

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 379-FN, establishing the solid waste management fund and establishing a solid waste disposal surcharge.

Hearing Date: February 2, 2022

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill:

- I. Establishes the solid waste reduction management fund.
 - II. Establishes a solid waste disposal surcharge.
 - III. Repeals the existing surcharge on out-of-state waste.
-

Sponsors:

Sen. Watters	Sen. Perkins Kwoka	Sen. Whitley
Sen. Hennessey	Sen. D'Allesandro	Sen. Sherman
Sen. Kahn	Sen. Prentiss	Sen. Avar
Rep. Ebel	Rep. Suzanne Smith	Rep. Grassie

Who supports the bill: 61 people registered support for the bill. Full list available upon request.

Who opposes the bill: Kirsten Koch (BIA), Steven Poggi (Waste Management), Curtis Howland

Who is neutral on the bill: Mike Wimsatt and Mike Nork (NHDES), Reagan Bissonnette (Northeast Resource Recovery Assoc)

Summary of testimony presented:

Sen. Watters

- Brought forward amendment 0427s.
- It has been clear for several years that we have a solid waste capacity crisis.
- DES projects our landfills will run out of space in the near future. While some expansion has been approved, we still have a looming problem. There was a study committee two years ago that made recommendations for what to do about this solid waste crisis and the price escalation it is causing for our communities and taxpayers.

- The legislature took an important step last year to revive the ten-year plan for solid waste reduction. NHDES is working on that.
- New problems have arisen in the last few years. There is turmoil in the recycling market because of activities taken by China and other countries to refuse to receive American waste. There are difficulties in sustaining a market for municipalities, so many municipalities have been throwing recyclable materials into the waste stream. That also came along because of the escalation in tipping fees.
- Last year there were issues surrounding the landfill proposed for Dalton and Forest Lake. That brought to our attention the amount of waste coming in from out-of-state. Roughly one million tons, or half, of our solid waste is from out-of-state.
- He worked on a version of this bill two years ago. They had worked out a way to get around the interstate commerce clause prohibition on fees being applied only to out-of-state waste by the methodology in this bill where they would charge a tipping fee and rebate it back to communities in various ways. That bill didn't make it through because of the Covid-19 pandemic.
- He brought the bill back this year, but over last week it has become clear that the fee issue, though rebated to the NH folks, would be problematic for getting the support of the governor and others.
- The amendment keeps the part of the bill that set up the solid waste management fund but does not fund it through tipping fees. The purpose of the fund is to give matching grants to NH municipalities, private entities and businesses for projects that contribute to the reduction of hazardous waste materials.
- The program would provide DES with a way to get grants to communities. He pointed out the reference to the EPA on page 2, line 3. There is funding approved in the federal infrastructure bill for major grants for recycling and solid waste. If we have this in statute, he believes it will give NH a leg up in competing for these funds.
- We might be able to fund a recycling facility in the state, which we don't currently have. This results in transportation costs for communities who have to send recycling materials to Massachusetts and elsewhere.
- There is a \$500,000 appropriation in the amendment to get this started.
- This will help us deal with the solid waste crisis we face now. We are running out of capacity. We need a head start. This is money well spent and it sends a strong message to folks in the north country that we are trying to do something about this problem.

Sen. Hennessey asked what the \$500,000 will do.

Sen. Watters said DES is underfunded and this will help with that but also the money will go out to communities and others and perhaps help them get a compactor, or set up a recycling program, set up an MRF, or provide a dumpster, etc. Municipalities can coordinate grants to get what they need.

Sen. Hennessey asked if the funding in lines 3 and 4 is available, would the \$500,000 be necessary.

Sen. Watters said DES can speak to when that funding might be available and what the criteria might be. It will be some time before those funds are available. We need to do something now. We need capacity. Everything fell apart about 15 years ago, and it has been hard to build back up. This will provide seed money and stability moving forward.

Sen. D'Allesandro said the amendment is a flip from the bill. The \$500,000 vs. the \$2 million that would have been generated from the fee makes an enormous difference. He asked if the \$500,000 is enough to do what he wants.

