



# First-in- the-Nation: *SB 380, New Hampshire's Drinking Water and State Assistance Fund*

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**N**ew Hampshire Senate Bill 380 (SB 380) obtained universal, bipartisan support from the legislature this year and has been signed into law. This new legislation holds forth the promise of significant state assistance for the repair, protection and expansion of the State's drinking water infrastructure. To accomplish this goal, SB 380 establishes a dedicated drinking water and groundwater trust fund. Although the new law became effective immediately upon passage, the trust fund receives 100% of its funding from the State's MtBE litigation verdict in the ExxonMobil versus State of New Hampshire case. Essentially, State assistance from SB 380 provisions is contingent upon obtaining funds from the ExxonMobil case.

A brief history of the State's MtBE litigation provides necessary background for understanding the timing and likelihood of obtaining funds to implement this historic, first in the nation legislation. In 2003, the State of New Hampshire sued twenty-two gasoline manufacturers and refiners seeking damages in connection with the statewide contamination of groundwater with the gasoline additive MtBE. In 2013, the State settled the lawsuit with all but one of the defendants, obtaining \$81,630,000 for remediation of MtBE contamination statewide. One defendant, ExxonMobil Corporation, chose to go to trial, and the jury returned a \$236,372,644 verdict against the company. ExxonMobil appealed to the New Hampshire Supreme Court. In October 2015 the New Hampshire Supreme Court ruled against the company. ExxonMobil subsequently filed a petition for writ of certiorari with the U.S. Supreme Court seeking a review of the case. New Hampshire filed a response in opposition to the petition. On

May 16, 2016, the United States Supreme Court denied ExxonMobil's appeal. The verdict monies, which are the funding source for SB 380, became available in June with the State receiving \$307,172,716.28 in settlement money, of which 90% goes into the trust and 10% goes into the State's Rainy Day Fund.

It is important to understand that there are two different types of funds associated with the MtBE litigation. The first type is the settlement funds (obtained from all defendants except ExxonMobil). Settlement funds are currently being used for MtBE related cleanup activities and all settlement fund related spending is governed by the language of the settlement agreements. After deduction of two years of expenditures, \$72.4 million in settlement funds remain available for MtBE projects. These funds are currently being used by the Department of Environmental Services MtBE Remediation Bureau for MtBE release prevention, cleanup, drinking water well sampling and infrastructure projects. To date this program has:

- Removed 185 underground storage tanks and provided 77 gasoline spill prevention systems to in-state motor vehicle recycling facilities;
- Completed a water line extension to address contaminated water supplies impacting 30 homes in Rochester;
- Approved funding for 3 water line extension engineering designs and six water line extension feasibility studies;
- Funded work on relocation of Dover's MtBE contaminated Griffin water supply well to a more protected portion of the Pudding Hill aquifer;
- Removed over 10,000 tons of contaminated soil from 13 contaminated sites; and

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- Sampled over 2,800 drinking water wells for MtBE contamination.

Work is proceeding on MtBE cleanups using the settlement funding and that work is not impacted or changed by the passage of SB 380.

The second type of funds associated with the MtBE litigation is the verdict funds that will be used to fund the provisions of SB 380. What exactly are the provisions of SB 380? In brief, the legislation:

- Uses the ExxonMobil award to establish a trust fund for drinking water and groundwater;
- Provides funding to “investigate, manage and remediate contaminated groundwater;”
- Provide funding through cost sharing grants to municipalities for the design, construction and expansion of public water systems and the expansion of wellhead protection programs;
- Provides funding to assist with the development and implementation of local and regional well head protection programs; and
- Requires mapping of classes of groundwater and groundwater contamination.

## How will SB 380 be implemented, assuming the funding source is in place this year?

First, the legislation establishes an advisory committee for the administration of the trust fund. The committee must consult with DES at least annually and provide “advice and counsel relative to future work and project priorities” (SB 380). The advisory committee members consist of four legislators, three members of State Government (Treasury, DHHS and the Governor’s designee) and four members of the public including a member to represent municipalities with public water systems. The advisory committee will provide an annual report to the legislature and will review and report back to the legislature the progress being made toward the goals of the legislation. The advisory committee will prepare a report for the legislature every five years on the progress being made relative to MtBE contamination and the efficacy of the program established by SB 380.

## What can be accomplished before the committee is in place and develops its recommendations?

The MtBE Remediation Bureau and existing settlement funds are cur-

rently available to address MtBE contamination and MtBE related drinking water problems. This program is being used to evaluate the feasibility of potential projects and to complete a variety of MtBE cleanup related projects, including a number of significant infrastructure projects. The settlement fund related cleanup efforts will be helpful for developing capacity, identification of potential projects for the advisory committee to consider and piloting a variety of approaches to execution of these types of projects. Although key decisions for the future implementation of SB 380 must wait on the appointment and meeting of the advisory committee, it is time to consider the possibilities for the future. If you would like to provide input on the development, implementation and prioritization of future SB 380 programs aimed at protecting, remediating and enhancing New Hampshire’s drinking water and groundwater resources, don’t hesitate to contact us. DES will share the input with the future advisory committee once it is established.

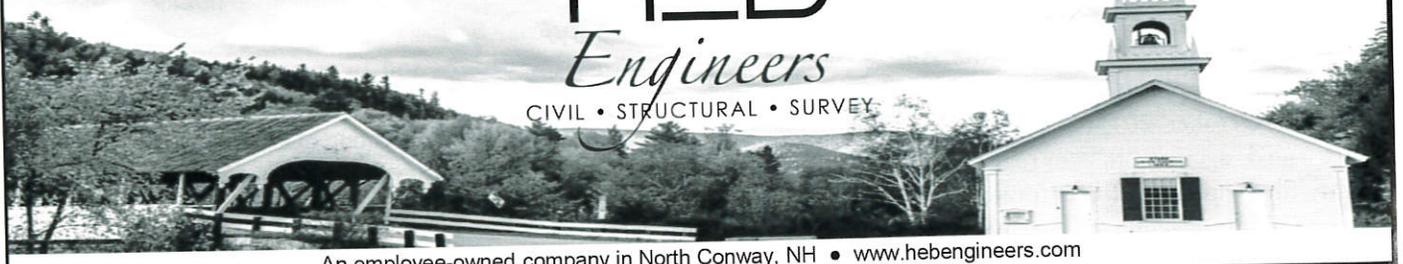
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