

# LEGISLATIVE BULLETIN

## Additional Funding Proposed to Tackle PFAS

On Tuesday, February 7, at 1:25 p.m. in State House Room 103, the Senate Finance Committee will hold a hearing on [SB 138](#) which proposes to add \$10 million to the existing perfluorinated chemical (PFAS) remediation loan fund. **SB 138** is an **NHMA policy bill** that would provide state financial assistance toward the costs of meeting water and wastewater quality standards associated with PFAS.

PFAS, commonly referred to as “forever chemicals,” are widely used, long-lasting chemical pollutants produced by companies that break down very slowly over time. Technologies for PFAS removal in drinking water exist, but they are costly and high-maintenance—and the burden to pay for them falls on taxpayers. To address this cost burden the legislature previously enacted RSA chapter 485-H and established the [PFAS Remediation Loan Fund](#) for loans to defray the cost of upgrades to public water systems and wastewater facilities.

The PFAS Remediation Loan Fund is a low-interest loan program, offering 10 percent loan forgiveness for disadvantaged communities and up to 50 percent conditional reimbursement for all loan recipients if the state receives sufficient funds from PFAS contamination judgments or settlements. As experts continue to classify hundreds of PFAS chemicals and discover their impacts on public health, the costs for remediation are only anticipated to rise. PFAS-related legislation and the funding needed to maintain safe public drinking water and soil continues to be a focus at the state house.

Municipal officials who are currently addressing PFAS remediation and experiencing associated cost increases at their water and wastewater facilities are urged to attend this hearing to explain the financial impacts on utility ratepayers and property taxpayers. If you are unable to attend the hearing, please consider writing to the [Senate Finance Committee](#) or sign in support of this legislation using the online option which can be found [here](#).

NHMA Legislative Bulletin 06  
February 03, 2023

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## Funding for Municipal Wastewater Projects

On **Tuesday, February 7, at 1:40 p.m.** in **State House 103**, the [Senate Finance Committee](#) will hold a public hearing on [SB 230](#), an **NHMA policy bill**, which appropriates \$15 million in non-lapsing funds for each of the 2024 and 2025 fiscal years to fund the state share of eligible and completed wastewater projects under the State Aid Grant (SAG) program pursuant to RSA 486. [HB 311](#), a similar bill filed in the House, contains the same levels of funding for eligible municipal wastewater projects. Historically, the legislature has, by law, expressly authorized the SAG program to provide grants to municipalities of 20% to 30% of the principal and interest payments on completed and eligible environmental infrastructure projects. However, sufficient funding for the grants has not been included in the state budget in recent years—thus the need for a separate funding bill. (For more information on the importance of this funding, please see the 2023 [SAG Project Priority List](#) issued by the Department of Environmental Services.)

Please contact the [Senate Finance Committee](#) to express your support for this much-needed funding which would honor the state’s partnership with its political subdivisions to protect the health of its residents and promote state and municipal economic growth.

## Municipalities May Be Required to Pay to Resolve Gray Areas of RTK

On Wednesday, the **House Judiciary Committee** recommended [HB 307](#), relative to attorney’s fees in actions under the Right to Know Law, as Ought to Pass—unanimously. As the Department of Justice noted in its fiscal note, **HB 307** “would remove the requirement that the court find that the public body or public agency knew or should have known the conduct engaged in was a violation of RSA 91-A before awarding attorney’s fees. Without this additional finding, [DOJ] assumes the bill would result in a court awarding attorney’s fee any time a petitioner was successful in obtaining a judgment that a violation of RSA 91-A occurred.”

In other words, the government would be responsible for paying the other side’s attorney’s fees in a Right to Know Law case *if* the government loses the case—period. This is highly problematic because there are areas of the law where the rules for how the government is to comply have not been clearly articulated.

Here’s an example.

This year’s [HB 321](#) seeks to flesh out the provision in RSA 91-A:3 relative to “sealing” minutes. Its language was crafted in response to a legislator’s query about NHMA’s advice on best practices for nonpublic session minutes. RSA 91-A:3, III currently says simply that, “[the relevant portion of the minutes made in nonpublic session] may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.” **HB 321** would clarify that a public body or agency may adopt its own procedure to regularly review “sealed” nonpublic session minutes to determine if the circumstances no longer justify withholding them from disclosure; or, the public body may simply follow the statutory formula. But if a lawsuit were brought today challenging a public body’s current practices with respect to nonpublic session minutes—and a judge interpreted the law a certain way and ruled that the public body was not properly following RSA 91-A:3—the public body would lose the case *and* pay private attorney’s fees of the petitioner—even if the public body had been following the advice of counsel. Ultimately, under **HB 307**, if the municipality does not accurately predict the court’s ruling, it would be responsible for the other side’s attorney’s fees, even if the municipality had a reasonable review process in place.

