

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 485

FISCAL
NOTE

By Senators Trump, Smith, Caputo, Oliverio, Jeffries,
Plymale, Rucker, Woodrum, Barrett, Queen, Woelfel,
Chapman, and Hamilton

[Introduced January 26, 2023; referred
to the Committee on Agriculture and Natural
Resources; and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §22-11C-1, §22-11C-2, and §22-11C-3, all relating to identifying and abating
 3 health risks of perfluoroalkyl and polyfluoroalkyl substances (PFAS) discharged into
 4 source waters used for public drinking water; providing legislative findings; requiring the
 5 Department of Environmental Protection to write PFAS action plans to identify and address
 6 sources of PFAS for certain public water systems; requiring facilities using certain PFAS
 7 chemicals to monitor and report their use; setting forth other duties of those facilities;
 8 requiring the Secretary of the Department of Environmental Protection to propose updates
 9 to the numeric Public Water Supply human health criteria; and requiring necessary the
 10 Department of Environmental Protection to implement permit modifications and legislative
 11 rulemaking to effectuate the provisions herein.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11C. PFAS PROTECTION ACT.

§22-11C-1. Legislative Findings.

1 (a) Legislative findings. -- (1) The Legislature recognizes the prevalence and health risks of
 2 perfluoroalkyl and polyfluoroalkyl substances (PFAS), which the U.S. Environmental Protection
 3 Agency (USEPA) has classified as contaminants. These chemicals are used in thousands of
 4 applications throughout the industrial, food, and textile industries and are an ingredient in some
 5 fire-fighting foams, food packaging, cleaning products, nonstick pots and pans, and various other
 6 household items. They are very stable and accumulate in the environment, and many are highly
 7 water soluble, easily transferring through soil to groundwater. They are known to cause cancers
 8 and other adverse health effects.

9 (2) During the 2020 regular session, the West Virginia Legislature passed Senate
 10 Concurrent Resolution 46 (SCR 46), which requested that the Department of Environmental
 11 Protection (DEP) and the Department of Health and Human Resources cooperatively propose and
 12 initiate a public source-water supply study plan to sample PFAS substances for all community

13 water systems in West Virginia, including schools and daycares that operate treatment systems
14 regulated by the West Virginia Department of Health and Human Resources.

15 (3) In compliance with SCR 46, the DEP and the Department of Health and Human
16 Resources contracted with the United States Geological Survey (USGS) to conduct the PFAS
17 study. This study was completed in 2022, with results for 279 sampled sites published in the USGS
18 Scientific Investigations Report 2022-5067.

19 (4) According to this study, PFOA and/or PFOS was detected above the USEPA drinking
20 water health advisory in 49% (137) of the sampled raw water sources (involving 130 community
21 water systems) between 2019 and 2021.

22 (5) In June 2022, the USEPA issued updated or final drinking water health advisories for
23 four PFAS: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane
24 sulfonic acid and its potassium salt (PFBS), and hexafluoropropylene oxide (HFPO) dimer acid
25 and its ammonium salt ("GenX chemicals"). The updated advisory levels for PFOA and PFOS
26 indicate that negative health effects can occur at near-zero concentrations.

27 (6) In August 2022, the USEPA proposed to designate PFOA and PFOS as hazardous
28 substances because, when released into the environment, these chemicals present substantial
29 danger to public health.

30 (7) On December 5, 2022, the USEPA issued guidance to state permitting authorities
31 entitled "Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program
32 and Monitoring Programs".

33 (8) The USEPA has committed to establishing drinking water standards under the Safe
34 Drinking Water Act for PFOA and PFOS in 2023.

35 (9) The USEPA has committed to publishing recommended human health water quality
36 criteria under the Clean Water Act for PFOA and PFOS in 2024.

37 (10) It is imperative to identify the sources of PFAS detected in the raw water sources for
38 community water systems so that these sources of pollution can be properly addressed, without

39 shifting the burden and cost of reducing PFAS to public drinking water systems and their
40 ratepayers. Identifying and addressing PFAS sources will also benefit people who rely on
41 impacted private drinking water wells.

42 (11) It is in the public interest for West Virginia to reduce toxic chemicals such as PFAS
43 chemicals in drinking water supplies to protect the health of West Virginians and strengthen the
44 state's economy.

§22-11C-2. Identification of PFAS sources where PFAS has been detected in raw water sources for public drinking water systems.

1 (a) To identify and address sources of PFAS in raw water sources of public drinking water
2 systems, DEP shall:

3 (1) Write a PFAS action plan to identify and address sources of PFAS by July 1, 2024 for
4 each public water system for which Scientific Investigations Report 2022-5067 has measured
5 PFOA, PFOS, PFBS, or GenX chemicals in its raw water source above the practical quantitation
6 limit and above USEPA's applicable drinking water human health advisory;

7 (2) For each raw water source for which Scientific Investigations Report 2022-5067 has
8 measured PFOA, PFOS, PFBS, or GenX chemicals above the method detection level, above
9 USEPA's applicable drinking water human health advisory, and below the practical quantitation
10 limit, DEP shall initiate a study to sample the finished water of the associated public water system,
11 after treatment, by December 31, 2023.