Sen. Watters said yes. We needed to have something at that level. With regard to the amount that would have been generated from the tipping fee, a fair amount would have been rebated back. That

was a gross figure; the net figure would have been less. He thinks it is a necessary investment. The \$500,000 is enough to begin the program and make some important grants right now that will help our communities.

Sen. D'Allesandro pointed to line 5 on page 2 and asked if the word "may" should be "shall."

Sen. Watters agreed.

Sen. Daniels asked if all of the cosponsors are in agreement with the amendment.

Sen. Watters stated that the need to amend the bill just came up last week and he just got the amendment at 8:30 this morning and has not had chance to share it yet.

Sen. Giuda asked what this legislation establishes that does not currently exist.

Sen. Watters said it establishes the fund, its purpose, and it addresses the crisis we are facing in the findings language. It is also important to have the piece in the legislation mentioning the EPA because having it in statute could provide a leg up on that grant funding.

Sen. Giuda asked who applies for the grants, the state or municipalities.

Sen. Watters was not sure that the rules have been developed yet but thought it was the states.

There is a need for administration and expertise that the state can provide that municipalities might not be able to. It makes sense for DES to play a role here. We need a state effort on this

Sen. Hennessey said in the initial bill, there would be potential where municipalities wouldn't have to match the funds that they receive to make recycling improvements. However, in the amendment it calls for a matching grant fund. She asked if that would be 50/50

Sen. Watters thought it would be developed in rules. The reason for the opt out in the original bill was because some municipalities, like Nashua, had their own landfills, and if we would be giving money back to them, why would they have to match it.

Natch Greyes

- The NHMA supports the bill and the amendment.
- They want a solution because landfills are running out of capacity, and we need to pursue various options.
- Even with the amendment, any funding that would have to come from municipalities would be rebated through the grant programs. This would provide a solution without costing municipalities.

Sen. Giuda noted that this eliminates a state surcharge and Senator Watters had mentioned the commerce clause. He asked him to expand on that.

Sen. Watters said NH had put such a fee in statute years ago, however the interstate commerce clause wouldn't allow it because the fee was only applied to out-of-state waste, so it was disadvantaging interstate commerce. The way SB379 was set up was to charge everyone but rebate it back to municipalities through grants, and that passed legal muster.

Sen. Giuda asked if there was a court decision rendered.

Sen. Watters said yes.

Sen. Giuda said he would understand it if the situation were state to state but this involves private entities bringing their trash to NH.

Sen. Watters said there was a Supreme Court ruling on that.

Sen. Daniels asked Mr. Greyes what gives him the impression the state will have money to refund to the municipalities.

Mr. Greyes responded that's his understanding of how the program will work. He said he would defer to DES for an explanation of how the program will be set up.

Sen. Daniels asked Mr. Greyes if he was aware that legislative requests in the Senate for appropriations off the budget exceed the amount of surplus we have.

Mr. Greyes stated he was not aware of that.

Kirsten Koch – BIA

- They are opposed to the original bill.
- They are concerned about the surcharge as they see it as a tax on solid waste that would add to the cost of managing solid waste for businesses.
- They are also concerned that this bill targets commercial industry as a source of funding specifically for this fund and results in cost shifting to the business community.
- She said they are pleased with the amendment eliminating the tax and support that change in the amendment.

Sen. Hennessey asked if she thought the amended version would reduce solid waste costs for businesses in NH because it would create new recycling opportunities and lower the overall tonnage going to landfills.

Ms. Koch said she wasn't sure it would reduce costs for businesses because as originally written, the bill requires businesses to take efforts such as hiring additional consultants to look at their solid waste.

Marc Morgan – City of Lebanon - Solid Waste Manager

- The city owns and operates a landfill in West Lebanon for its citizens, businesses, and 21 other communities located in the upper valley. It serves the disposal, recycling, and compost needs of 90,000 people.
- The City of Lebanon supports SB379.
- