

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 30, 2021
 To: Joint Standing Committee on Health & Human Services
 From: Erin Dooling, Esq., Legislative Analyst

	LD 129 (Sen. Stewart) - Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants	LD 164 (Rep. Tucker) - An Act To Establish Maximum Contaminant Levels under the State’s Drinking Water Rules for Certain Perfluoroalkyl and Polyfluoroalkyl Substances	LD 1388 (Rep. Pluecker) - An Act To Require Testing of Public Drinking Water Supplies for Toxic Perfluoroalkyl and Polyfluoroalkyl Substances and To Establish Maximum Contaminant Levels
Contaminant limit	70 parts per trillion on an interim basis; final level to be established through rulemaking by June 1, 2024 <i>Department proposed amendment to require PFOA and PFOS to be 20ppt.</i>	20 nanograms per liter	20 nanograms per liter; DHHS rulemaking to establish new limit as long as it’s not less protective than statute
Calculation of contaminant level	Individually or in combination	Individually, for each of the contaminants and as the sum concentration of 2 or more contaminants	Individually for any one contaminant or as the sum concentration of 2 or more contaminants
Contaminants included	5 (PFOA, PFOS, PFHxS, PFNA, PFHpA)	6 (PFOS, PFOA, PFHxS, PFNA, PFHpA, <i>PFDA</i>)	6 (PFOS, PFOA, PFHxS, PFNA, PFHpA, <i>PFDA</i>); DHHS rulemaking to add additional PFAS contaminants
Affected water systems	Community water systems and nontransient, noncommunity water systems that is a school or a child care facility (definitions)	Water systems regulated under the primary drinking water rules (all public water systems)	Community water systems and noncommunity water systems (definitions)
Testing	Requires initial testing by Dec. 31, 2022 and, depending on initial results, requires subsequent testing either quarterly or annually until the adoption of rules	Bill is silent	Required by Dec. 31, 2022; annual testing thereafter if no contamination found and quarterly testing thereafter if contamination found; DHHS rulemaking to adjust testing frequency if not less than certain frequency
Reporting / Public notice	Required to report monitoring results to DHHS. Public notice required if the levels exceed 70ppt.	Bill is silent	Required to report monitoring results to DHHS. Public notice required if the levels exceed 20 nanograms per liter.
Treatment / mitigation	Treatment or other remedies required to reduce levels if it exceeds 70ppt	Bill is silent	Required to implement necessary treatment measures as directed by DHHS to reduce the level below 20 nanograms per liter.
Enforcement	By DHHS in accordance with Title 22, chapter 601, subchapters 2 & 2-A	Bill is silent	By DHHS as determined in rulemaking
Fiscal impact	Not yet determined	Not yet determined	Not yet determined

Suggested Amendments from PH	<ul style="list-style-type: none"> • Reduce max. level to 20ppt or lower • Regulate 6 PFAS contaminants • American Chemistry Council: <ul style="list-style-type: none"> ○ 70ppt should apply only to PFOA and PFOS ○ State should work with water systems to find remedies instead of requiring water systems to fund treatment (Page 2, section 4(A)) ○ Remove reference to “potential risk to public health” (Page 2, section 4(B)) 	<ul style="list-style-type: none"> • Require testing, either like LD 129 or 1388 	<ul style="list-style-type: none"> • DHHS: Significant programmatic and fiscal impact to implement • MWUA: The term “action level” may cause confusion with MCLs
OPLA Drafting Issues/Questions	<ul style="list-style-type: none"> • Mandate preamble likely required 	<ul style="list-style-type: none"> • Should there be an unallocated directive for DHHS to adopt rules by a certain date? Should the Legislature direct what those rules should include? • Mandate preamble potentially required 	<ul style="list-style-type: none"> • Mandate preamble likely required

MANDATE:

I believe that each of the bills affects approximately 280 schools that are regulated as nontransient, noncommunity public water systems (meaning that they have their own water source). LDs 129 and 1388 likely constitute a mandate by requiring those schools to expand or modify its activities by testing and remediating for PFAS that would necessitate additional expenditures from local revenues. Whether LD 164 is a mandate is less clear, as the bill requires a maximum contaminant level, which would require testing to determine, but the activities that could generate costs for the schools would not be determined until rulemaking, if at all (such as the frequency of testing and remediation requirements). Mandates either need to be funded by the State at 90% of the costs or must be enacted by a vote of 2/3 in each chamber.

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- *Submitted to Office of the Attorney General:* The Committee asked whether there may be a pending class action suit your office may be involved in or aware of that may provide funds to the State that could be used to pay for remediation efforts.
- Memorandum from DHHS (4/28/2021) (*emailed*)

ADDITIONAL RELATED INFORMATION:

- [PFAS Task Force Report Jan 2020](#)
- [DEP slides for Feb. 8 PFAS briefing](#)
- [MECDC slides for Feb. 8 PFAS briefing](#)
- [Letter from Governor to Maine's Congressional Delegation \(March 25, 2021\)](#)
- ***Related legislation enacted in the 130th:*** P.L. 2021, ch. 1 (LD 220, the [supplemental budget](#)) in Part M, section M-13 and M14 (see pg. 84) transferred the remaining balance in the now-defunct Waste Motor Oil Disposal Site Remediation Program to the uncontrolled sites fund, with 50% of the balance required to be segregated for PFAS remediation. I believe that balance was ~5 million.
- ***Brief summary of related pending legislation in other committees:***
 - **ENR - LD 780** – this would allow DEP to address PFAS contamination under the State's uncontrolled sites law, which would include addressing the contamination, ordering other "responsible parties" to address the contamination and/or ordering those "responsible parties" to pay those remediation costs. It wouldn't force the state to undertake any clean up but would give it the authority to take action with respect to PFAS contamination in the same manner it can address contamination of other hazardous substances designated under CERCLA. This was voted unanimously OTP-AM. The amendment is a minor clarification that doesn't change the substance.
 - **ENR - LD 960** – this would require reporting on PFAS-containing firefighting foam used in Maine and PFAS-containing product sold in Maine. This was heard but we're waiting to work it with LDs 1503 and 1505.
 - **ENR - LD 1503** – this is a slightly different version of the portion of LD 960 that regulates PFAS-containing products. This has a hearing on 5/3.
 - **ENR - LD 1505** – this is a slightly different version of the portion of LD 960 that regulates the use of PFAS-containing firefighting foam. This has a hearing on 5/3.
 - **ENR - LD 1600** – this has not yet been referred to ENR, but would address PFAS contamination and remediation through a disposal fee for sludge, septage, etc. Assuming it is referred, we'd probably hear it on 5/7.
 - **JUD – LD 363** - defines when a cause of action (arising out of any harm or injury caused by a perfluoroalkyl or polyfluoroalkyl substance) accrues. Typical tort action. Heard 3/17, worked 4/7 (unanimous OTP-AM).
 - **AFA – LD 150** – a bond bill that would fund hazardous substance site cleanups, including those contaminated by PFAS. Heard 4/26.