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Bill To Restrict Out-Of-State Trash Sees Support At Hearing

Robert Blechl rblechl@caledonian-record.com Staff Writer

Feb 15, 2023



State Sen. Donovan Fenton, D-Keene, is sponsoring a landfill-related bill that went to a Senate committee hearing at the New Hampshire statehouse on Wednesday could have an impact on the North Country.

A Senate bill that seeks to prohibit the New Hampshire Department of Environmental Services from granting permits to any future “unlimited service area landfills” unless they meet certain requirements saw support, as well as opposition from DES, during a public hearing at the statehouse on Wednesday.

Senate Bill 159, sponsored by state Sen. Donovan Fenton, D-Keene, would require DES to deny a permit for the construction of a new landfill or an “unlimited service area landfill,” excluding the expansion of existing landfills unless the department decided that the permit application is consistent with New Hampshire’s solid waste management plan that was updated in 2022 and consistent with RSA 149-M:29, the state’s solid waste management statute.

The statute includes provisions to reduce solid waste generation and increase diversion through methods such as recycling and composting in an effort to cut back on landfilling, which is New Hampshire's least-preferred method of solid waste management in its stated hierarchy of preferred methods.

SB 159 comes after concerns voiced by residents in the North Country, some not keen about the prospect of another commercial landfill in the region, and residents from across New Hampshire about the amount of out-of-state trash imported into the state and their position that imported waste causes New Hampshire landfills to reach capacity sooner than they would otherwise and New Hampshire should take care of its own needs first and not have to build new landfills or expand existing ones to accommodate other states.

"New Hampshire is slowly becoming a dumping ground for trash from other states," Fenton said at the hearing before the Senate Energy and Natural Resources Committee.

A November report from the environmental department shows more than 45 percent of waste dumped in New Hampshire landfills is from out of state, he said.

"Massachusetts hasn't built a landfill in 30 years and it almost seems that their solid waste plan is to dump it in New Hampshire," said Fenton. "Maine passed legislation prohibiting the disposal of out-of-state waste. Vermont has also established aggressive standards for what can be disposed of in its landfills. At this rate, the way we are going, it might not be long before we see barges coming into Portsmouth with trash from South Carolina."

New Hampshire recently updated its solid waste management plan with the goal of reducing in-state waste and trash toxicity, he said.

"It has great strategies like recycling and composting, but it fails to address the problem that almost half of our waste is coming from out of state," said Fenton. "I urge the members of the committee to consider this bill and think really long and hard about what we're doing to our state and what it will look like in five to 10 years from now if we don't address this problem ... We're witnessing an environmental disaster with these dump trucks driving up from Massachusetts that get maybe 4 miles to the gallon."

State Sen. David Watters, D-Dover, a co-sponsor of SB 159, said while the state recognizes that permits must be consistent with 149-M:29 requirements and with the state's public benefit requirement, SB 159, as a subset of DES's decision-making, would achieve a better understanding

of exactly how much waste and from where is going to be land-filled.

Fenton defined an unlimited service area landfill as one that can accept trash from anywhere and a limited service area landfill, such as a municipal waste district, as one that can only accept trash from certain counties or municipalities.

State Sen. Kevin Avar, R-Nashua, cited the U.S. Constitution.

“From what I understand, it’s pretty difficult for us to refuse trash from out of state,” said Avar.

“You’re talking about the Commerce Clause?” said Fenton. “The elephant in the room, right? The way I understand it is it doesn’t violate the Commerce Clause because we already issued a limited service area landfill. Something like that in Lebanon already accepts trash from places in New Hampshire, but also from Vermont.”

Watters said he spends a lot of time on the Interstate Commerce Clause in the bills he looks at and said SB 159 would not prohibit out-of-state waste imports, but simply say DES may consider the issue of how much trash is being imported when it looks at the larger permit.

“Also, we are not getting rid of existing landfills and expansion,” said Fenton. “We’re a growing state and we have to do something with our trash. That would solve our problem. A state like Vermont has one landfill in it and they seem to be doing just fine. They dump it in our state, but that’s a different story.”

DES opposes the bill and has three areas of concern, said Mike Wimsatt, director of DES’s Waste Management Division.

The first concern is that it seeks to amend a section of the statute that has since been repealed and the second is that existing law already directs DES to consider as part of its public benefit determination whether a proposed facility will assist in achieving the goals of New Hampshire’s solid waste management plan, he said.

“If this bill were to pass, it would provide new language, similar but different, to do essentially the same thing and it’s never good when a direction for the agency is described in two different ways in the same law,” said Wimsatt. “It puts ambiguity into the issue and that’s not helpful for anyone.”

The third concern is that it is DES's understanding that the intent of the bill is to ensure that no proposed facility is permitted that would be able to accept waste from an unlimited service area, he said.

Watters said he has the bill in front of him and no such intent is included in the language.

"Let's forget the bill for a moment," said Watters. "If you have a proposal for a new landfill, under the existing public good consideration under the 10-year plan would you be able to negotiate a permit that does in fact limit the amount that might come into a landfill from out of state?"

"I politely decline to answer that," said Wimsatt. "I think this is an issue that is under a constant state of appeal and litigation and I don't think it's helpful for me as a representative of an agency to opine on that."

"But you see why I would ask," said Watters. "If we don't know the answer to that question, that's why this kind of legislation comes in, which frankly other states have done in one form or another as they're closing their landfills."

John Tuthill, of Acworth, a solid waste activist and former state representative, asked the committee to support SB 159 in one form or another.

Up until the 1970s, municipal landfills were across New Hampshire, but pollution issues and the new Clean Water Act prompted the New Hampshire Legislature to take action, which resulted in district-run landfills or contracts with the private sector, he said.

"In theory, I think this was an admirable goal, but we now know more than 40 years later it has not been particularly effective," said Tuthill. "Privatization has really dominated the waste management system in our state."

The Interstate Commerce Clause (ICC) has a lot of history but also a lot of mythology, and the New Hampshire Attorney General's office in 2022 issued a memo to the state's solid waste working group that pointed out ways to work with the ICC while regulating the flow of waste across state borders, said Tuthill.

"Like advanced recycling, you don't have to throw the doors wide open to anything and everything," he said. "There is an interest on the part of the state for the protection of public health and the environment. Issuing a permit that defines a service area I think makes a lot of sense."

Currently, New Hampshire regulations are not as robust as they could be and DES has limited resources to fully implement those regulations, said Tuthill.

“It would be worth exploring the intent of this bill,” he said. “I think you’re going to have to look at what other states around us have done, which have left us quite vulnerable as the state with perhaps the weakest regulations in the region.”

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