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Amended Landfill Bill Appears To Preserve Local Control

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This week, the New Hampshire Senate Finance Committee voted to recommend a landfill bill that was amended and appears to preserve local control by communities.

An amendment to a bill that in its original form would have allowed the state to preempt community control by dissolving existing legal agreements between a town and a landfill company and possibly pave the way for an expansion against a community's wishes appears to now preserve local control.

House Bill 707, which seeks to establish a new solid waste site evaluation committee (SEC) for the siting of landfills, goes to a Senate floor vote on Thursday, where it's expected to pass, after the Senate Finance Committee on Tuesday voted 7-1 ought to pass with the amendment.

Some local residents, though, voiced concerns about possible last-minute floor amendments that could undermine the new bill.



In a Feb. 20 earnings call for Casella Waste Systems shareholders, new Casella CEO Ned Coletta said former CEO John Casella “has been heading up for a few years” HB 707, which, up to that time, would have given sole siting authority to the state, with a preference for expansions of existing landfills and with, as stated in the original bill, “no municipal ordinance, bylaw, rule, regulation, agreement, or other restriction” to prevent the siting of an expansion approved by the state.

Local residents expressed worries that the bill was targeted specifically at the town of Bethlehem, where, in 2012, Casella and Bethlehem entered into a settlement agreement that gave the company 10 more acres for expansion, with Casella agreeing in writing that it would close its Bethlehem landfill after it reached capacity (which it is fast nearing) and not buy new land for expansion.

In 2015, however, the company bought more than 100 landfill-adjacent acres for expansion, which it subsequently sought through two unsuccessful town votes.

In effect, HB 707 in its original form would have used the New Hampshire Legislature to override Bethlehem’s settlement agreement.

At least for now, that wording is off the table.

As rewritten, HB 707 would “establish a procedure to evaluate the local, regional, and statewide benefits and burdens of a new major solid waste facility that are not captured by existing regulatory reviews, including public health and safety, noise, odor, aesthetics, local and regional economic impacts, property value impacts, nature and source of waste, need, impacts on tourism, recreation

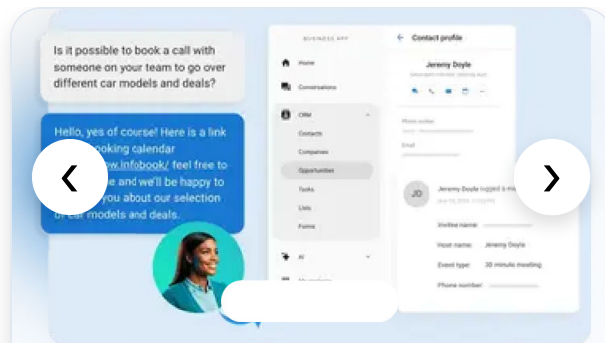
and traffic, and other similar impacts. Furthermore, the general court recognizes there is a compelling state interest in maintaining adequate, reasonably priced, and environmentally protective disposal capacity for solid waste generated in New Hampshire.”

During Tuesday’s Senate Finance Committee, state Sen. Howard Pearl, R-Loudon, a sponsor of the original HB 707, presented the 15-page amendment, which he said combines language from HB 707 and similar legislation, House Bill 1189.

The amendment is the result of a long process, several months of negotiations, and much discussion among stakeholders, he said.

“The amendment does not legislate outcomes to current legal or permitting proceedings,” said Pearl. “It creates a robust process for including local voices while still providing a regulatory pathway for the solid waste industry to pursue siting determinations.”

Without saying Casella and Bethlehem specifically, Pearl noted concerns about the original HB 707.



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“We tried to take into consideration all of the input we received,” he said. “I was hoping to come to you today with something all of the stakeholders could be on board with. We almost got there. I still realize there are potential concerns with a couple of situations that exist in the state. We couldn’t quite get agreement on having language that would definitely resolve them because we wanted to make sure the Legislature was not predetermining an outcome of what has been ongoing legal concerns for certain towns and the stakeholders that were involved. I come to you today with this language. I believe it sets in place a very good process.”

Pearl did not say specifically which stakeholders were not on board with the amendment.

State Sen. David Watters, D-Dover, said the landfill issue at the statehouse goes back six years.

“Over the many years we’ve worked on this, there’s been the issues about what relationship this body will have to local agreements,” said Watters. “Senator Pearl, if you could talk a little bit about if there are existing MOUs or legal agreements whether or not this body would be able to preempt those.”

Pearl said he will refer back to his opening statement about how the amendment does not legislate outcomes to current legal or permitting procedures.

“My opinion is, no, we are not determining outcomes,” said Pearl. “The contracts and obligations that are currently in place are currently in place. It does not override any of them. What it does do is provide a pathway and new procedure toward siting of landfills.”

“I hear what you’re saying, but it seems to me the process might take place and consider any local agreements, but at the end of the day, this body could take an action that overrides that existing agreement,” said Watters. “Am I understanding that incorrectly?”

“I don’t believe this amendment empowers them to do that,” said Pearl. “If the SEC decided to do that, certainly there are the normal litigation procedures that would be in place for someone who had an objection to the outcome.”

“If I may, I think it might be useful if you and I could arrange to have a little colloquy on the [Senate] floor because that is the public record on that point,” said Watters.

On Wednesday, members of the North Country Alliance for Balanced Change (NCABC), who oppose a new Casella landfill in Dalton (the permit application for which has been denied by the state) and support preserving local control in Bethlehem, voiced support for the amended HB 707.

The legislation, they said, “would establish a solid waste site evaluation committee to review all large landfill proposals and expansions while preserving local control and honoring existing contractual agreements.”

“We commend Governor Kelly Ayotte, the New Hampshire House, and Senator Howard Pearl for bringing stakeholders together to advance comprehensive, practical solid waste reform,” said Wayne Morrison, of Whitefield, the president of NCABC. “This compromise language strikes an important balance between responsible oversight, local authority, and the state’s long term waste management needs. We urge Senators to support the amendment and reject the sludge of expected ‘poison pill’ floor amendments that seek to undermine this carefully negotiated agreement.”

“New Hampshire is on the verge of landmark solid waste reform,” said Tom Tower, of Whitefield, the vice-president of NCABC. “Voters across the state should pay close attention to tomorrow’s Senate session and take note of which side of history their State Senator is on.”



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