

CHAPTER 223
HB 271 - FINAL VERSION

7Apr2021... 0577h
24Jun2021... 2003CofC
24Jun2021... 2068EBA

2021 SESSION

21-0087
08/06

HOUSE BILL **271**

AN ACT relative to standards for per and polyfluoroalkyl substances (PFAS) in drinking water and ambient groundwater.

SPONSORS: Rep. Rung, Hills. 21; Rep. Weston, Graf. 8

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill directs the department of environmental services to set maximum contaminant limits for per and polyfluoroalkyl substances (PFAS).

This bill also enables the department of environmental services to make grants and loans to eligible municipalities and drinking water and wastewater systems to address PFAS contamination and renames the PFAS remediation fund the PFAS remediation loan fund.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through]~~.
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 223
HB 271 - FINAL VERSION

7Apr2021... 0577h
24Jun2021... 2003CofC
24Jun2021... 2068EBA

21-0087
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to standards for per and polyfluoroalkyl substances (PFAS) in drinking water and ambient groundwater.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 223:1 Per and Polyfluorinated Chemicals. The subdivision heading preceding RSA 485:16-e is
2 repealed and reenacted to read as follows:

Per and Polyfluoroalkyl Substances

4 223:2 Per and Polyfluoroalkyl Substances. Amend RSA 485:16-e to read as follows:

5 485:16-e [~~Perfluorochemicals~~] ***Per and Polyfluoroalkyl Substances.***

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

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

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

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

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

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

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

22 223:3 Per and Polyfluoroalkyl Substances. Amend RSA 125-C:10-e to read as follows:

23 125-C:10-e Requirements for Air Emissions of [~~Perfluorinated Compounds~~] ***Per and***
24 ***Polyfluoroalkyl Substances*** Impacting Soil and Water.

25 I. For the purposes of this section:

26 (a) "Best available control technology" means "best available control technology" as
27 defined in RSA 125-C:10-b, I(a).

CHAPTER 223
HB 271 - FINAL VERSION
- Page 2 -

(b) "Ambient groundwater quality standard" means "ambient groundwater quality standard" as defined in RSA 485-C:2, I.

(c) "Surface water quality standard" means "surface water quality standard" established in or pursuant to RSA 485-A.

~~(d) ["Perfluorinated compounds" or "PFCs" means the list of compounds identified in paragraph 1.1 of Environmental Protection Agency Document #: EPA/600/R-08/092 Method 537. "Determination of Selected Perfluorinated Alkyl Acids in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)", Version 1.1 (September 2009).]~~ ***"PFAS" means per and polyfluoroalkyl substances.***

(e) "Precursor" means any substance that has been shown by sound science to be transformed into a ~~[PFC]~~ ***PFAS*** under ambient conditions reasonably expected to occur in New Hampshire.

II. A device that emits to the air any ~~[PFCs]~~ ***PFAS*** or precursors that have caused or contributed to an exceedance of an ambient groundwater quality standard or surface water quality standard as a result of the deposition of any such ~~[PFCs]~~ ***PFAS*** or precursors from the air, shall be subject to the determination and application of best available control technology. Within 6 months of the department determining that the device is subject to such control technology, the owner of the device shall submit to the department an application for a permit. Within 12 months of permit issuance, the applicant shall complete construction and installation of controls consistent with the permit. Operation of the source may continue through the permitting, construction, and installation time period. A source which can demonstrate to the department that its device no longer contributes to an exceedance of an ambient groundwater quality standard or surface water quality standard shall be exempt from this section.

III. The construction, installation, or modification of any device that has the potential, based on an applicability threshold adopted by the department, to cause or contribute to an exceedance of an ambient groundwater quality standard or surface water quality standard as a result of the deposition of any ~~[PFCs]~~ ***PFAS*** or precursors from the air, shall be prohibited without first applying for and obtaining a permit from the department that establishes emission limitations for such device based on best available control technology.

IV. Part of the initial application for a permit under this section shall include an analysis of best available control technology for controlling emissions. Any permit issued shall contain inspection, testing, and reporting requirements, as applicable, to ensure the conditions of the permit are met.

V. Any determination of best available control technology under this section shall be subject to the following:

(a) In no event shall application of best available control technology result in:

CHAPTER 223
HB 271 - FINAL VERSION
- Page 3 -

(1) Emission of any air contaminant that would exceed the emissions allowed by any applicable standard under RSA 125-C or RSA 125-I or rules adopted pursuant to either chapter.

(2) Emission of any air contaminant subject to this section in an amount disproportionate to the emissions of such air contaminant from other similar air pollution control devices for that air contaminant at facilities using similar technology.

(3) Emission of any air contaminant subject to this section which causes or contributes to or has the potential to cause or contribute to an exceedance of an ambient groundwater quality standard or surface water quality standard, as a result of the deposition of the contaminant from the air.

(b) If the department determines that the facility has more than one device that emits air contaminants subject to this section, the department shall determine best available control technology emission limitations for each such device.

VI. This section shall only pertain to [PFCs] **PFAS** for which at least one *peer reviewed* study has been conducted in accordance with generally accepted scientific principles that demonstrates that the [PFC] **PFAS** of concern is known to cause or may reasonably be anticipated to cause acute, chronic, mutagenic, reproductive, or developmental health effects in humans as a result of exposure to such [PFC] **PFAS**. The implementation of this section shall only rely upon standards that are based on federal maximum contaminant levels, health advisories, provisional health advisories, standards that are derived from federally published toxicological data, or more restrictive New Hampshire state standards.

