

February 19, 2026

The Honorable Bob Lynn
Chair, House Judiciary Committee
GP Room 230
1 Granite Place
Concord, NH 03301

Re: Opposition to House Bill 1389

Dear Chairman Lynn and Members of the Committee:

On behalf of the American Tort Reform Association (ATRA), a national coalition of large and small businesses, municipalities, and trade and professional associations with the mission of promoting a fair and predictable civil justice system, we would like to express our opposition to House Bill 1389. This bill would introduce greater uncertainty and potential unfairness into civil litigation regarding PFAS (perfluoroalkyl and polyfluoroalkyl substances) by (1) eliminating New Hampshire's definition of a "PFAS facility", (2) subjecting these undefined entities to onerous Federal toxic waste closure and decommissioning standards, and (3) removing liability exemptions for public water systems, wastewater treatment plants, and state-permitted solid waste facilities.

Removal of "PFAS Facility" Definition

House Bill 1389 proposes to eliminate the current definition of a "PFAS facility" in RSA 147-B:2, VIII-m, which refers to "any site, area, or location where PFAS is or has been used in a manufacturing process." The bill would instead leave the term undefined, creating substantial confusion as to whether any property owner or other entity may be deemed a "PFAS facility" in a lawsuit. As a result, the bill could allow claims that have been limited to manufacturing operations to be brought against virtually any entity where a release of PFAS in groundwater or surface water exceeds stated limits.

For example, the lack of a definition could enable claims against the owner or operator of any location PFAS exists. As the Committee may recall, Governor Sununu vetoed legislation (House Bill 1415) in 2024 that proposed to define a "PFAS facility" in RSA 147-B:2 as any site or location PFAS is or has been used, stored, disposed of, or "otherwise come to be located"—in essence, anywhere PFAS is found. His veto message expressed concerns that such an approach "would encompass any facility that previously used PFAS at their location, such as fire stations and other municipal facilities" and that exposing these entities to new liability would be "inappropriate and unnecessarily burdensome."¹ These same basic concerns exist with respect to House Bill 1389 because the term "PFAS facility" would be open to similarly broad interpretation.

Elimination of Liability Exemptions

House Bill 1389 would remove the explicit exemptions in RSA 147-B:10, VIII, for PFAS-related claims against public water systems, wastewater treatment plants, and state-permitted solid waste facilities. Eliminating these protections would expose each of these groups to new potential liability, which could entail substantial additional costs for public systems funded by taxpayers.

¹ Governor's Veto Message Regarding House Bill 1415, Office of Gov. Christopher Sununu, Aug. 2, 2024.

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Imposition of Federal Closure and Decommissioning Standards

House Bill 1389 would also amend subsection VIII of New Hampshire's hazardous materials cleanup statute, RSA 147-B:10, to subject the owner or operator of a PFAS facility to Federal regulations governing facility closure and hazardous substance disposal and decontamination of equipment, structures, and soil. The current subsection provides that the owner or operator of a PFAS facility is subject to the provisions of RSA 147-B:10, as well as landowner defenses under RSA 147-B:10-a, where a release of PFAS has resulted in total combined concentrations in groundwater or surface water of 10,000 parts per trillion (ppt) or greater of PFAS compounds for which state standards have been established. The current subsection also expressly exempts claims against a public water system or wastewater treatment plant, or a facility permitted by the state to manage solid waste.

House Bill 1389 would change this subsection to apply what are onerous Federal procedures governing toxic waste and other especially hazardous waste to the closure, removal from service, or decommissioning of certain equipment and structures related to an alleged release of PFAS. The bill would also lower the existing 10,000 ppt combined PFAS threshold to 500 ppt. While New Hampshire and Federal law establish lower thresholds for certain PFAS, the bill's reduced threshold would apply to combined concentrations of any PFAS subject to established limits.

As a practical matter, the bill would impose a massive potential regulatory burden on many entities—regardless of whether they did anything unreasonable—that is subject to the personal preferences of state officials. For example, the department of environmental services or the state attorney general could seek to require an entity's closure or removal of equipment allegedly associated with a release of PFAS and use the potential regulatory burden of compliance with House Bill 1389 as leverage to extract a settlement. Because the bill effectively treats the presence of small amounts of PFAS the same as substantial amounts of toxic waste, many entities may have no real choice except to acquiesce to unjust government demands.

For these reasons, ATRA respectfully urges the Committee to reject House Bill 1389. Thank you for your consideration.

Sincerely,



Sherman Joyce
President

cc: Members of the House Judiciary Committee