12 (3) For each public water system for which the measured PFOA, PFOS, PFBS, or GenX
13 chemicals in the finished water is above the method detection level and above USEPA's
14 applicable drinking water human health advisory, whether or not the measured value is above or
15 below the practical quantitation limit, DEP shall write a PFAS action plan to identify and address
16 sources of PFAS for the public water system's raw water source or sources by December 31,
17 2025.

18 (4) Perform outreach to ensure all relevant stakeholders in impacted areas are informed,

19 educated, and have opportunity to provide input to DEP regarding PFAS sources and impacts.
20 Stakeholder outreach will include, but is not limited to, residents, community members, business
21 owners, public water systems, publicly owned treatment works, landfills, tribal governments, and
22 local government officials and elected officials representing the impacted areas;

23 (5) Perform outreach to ensure the general public is informed about PFAS contamination
24 and the work of DEP to identify and address PFAS sources;

25 (6) Recommend any necessary changes to West Virginia statutes or administrative rules to
26 address the sources of PFAS chemicals; and

27 (7) Report annually on its activities to the Joint Legislative Oversight Commission on State
28 Water Resources.

29 (8) In developing PFAS action plans, consult with other applicable units of state
30 government, organizations representing West Virginia public drinking water systems, West
31 Virginia public drinking water systems, and other relevant entities with knowledge related to
32 identifying and addressing PFAS sources.

33 (b) The PFAS action plans, to the extent that data are available, shall identify the source or
34 sources of PFAS in the raw water source, and regulatory and non-regulatory options for
35 addressing each identified source of PFAS. The goal of these PFAS action plans is to ensure, to
36 the maximum extent possible, that the costs of addressing PFAS found in community water
37 systems are borne by the sources of the PFAS and not by the community water system or its
38 ratepayers.

**§22-11C-3. Self-reporting of PFAS manufacture and use, monitoring of PFAS discharges,
and establishment of PFAS water quality criteria.**

1 (a) No later than December 31, 2023, all facilities, including, but not limited to, chemical
2 and manufacturing facilities, which manufacture, use, or have used one or more of the following
3 PFAS chemicals in their production process since January 1, 2013, must report the use of these
4 chemicals to the DEP:

5 (1) Any PFAS chemical found in any public water system's raw water source in Scientific
6 Investigations Report 2022-5067; and

7 (2) Any additional PFAS chemicals that the secretary determines are harmful to human
8 health.

9 (b) This reporting shall include the chemical name, the Chemical Abstracts Service (CAS)
10 number, the amount used in each year from 2013 through 2023, and any additional information
11 required by the secretary to ascertain sources of PFAS chemicals in West Virginia, and shall be
12 provided in a manner and form prescribed by the secretary.

13 (c) For every facility that reports the use of one or more PFAS chemicals, and that
14 discharges to a publicly owned treatment works, the secretary shall forward the information
15 provided by the facility to the publicly owned treatment works within 30 days of receipt.

16 (d) For every facility that reports the use of one or more PFAS chemicals, at least quarterly
17 monitoring of the self-reported PFAS chemicals shall be required within six months of notification
18 by the facility, as follows:

19 (1) If the facility discharges to a surface water under a West Virginia/National Pollutant
20 Discharge Elimination System permit, the secretary shall modify the facility's West
21 Virginia/National Pollutant Discharge Elimination System permit to require monitoring.

22 (2) If the facility discharges to a publicly owned treatment works under an industrial
23 pretreatment program and the permit holder for the publicly owned treatment works has
24 pretreatment authority, the permit holder for the publicly owned treatment works shall modify the
25 pretreatment permit held by the facility that reports the use of one or more PFAS chemicals to
26 require monitoring.

27 (3) If the facility discharges to a publicly owned treatment works under an industrial
28 pretreatment program and the department has pretreatment authority, the secretary shall modify
29 the pretreatment permit held by the facility that reports the use of one or more PFAS chemicals to
30 require monitoring.

31 (e) Monitoring shall use laboratory and sampling methods approved by the USEPA as
32 documented by the USEPA guidance to state permitting authorities entitled "Addressing PFAS
33 Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs"
34 dated December 5, 2022, or by relevant subsequent USEPA guidance or regulations. If two or
35 more approved methods are available, monitoring shall use the method with the lowest detection
36 level.

37 (f) For every facility that reports the use of one or more PFAS chemicals in accordance with
38 paragraph (a) of this section, the secretary shall modify the facility's West Virginia/National
39 Pollutant Discharge Elimination System permit as directed by the USEPA guidance to state
40 permitting authorities entitled "Addressing PFAS Discharges in NPDES Permits and Through the
41 Pretreatment Program and Monitoring Programs" dated December 5, 2022 or by relevant
42 subsequent USEPA guidance or regulations.

43 (g) After the USEPA establishes final water quality criteria under the Clean Water Act for
44 any PFAS, DEP shall propose adopting such criteria by rule in the next possible legislative session
45 in accordance with §29A-3-1 et seq., §22-11-31, §22-11-32, and §22-11-33 of this code.

NOTE: The purpose of this bill is to create the PFAS Protection Act. The bill: requires the DEP to identify and address PFAS sources impacting public water systems; requires facilities that have recently used PFAS chemicals to report their use to DEP, requires permits to be updated to require monitoring of PFAS chemicals for facilities that report their use; and requires DEP to propose rules to adopt water quality criteria for certain PFAS chemicals after they are finalized by the USEPA.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.