 residual treatment or storage facility.

19 (2) The applicant has demonstrated, to the satisfaction of the department, that low
20 or no-cost solutions are neither viable nor effective.

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

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

28 485-H:9 Rules. The department shall adopt rules, under RSA 541-A, relative to administering
29 PFAS remediation loan programs for eligible projects necessary to meet state PFAS standards.

30 485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the
31 department the PFAS remediation loan fund which shall be maintained by the state treasurer in
32 distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer
33 may invest the fund in accordance with RSA 6:8. Any earnings on fund moneys shall be added to the
34 fund. All moneys in the fund shall be non-lapsing and shall be continually appropriated to the
35 department. The PFAS remediation loan fund shall be used to fund loans and reimbursements in
36 accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative
37 appropriations, donations, and other funds shall be credited to this fund.

Amendment to HB 1264
- Page 5 -

1 5 New Subparagraph; PFAS Remediation Loan Fund. Amend RSA 6:12, I(b) by inserting after
2 subparagraph (358) the following new subparagraph:

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

5 6 Capital Appropriation; Department of Environmental Services. The sum of \$50,000,000 is
6 hereby appropriated to the department of environmental services for capital expenditures for the
7 remediation of per- and polyfluoroalkyl substances in the state's drinking water sources and waste
8 water residuals, which expenditures may include loans to public or private entities on such terms
9 and conditions as the department of environmental services shall determine. To provide funds for
10 the appropriation made in this section, the state treasurer is hereby authorized to borrow upon the
11 credit of the state not exceeding the sum of \$50,000,000 and for said purpose may issue bonds and
12 notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6:13-e.
13 Notwithstanding the provisions of RSA 9:18, the appropriation made in this section shall not lapse.

14 7 New Section; Authority to Issue Bonds; General Fund. Amend RSA 6 by inserting after
15 section 13-d the following new section:

16 6:13-e Authority to Borrow; Certain Environmental Projects.

17 I. The state treasurer, as may be requested from time to time by the commissioner of the
18 department of environmental services, is hereby authorized to borrow upon the credit of the state
19 such sums as may be authorized by law from time to time to be borrowed under this section and may
20 issue general obligation bonds in the name and on behalf of the state of New Hampshire for such
21 authorized purposes and amounts in accordance with the provisions of RSA 6-A. The state treasurer
22 is hereby further authorized to borrow all or any portion of amounts authorized to be borrowed
23 under this section either as a loan from banks or other financial institutions, within or without the
24 state, selected by the state treasurer or under the federal program established under the Water
25 Infrastructure Finance and Innovation Act, 33 U.S.C. chapter 52, as amended, and to enter into
26 agreements containing appropriate covenants and conditions as the state treasurer determines to be
27 necessary or desirable to secure favorable credit terms from said banks or other financial institutions
28 or under said program.

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

34 III. Payment of principal and interest on the borrowing authorized under paragraph I shall
35 be paid when due from general fund revenue; provided, however, that pursuant to RSA 485-H:6, I,
36 any borrowing under paragraph I shall be paid at or prior to maturity from any available funds
37 derived from lawsuits against the manufacturers of PFAS, after reimbursement to the department of

Amendment to HB 1264
- Page 6 -

1 justice for legal expenses related to the litigation and the transfer of funds to the revenue
2 stabilization reserve account pursuant to RSA 7:6-e.

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

7 8 Municipal Immunity for Compliance with Best Practices; Pollutant Liability Standard.
8 Amend RSA 507-B:9, I to read as follows:

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

18 9 New Section; Accident and Health Insurance; Coverage for Perfluoroalkyls (PFAS) and
19 Perfluorinated Compound (PFC) Blood Testing; Individual. Amend RSA 415 by inserting after
20 section 6-x the following new section:

21 415:6-y Coverage for Perfluoroalkyls (PFAS) and Perfluorinated Compound (PFC) Blood
22 Testing. Each insurer that issues or renews any individual policy of accident or health insurance
23 providing benefits for medical or hospital expenses, shall provide to certificate holders of such
24 insurance, who are residents of this state, coverage for perfluoroalkyls (PFAS) and perfluorinated
25 compound (PFC) blood testing. Benefits provided under this section shall not be subject to any
26 greater co-payment, deductible, or coinsurance than any other similar benefits provided by the
27 insurer.

