

**CHAPTER 30**  
**HB 1264 - FINAL VERSION**

19Feb2020... 0191h  
06/16/2020 1432s

2020 SESSION

20-2641  
01/04

**HOUSE BILL 1264**

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, requiring insurance coverage for PFAS and PFC blood tests, and expanding the statute governing ambient groundwater quality standards.

SPONSORS: Rep. Meuse, Rock. 29; Rep. Cushing, Rock. 21; Rep. Le, Rock. 31; Rep. McBeath, Rock. 26; Rep. Altschiller, Rock. 19; Sen. Sherman, Dist 24; Rep. Bushway, Rock. 21

COMMITTEE: Health, Human Services and Elderly Affairs

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**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 polyfluoroalkyl 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.
- VII. Expands the statute governing ambient groundwater quality standards to include state maximum contaminant levels established in law.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Twenty*

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, requiring insurance coverage for PFAS and PFC blood tests, and expanding the statute governing ambient groundwater quality standards.

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

30:1 Extending the Commission on the Seacoast Cancer Investigation. Amend RSA 126-A:74, V to read as follows:

V. The commission shall make 2 interim reports, one on or before November 1, ~~[2017]~~ **2020**, and one on or before ~~[November 1, 2018]~~ **June 30, 2021**, and issue a final report on its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the oversight committee on health and human services, and the state library on or before June 30, ~~[2020]~~ **2022**.

30:2 Commission on the Seacoast Cancer Cluster Investigation; Repeal Date Extended. Amend 2017, 197:5, I to read as follows:

I. Section 3 of this act shall take effect June 30, ~~[2020]~~ **2022**.

30:3 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 prenatal development, the commissioner determines the maximum contaminant levels in paragraph I need adjustment for the protection of human health.

30:4 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 efforts that would result in the system meeting standards with no unreasonable adverse effects. The applicant shall also show that there is no responsible party identified by 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:5 Loan Principal Forgiveness Based Upon Need.

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

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

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

485-H:6 Contingent Reimbursement.

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

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

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

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

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 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 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.

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

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

(1) The project is or was necessary to comply with a state mandated 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.

(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.

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 fund in accordance with RSA 6:8. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be non-lapsing and shall be continually appropriated to the department. The PFAS remediation loan fund shall be used to fund loans and reimbursements in accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative appropriations, donations, and other funds shall be credited to this fund.

30:5 New Subparagraph; PFAS Remediation Loan Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (358) the following new subparagraph:

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

30:6 Capital Appropriation; Department of Environmental Services. The sum of \$50,000,000 is hereby appropriated to the department of environmental services for capital expenditures for the remediation of per- and polyfluoroalkyl substances in the state's drinking water sources and waste water residuals, which expenditures may include loans to public or private entities on such terms and conditions as the department of environmental services shall determine. To provide funds for the appropriation made in this section, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$50,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6:13-e. Notwithstanding the provisions of RSA 9:18, the appropriation made in this section shall not lapse.

30:7 New Section; Authority to Issue Bonds; General Fund. Amend RSA 6 by inserting after section 13-d the following new section:

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

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

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

III. Payment of principal and interest on the borrowing authorized under paragraph I shall be paid when due from general fund revenue; provided, however, that pursuant to RSA 485-H:6, I, any borrowing under paragraph I shall be paid at or prior to maturity from any available funds derived from lawsuits against the manufacturers of PFAS, after reimbursement to the department of justice for legal expenses related to the litigation and the transfer of funds to the revenue stabilization reserve account pursuant to RSA 7:6-e.

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

30:8 Municipal Immunity for Compliance with Best Practices; Pollutant Liability Standard. Amend RSA 507-B:9, I to read as follows:

I. Notwithstanding any other provision of law, the liability of any governmental unit or public employee for any personal injury, bodily injury, or property damage caused by or resulting from pollutant incidents ***including, but not limited to, per and polyfluorochemical contamination***, shall only be based upon a showing by a preponderance of the evidence that the acts or omissions of the governmental unit were unreasonable. The acts or omissions of a governmental unit or public employee shall be conclusively presumed to be

reasonable if they are in accord with the generally prevailing state of the art, scientific knowledge, and technology available to the governmental unit at the time the acts or omissions were undertaken or made by the governmental unit or public employee.

30:9 New Section; Accident and Health Insurance; Coverage for Perfluoroalkyls (PFAS) and Perfluorinated Compound (PFC) Blood Testing; Individual. Amend RSA 415 by inserting after section 6-x the following new section:

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

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

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

30:11 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.

30:12 Health Services Corporations; Applicable Statutes; Effective January 1, 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.

30:13 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.

30:14 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, 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-A, RSA 415-F, RSA 420-G, and RSA 420-J shall apply to health maintenance organizations.

30:15 Ambient Groundwater Quality Standards. Amend RSA 485-C:6, I to read as follows:

I. The commissioner shall establish and adopt ambient groundwater quality standards for regulated contaminants which adversely affect human health or the environment. Ambient groundwater standards shall apply to all regulated contaminants which result from human operations or activities, but do not apply to naturally occurring contaminants. Where state maximum contaminant levels have

been adopted under RSA 485:3, I(b), *or established in law*, ambient groundwater quality standards shall be equivalent to such standards. Where federal maximum contaminant level or health advisories have been promulgated under the Federal Safe Drinking Water Act or rules relevant to such act, ambient groundwater quality standards shall be no less stringent than such standards. The commissioner may adopt standards more stringent than federal maximum contaminant levels or health advisories 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 federal standards are insufficient for protection of human health. Where such standards are established based upon health advisories that address cancer risks, the ambient groundwater quality standards shall be equivalent to that exposure which causes a lifetime exposure risk of one cancer in 1,000,000 exposed population. Where no federal or state maximum contaminant level or health advisory has been issued, the commissioner may adopt ambient groundwater quality standards on a basis which provides for an adequate margin of safety to protect human health and safety.

30:16 Effective Date.

- I. Sections 12 and 14 of this act shall take effect January 1, 2021 at 12:04 p.m.
- II. Sections 9, 10, 11, and 13 of this act shall take effect 60 days after its passage.
- III. The remainder of this act shall take effect upon its passage.

Approved: July 23, 2020

Effective Date:

- I. Sections 12 and 14 shall take effect January 1, 2021 at 12:04 p.m.
- II. Sections 9, 10, 11 and 13 shall take effect September 21, 2020.
- III. Remainder shall take effect July 23, 2020.