

HB 242-FN - AS INTRODUCED

2023 SESSION

23-0463

08/05

HOUSE BILL ***242-FN***

AN ACT relative to banning PFAS in food packaging.

SPONSORS: Rep. Dunn, Rock. 16; Rep. N. Murphy, Hills. 12; Rep. Rung, Hills. 12; Rep. W. Thomas, Hills. 12; Rep. K. Perez, Rock. 16; Sen. Carson, Dist 14

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill bans the use of food packaging containing perfluoroalkyl and polyfluoroalkyl substances (PFAS).

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to banning PFAS in food packaging.

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

1 1 New Subdivision; Prohibition of Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) in Food
2 Service Products. Amend RSA 149-M by inserting after section 23 the following new subdivision:

3 Prohibition of PFAS in Food Service Products

4 149-M:23-a Definitions. In this subdivision:

5 I. "Disposable food service product" means food containers designed for one-time use.
6 "Disposable food service container" includes service ware for beverages, trays, take-out foods,
7 packaged meat, eggs, bakery products, and leftovers from partially consumed meals prepared by food
8 vendors.

9 II. "Food service business" means a business that sells or provides food for consumption on
10 or off the premises, and includes, but is not limited to, any restaurant, cafe, delicatessen, coffee shop,
11 supermarket or grocery store, vending truck or cart, food truck, movie theater, school, business, or
12 institutional cafeteria, including those operated by or on behalf of the state. "Food service business"
13 does not include health care facilities or Meals on Wheels programs.

14 III. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated
15 organic chemicals containing at least one fully fluorinated carbon atom.

16 IV. "Service product" means a food container, bowl, plate, tray, carton, hot and cold beverage
17 cup, lid, or other item designed to be used for foods or beverages.

18 149-M:23-b Prohibition on Single-Use Food Service Products Containing PFAS.

19 I. Beginning January 1, 2024, no food service business shall sell or distribute in the state a
20 disposable food service product for foods or beverages that contains PFAS.

21 II. The following items are exempt from the prohibition in this section:

22 (a) Factory-sealed, aseptically-packaged shelf-stable foods.

23 (b) Uncooked meat, fish, poultry, or seafood for off-premises preparation and
24 consumption.

25 (c) Food or beverages that have been packaged in expanded polystyrene outside the state
26 before receipt by a food service business.

27 III. This section shall not prohibit a person from re-using polystyrene packaging received
28 with products distributed from out of state.

29 IV. A food service business shall not be in violation of a prohibition under this subdivision if
30 the food service business:

31 (a) Purchased the polystyrene foam food service product prior to January, 2025; and

HB 242-FN - AS INTRODUCED

- Page 2 -

- 1 (b) Provides the polystyrene food service product to a consumer on or before July 1, 2025.
- 2 149-M:23-c Municipalities shall have the sole authority under this subdivision to regulate,
- 3 implement, and enforce the prohibition on food service products containing PFAS.
- 4 2 Effective Date. This act shall take effect January 1, 2024.

**HB 242-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to banning PFAS in food packaging.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill bans the use of food packaging containing perfluoroalkyl and polyfluoroalkyl substances (PFAS). The Department of Environmental Services indicates the bill does not outline a clear role for the Department in the administration or implementation of prohibiting PFAS in food packaging. While the bill proposes to amend RSA 149-M:23 where the Department holds administrative and enforcement authority of the statute under RSA 149-M:5 and 149-M:6; the bill gives municipalities the sole authority to regulate, implement, and enforce the prohibition on food service products containing PFAS. The Department assumes it would not be administering this bill and anticipates no staffing responsibilities. For the state and counties, a fiscal impact is possible with a cost increase for food service products used by state and county run institutions.

On a local level, New Hampshire has 13 cities, 221 towns, and 25 unincorporated places that would need to dedicate staff to regulate, implement, and enforce this bill. The Department does not have information as to whether the bill would require additional of staff or the use of existing resources at the local level.

The New Hampshire Municipal Association states it is unaware of any federal, state, local, or other public or private database containing a listing of food packaging containing PFAS and assumes implementation of the requirements would likely require testing of individual products by the municipality to determine presence of PFAS before taking an enforcement action. The Association indicates the cost of testing products for PFAS varies based on the laboratory used, but the general range appears to be \$400 - \$800 per test. The availability of information from other municipalities or the state may lower that cost. It is unclear whether municipalities can or would band together to create a PFAS registry in order to avoid duplication of lab costs. However, the availability and cost of witnesses necessary for any legal action will continue to exist, if such enforcement action were to go to court. Therefore, the Association states the cost is indeterminable. The Association does not expect any impact on local revenues.

AGENCIES CONTACTED:

Department of Environmental Services and the New Hampshire Municipal Association