28 10 New Section; Accident and Health Insurance; Coverage for Perfluoroalkyls (PFAS) and
29 Perfluorinated Compounds (PFCS) Blood Testing; Group. Amend RSA 415 by inserting after section
30 18-bb the following new section:

31 415:18-cc Coverage for Perfluoroalkyls (PFAS) and Perfluorinated Compounds (PFCS) Blood
32 Testing. Each insurer that issues or renews any policy of group or blanket accident or health
33 insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of
34 such insurance, who are residents of this state, coverage for coverage for perfluoroalkyls (PFAS) and
35 perfluorinated compounds (PFCS) blood testing. Benefits provided under this section shall not be
36 subject to any greater co-payment, deductible, or coinsurance than any other similar benefits
37 provided by the insurer.

Amendment to HB 1264

- Page 7 -

11 Health Services Corporations; Applicable Statutes. Amend RSA 420-A:2 to read as follows:

420-A:2 Applicable Statutes. Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F, RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-t, RSA 415:6-u, RSA 415:6-v, RSA 415:6-w, RSA 415:6-x, **RSA 415:6-y**, RSA 415:18, V, RSA 415:18, XVI and XVII, RSA 415:18, VII-a, RSA 415:18-a, RSA 415:18-i, RSA 415:18-j, RSA 415:18-o, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w, RSA 415:18-y, RSA 415:18-z, RSA 415:18-aa, RSA 415:18-bb, **RSA 415:18-cc**, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be subject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

12 Health Services Corporations; Applicable Statutes; Effective January 2021. Amend RSA 420-A:2 to read as follows:

420-A:2 Applicable Statutes. Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F, RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-u, RSA 415:6-v, RSA 415:6-w, RSA 415:6-x, **RSA 415:6-y**, RSA 415:18, V, RSA 415:18, XVI and XVII, RSA 415:18, VII-a, RSA 415:18-a, RSA 415:18-i, RSA 415:18-j, RSA 415:18-o, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w, RSA 415:18-z, RSA 415:18-aa, RSA 415:18-bb, **RSA 415:18-cc**, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be subject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

13 Health Maintenance Organizations; Statutory Construction. Amend RSA 420-B:20, III to read as follows:

III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415:6-g, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-t, RSA 415:6-u, RSA 415:6-v, RSA 415:6-w, RSA 415:6-x, **RSA 415:6-y**, RSA 415:18, VII-a, RSA 415:18, XVI and XVII, RSA 415:18-i, RSA 415:18-j, RSA 415:18-r, RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w, RSA 415:18-y, RSA 415:18-z, RSA 415:18-aa, RSA 415:18-bb, **RSA 415:18-cc**, RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health maintenance organizations.

14 Health Maintenance Organizations; Statutory Construction; Effective January 1, 2021. Amend RSA 420-B:20, III to read as follows:

III. The requirements of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415:6-g, RSA 415:6-m, RSA 415:6-o, RSA 415:6-r, RSA 415:6-u, RSA 415:6-v, RSA 415:6-w, RSA 415:6-x, **RSA 415:6-y**, RSA 415:18, VII-a, RSA 415:18, XVI and XVII, RSA 415:18-i, RSA 415:18-j, RSA 415:18-r,

Amendment to HB 1264

- Page 8 -

1 RSA 415:18-t, RSA 415:18-u, RSA 415:18-v, RSA 415:18-w, RSA 415:18-z, RSA 415:18-aa, RSA
2 415:18-bb, **RSA 415:18-cc**, RSA 415-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health
3 maintenance organizations.

4 15 Effective Date.

5 I. Sections 12 and 14 of this act shall take effect January 1, 2021 at 12:04 p.m.

6 II. Sections 9, 10, 11, and 13 of this act shall take effect 60 days after its passage.

7 III. The remainder of this act shall take effect upon its passage.

UNAPPROVED

2020-1261s

AMENDED ANALYSIS

This bill:

- I. Extends the commission on the seacoast cancer cluster investigation. Sets maximum contaminant limits for perfluorochemicals in drinking water.
- II. Establishes the per and polyfluoroalkly substances (PFAS) fund.
- III. Establishes a low interest loan program for certain water and waste water systems affected by PFAS contamination.
- IV. Makes an appropriation to the department of environmental services for the remediation of PFAS contamination.
- V. Allows the department of environmental services to borrow money.
- VI. Requires insurance coverage for perfluoroalkyls (PFAS) and perfluorinated compound (PFC) blood testing.