

1 Committee of Conference Report on HB 271, relative to standards for per and polyfluoroalkyl
2 substances (PFAS) in drinking water and ambient groundwater.

3
4 Recommendation:

5 That the House recede from its position of nonconcurrency with the Senate amendment, and

6 That the Senate recede from its position in adopting its amendment to the bill, and

7 That the Senate and House adopt the following new amendment to the bill as amended by the
8 House, and pass the bill as so amended:

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10 Amend the bill by replacing all after section 3 with the following:

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12 4 PFAS Fund and Program; Purpose. Amend RSA 485-H:1 to read as follows:

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

21 5 PFAS Fund and Program; Definitions. Amend RSA 485-H:2, III and IV to read as follows:

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

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

25 6 PFAS Fund and Program; Drinking Water Protection; Groundwater RSA 485-H:3-4 are
26 repealed and reenacted to read as follows:

27 485-H:3 Implementation of Drinking Water Protection Program.

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

30 (a) Municipalities for municipal use;

31 (b) Municipalities for use in assisting private well users including funds necessary to
32 address the reasonable administrative costs of the municipality;

33 (c) Community water systems for use on an existing system or to expand a system to
34 assist additional water users; and

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1 (d) Non-profit, non-transient non-community water systems.
2 Such loans and grants shall be provided for the projects described below begun after September 30,
3 2019.

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

9 III. The department shall adopt rules, and include conditions in loan and grant documents,
10 to ensure that the applicant has made and will make reasonable efforts to obtain and use funds from
11 any liable or potentially liable third party prior to and after taking a loan from the PFAS loan fund
12 or receiving a grant, and that any money received from a liable or potentially liable third party after
13 the loan is provided is applied to early repayment of such loan to the extent reasonable. In addition,
14 the department shall adopt rules establishing criteria to ensure that an applicant shall not be
15 eligible for loans or grants for any project or portion of a project to the extent the negligence of the
16 applicant caused the contamination that resulted in the exceedance of a PFAS drinking water
17 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 or grant. Any
21 money 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 VI. Municipalities may assist private well users impacted by PFAS contamination in a
26 manner consistent with this chapter, may accept and expend grants and loans provided by the
27 department pursuant to subparagraphs I(a) and (b), and may apply for and receive funds from the
28 department necessary to cover reasonable administrative costs related to implementation of
29 subparagraph I(b).

30 485-H:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection.

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

34 II. The department shall provide the loans and grants described in paragraph I if the
35 applicant demonstrates, and the department agrees, that the project is the most cost-effective way to
36 meet applicable PFAS standards and if the project meets the other provisions of this chapter and
37 department rules adopted pursuant to this chapter. The applicant shall provide evidence in the

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1 application for funding that there is not a more cost-effective way to meet applicable PFAS
2 standards.

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

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

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

18 7 PFAS Fund and Program; Loan Forgiveness. Amend RSA 485-H:5 to read as follows:

19 485-H:5 Loan Principal Forgiveness Based Upon Need.

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

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

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

29 8 PFAS Program; Rules; Loan Fund. Amend RSA 485-H:7-10 to read as follows:

30 485-H:7 Drinking Water and Groundwater Trust Fund Exception. Notwithstanding any law to
31 the contrary, any funds deposited into the drinking water and groundwater trust fund established in
32 RSA 6-D:1 as a result of this chapter may be transferred to the department to be used for funding
33 PFAS remediation projects, including those at wastewater treatment facilities, at the discretion of
34 *the drinking water and groundwater trust* fund's advisory commission.

35 485-H:8 Duties of the Department.

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

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

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

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

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

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

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

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

24 485-H:9 Rules. The department shall adopt rules, under RSA 541-A, relative to administering
25 [~~PFAS remediation loan programs for eligible projects necessary to meet state PFAS standards~~] *this*
26 *chapter*.

27 485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the
28 department the PFAS remediation loan fund which shall be maintained by the state treasurer in
29 distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer
30 may invest the *PFAS remediation loan* fund in accordance with RSA 6:8. Any earnings on *PFAS*
31 *remediation loan* fund moneys shall be added to the *PFAS remediation loan* fund. All moneys
32 in the *PFAS remediation loan* fund shall be non-lapsing and shall be continually appropriated to
33 the department. The PFAS remediation loan fund shall be used to fund loans and reimbursements
34 in accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative
35 appropriations, donations, and other funds *related to the PFAS remediation loan fund* shall be
36 credited to [~~this~~] *the PFAS remediation loan* fund.

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1 9 New Section; Grants. Amend RSA 485-H by inserting after section 10 the following new
2 section:

3 485-H:11 Grants.

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

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

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

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

15 10 Drinking Water and Groundwater Trust Fund. Amend RSA 485-F:3, III to read as follows:

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

24 11 Effective Date. This act shall take effect upon its passage.

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The signatures below attest to the authenticity of this Report on HB 271, relative to standards for per and polyfluoroalkyl substances (PFAS) in drinking water and ambient groundwater.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Avard, Dist. 12

Rep. Renzullo, Hills. 37

Sen. Gray, Dist. 6

Rep. Suzanne Smith, Graf. 8

Sen. Watters, Dist. 4

Rep. Gunski, Hills. 6

Rep. Healey, Hills. 21

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2021-2003-CofC

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.