223:4 PFAS Fund and Program; Purpose. Amend RSA 485-H:1 to read as follows:

485-H:1 Purpose Statement. Communities across the state have been impacted by ~~[per and polyfluoroalkyl substances (PFAS)]~~ **perfluorochemical** contamination, largely through no fault of their own. ***Perfluorochemicals are a class of chemicals that are part of a larger group of chemicals called per and polyfluoroalkyl substances (PFAS).*** 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.

223:5 PFAS Fund and Program; Definitions. Amend RSA 485-H:2, III and IV to read as follows:

III. "Drinking water standard" means the maximum contaminant levels ~~[in accordance with]~~ ***established pursuant to*** RSA 485:16-e.

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

223:6 PFAS Fund and Program; Drinking Water Protection; Groundwater. RSA 485-H:3-4 are repealed and reenacted to read as follows:

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

CHAPTER 223
HB 271 - FINAL VERSION
- Page 4 -

I. The department shall provide low-interest loans and grants for the purpose of addressing exceedances of PFAS drinking water standards to:

- (a) Municipalities for municipal use;
- (b) Municipalities for use in assisting private well users including funds necessary to address the reasonable administrative costs of the municipality;
- (c) Community water systems for use on an existing system or to expand a system to assist additional water users; and
- (d) Non-profit, non-transient non-community water systems.

Such loans and grants shall be provided for the projects described below begun after September 30, 2019.

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

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

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

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

VI. Municipalities may assist private well users impacted by PFAS contamination in a manner consistent with this chapter, may accept and expend grants and loans provided by the department pursuant to subparagraphs I(a) and (b), and may apply for and receive funds from the department necessary to cover reasonable administrative costs related to implementation of subparagraph I(b).

CHAPTER 223
HB 271 - FINAL VERSION
- Page 5 -

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

4 II. The department shall provide the loans and grants described in paragraph I if the
5 applicant demonstrates, and the department agrees, that the project is the most cost-effective way to
6 meet applicable PFAS standards and if the project meets the other provisions of this chapter and
7 department rules adopted pursuant to this chapter. The applicant shall provide evidence in the
8 application for funding that there is not a more cost-effective way to meet applicable PFAS
9 standards.

10 III. The department shall adopt rules, and include conditions in loan and grant documents,
11 to ensure that the applicant has made reasonable efforts to obtain and use funds from any liable or
12 potentially liable third party prior to and after taking a loan from the PFAS loan fund or receiving a
13 grant, and that any money received from a liable or potentially liable third party at a later time is
14 applied to early repayment of the loan from the PFAS loan fund to the extent reasonable. In
15 addition, the department shall adopt rules establishing criteria to ensure that an applicant shall not
16 be eligible for loans or grants for any project or portion of a project to the extent the negligence of the
17 applicant caused the contamination that resulted in the exceedance of an applicable PFAS standard.

18 IV. If the department forgives any part of a loan or provides a grant related to costs for a
19 project for which a third party might otherwise be liable, the right to recover payment from such
20 third party shall be subrogated to the department to the extent of such forgiveness. Any money
21 recovered by the department from such third party shall be deposited in the PFAS loan fund.

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

25 223:7 PFAS Fund and Program; Loan Forgiveness. Amend RSA 485-H:5 to read as follows:

26 485-H:5 Loan Principal Forgiveness Based Upon Need.

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

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

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

36 223:8 PFAS Program; Rules; Loan Fund. Amend RSA 485-H:7-10 to read as follows:

CHAPTER 223
HB 271 - FINAL VERSION
- Page 6 -

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

485-H:8 Duties of the Department.

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

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

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

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

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

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

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

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

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

485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the department the PFAS remediation loan fund which shall be maintained by the state treasurer in distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer may invest the ***PFAS remediation loan*** fund in accordance with RSA 6:8. Any earnings on ***PFAS***

CHAPTER 223
HB 271 - FINAL VERSION
- Page 7 -

1 **remediation loan** fund moneys shall be added to the **PFAS remediation loan** fund. All moneys
2 in the **PFAS remediation loan** fund shall be non-lapsing and shall be continually appropriated to
3 the department. The PFAS remediation loan fund shall be used to fund loans and reimbursements
4 in accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative
5 appropriations, donations, and other funds **related to the PFAS remediation loan fund** shall be
6 credited to ~~[this]~~ **the PFAS remediation loan** fund.

7 223:9 New Section; Grants. Amend RSA 485-H by inserting after section 10 the following new
8 section:

9 485-H:11 Grants.

10 I. The department, to the limit of the funds appropriated to the department for this purpose
11 through the actions of the fiscal committee established under RSA 14:30-a, shall provide grants to
12 entities meeting the eligibility requirements of RSA 485-H:3 and RSA 485-H:4 for up to the greater
13 of \$1,500,000 or 30 percent of the total eligible cost of the project.

14 II. In no instance shall the grant exceed the total eligible costs.

15 III. In no instance shall the sum of all department administered funding of the project, to
16 include loans and grants, exceed the total eligible costs.

17 IV. If department administered funding had been secured prior to this grant being available,
18 such that the addition of the grant would cause the sum of the funding to exceed the total eligible
19 costs, then the department administered loan amounts shall be reduced on a prorated basis to the
20 extent required to bring the sum of the funding equal to total eligible costs.

21 223:10 Drinking Water and Groundwater Trust Fund. Amend RSA 485-F:3, III to read as
22 follows:

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

31 223:11 Contingent Renumbering; HB 236. If HB 236 of the 2021 regular legislative session
32 becomes law, then RSA 485-H:11 as inserted by section 1 of that bill shall be renumbered as RSA
33 485-H:12.

223:12 Effective Date. This act shall take effect upon its passage.

Approved: August 24, 2021
Effective Date: August 24, 2021