That's just one example of how the cost of litigation for Right to Know Law claims would be shifted to the taxpayers. This is a particularly disappointing recommendation given the recent creation of the Right to Know Law Ombudsman, which is intended to make resolving 91-A disputes more accessible and cost effective.

**HB 307** will be listed on the regular calendar because it has a fiscal note. We are asking our members to reach out to their representatives to educate them on the potential costs associated with this change.

## Immunity Bill to Be Voted on By Committee

On **Wednesday**, the **House Judiciary Committee** will vote on **HB 647**, relative to causes of action for individual rights. We are hopeful that the committee will follow the lead of those who testified and signed in online: As of this writing, 330 [online sign-ins](#) from New Hampshire were opposed, while 31 supported the bill, and the vast majority of those who testified were opposed. Our members still have time to contact [committee members](#) and ask them to support an Inexpedient to Legislate motion.

In addition to our article in [last week's Bulletin](#), we want to make local officials aware of a few issues raised at the hearing:

- **Preemption of current immunity statutes.** There was some testimony from proponents of **HB 647** that it would *not* override current immunity statutes, including RSA chapter 507-B. This position contradicts the plain language of the bill, which states, in its first sentence: "Superseding Enactment: To the extent of any conflict, this chapter supersedes a defense or immunity in RSA 99-D, 507-B, 541-B, or other RSA section enacted prior to the effective date of this chapter." Then, on the second page, paragraph IX confirms that "a claim under this chapter is not subject to: A. Statutory immunities; B. Common law doctrines of immunity; C. Federally-recognized doctrines of qualified immunity; D. Sovereign immunity, governmental immunity, custom or policy; or E. Limitations on liability or damages." The language is very clear.
- **Standard of review.** Members of the committee raised questions about the standard of review for claims under the bill. The newly proposed RSA 507-H:5, I (p. 2, lines 22 – 29) sets a standard of review for judicial evaluation of a government employee's use of force. Proponents of the bill testified this paragraph was meant to be the standard of review for all claims under the bill, but this also contradicts the plain language, which applies to use of force cases only.
- **Training and supervision.** Questions and comments were raised to suggest that if governmental entities simply hired competent people and trained them well, there would be no need for concern of increased lawsuits and costs should **HB 647** pass. Governments are human institutions. Cities and towns provide a wide variety of services to the general public, which opens them to the constant risk of something going wrong. Governmental immunity recognizes this reality and allows governments to operate and serve the public, without the risk of costly lawsuits at every turn. These protections are even more critical for New Hampshire's local government system, which rests heavily on regular people who volunteer their time to serve the public. A fair balance between imposing civil liability on local governments, given the reasonable priority of the competing interests, already exists in the law between managing the needs of the public and the need to ensure that the injured are compensated.

We also understand that the committee is likely to consider an amendment to the bill. If it is the same amendment for which we have seen a draft, it does not address our concerns. We remain concerned about the increase in liability for municipalities, which, in turn, will cause their insurance rates to climb, rates that are ultimately paid by the municipality’s taxpayers. Additionally, the changes ushered in by this legislation would hamper government operations by tying up staff in lawsuits, preventing municipalities from performing the same level of service as they currently provide with their existing staffing and budgets.

We continue to urge our members to reach out to the [committee](#) and ask them to recommend the bill Inexpedient to Legislate.

### Hearing Schedule

Please [click here](#) to find a list of hearings next week on bills that NHMA is tracking. Please note that the linked PDF only covers hearings scheduled for the next week. For the most up-to-date information on when bills are scheduled for a hearing, please use our [live bill tracker](#).

<b>2023 NHMA UPCOMING MEMBER EVENTS</b>	
Feb. 4	2023 Town & School Moderators (Traditional Town Meeting) Workshop ( <b>VIRTUAL</b> ) – 9:00 – 1:30
Feb. 8	<b>Webinar:</b> 10 Steps to Successful Succession Planning – 12:00 – 1:00
Feb. 9	Right-to-Know Law Workshop for Law Enforcement (hybrid) 9:00 – 12:00
Mar. 1	2023 Regional Legislative Preview in Keene – 6:00 p.m.
Please visit <a href="http://www.nhmunicipal.org">www.nhmunicipal.org</a> for the most up-to-date information regarding our upcoming events. Click on the Events& Training tab to view the calendar.	
For more information, please call NHMA’s Workshop registration line: (603) 230-3350.	