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N.H. House Kills Landfill Siting Bill

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Jun 29, 2023



Kelley Potenza, a Republican state representative from Stafford, is encouraging her House colleagues, in a vote on Thursday, to kill a landfill siting bill that a number of North Country residents and lawmakers have been following during the 2023 legislative session. (Contributed image)

During a House floor vote on Thursday, a landfill siting bill that was closely watched in the North Country died in a 134-238 vote.

Citing involvement by Casella Waste Systems in the crafting of the bill, a state representative had urged her New Hampshire House of Representative colleagues to kill the bill.

Senate Bill 61, which sought to require the New Hampshire Department of Environmental Services to study current siting regulations and adopt rules regarding site-specific surface water setbacks for new landfills and make a \$200,000 appropriation to DES to hire an independent consultant to complete within two years hydro-geologic studies, was one of the more contested bills in the 2023 legislative session.

While supported by DES and the waste industry, some lawmakers expressed concerns that the bill didn't do enough to ensure that a private consultant would not have a conflict of interest and have technical requirements based on groundwater movement.

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In a mass email to her House colleagues on Tuesday evening, state Rep. Kelley Potenza, R-Strafford, attached four emails, obtained through a right-to-know request, between DES Solid Waste Bureau director Mike Wimsatt and Bryan Gould, an attorney from the Cleveland Waters and Bass law firm that is enlisted by Casella.

The email subject regards an amendment to SB 61 merging Senate Bill 227, which also sought to require DES to contract for an assessment of setback requirements.

In one email, Wimsatt tells Gould that DES has reviewed the subject draft amendment and believes that prior edits were correctly incorporated.

To her House colleagues, Potenza said, "This bill was not, in fact, crafted by the Senate. This bill was crafted in January by the attorney representing Casella Waste Management Systems. Attached are the 91a email documents that prove such. I understand that legislators and bureaucrats consulting with lobbyists and 'industry' professionals is acceptable in politics, BUT we cannot allow one special interest to craft our legislation or ask them for permission to make changes to a (their) bill, giving them veto power over every word."

SB 61 should be rejected for that reason alone, and while many people would argue that the bill is better than nothing, the Legislature is not in the "better than nothing" business, and it is not an accurate argument, she said.

"SB 61 removes legislative oversight," said Potenza. "The final taxpayer-funded report will be presented to DES, and the legislature will merely get a copy. Rules will be finalized and sent over to JLCAR [the administrative rules committee] with no hearings in the legislature. These rules will favor the industry (Casella) and not the delicate balance needed between industry and environmental protection ... The company who wrote the bill (Casella) crafted it in such a way that their associates are going to be hired to write the report that will determine the permitting rules."

The bill, she said, does not require science to be a part of their qualifications, and the consultant chosen to write the report does not have to have credentials or experience in evaluating the health and safety risks associated with environmental protection and the engineering and hydro-geological aspects of landfill design and siting.

If made law, SB 61 would pause for two years the siting of new landfills as DES reviews its rules on landfill setbacks near surface waters.

Potenza, however, called the 2-year abeyance “the misleading bait and possible switch.”

“DES has repeatedly said they are already well into writing new site-specific setback permitting rules,” she said. “So, if the firm hired completes a report within a month or two, DES could have new rules submitted to JLCAR by January 2024. There is only abeyance if new rules aren’t completed ... The rules expire in July of 2024, and since DES said they are already working on them, this bill is NOT necessary.”

The current landfill setback from water is 200 feet, a distance Potenza called “ridiculous.” DES, she said, could instead choose a site-specific setback to surface water in every future permit application based on local hydro-geologic conditions.

The Senate killed HB 56, which overwhelmingly passed the House and which sought to establish a formula to determine the distance a new landfill could be sited from surface water, and handed “the Governor’s bill SB 61 to shove down our throats ...,” she said.

Potenza encouraged the entire House to non-concur with the committee of conference and kill SB 61.

“The sky won’t fall if SB 61 is killed on Thursday,” she said. “Let’s come together and make the right, ethical decision for New Hampshire citizens. SB 61 doesn’t pass the core Republican test of fiscal responsibility or the core Democratic test of precaution in the face of dangers to health and the environment.”

Locally, other lawmakers weren’t fans of the bill, among them state Rep. Matt Simon, R-Littleton.

“It doesn’t guarantee that anything will get done,” he said on Wednesday. “I was looking for a much stronger bill to come out than what’s being proposed at the moment.”

If the work that SB 61 sets out to accomplish isn’t completed, there are no consequences, which is concerning, said Simon.

“I don’t want to particularly vote for it because I don’t want to give the state cover to pretend they are doing something when they’re not,” he said. “Casella was the one who drew the line as far as what would be acceptable and what isn’t. It’s not a good look and it doesn’t seem genuine.”

On Wednesday, Casella spokesman Jeff Weld was asked why the company was involved in the drafting of the bill, what the company hopes to achieve from that involvement if the bill is signed into law, and if the company believes or not that such involvement in the wording of the bill is a conflict of interest.

“The emails in question demonstrate that Casella, like others in our industry, provided Director Wimsatt and NH DES with comments on an amendment that DES had proposed to consolidate another bill with SB 61,” Weld said.

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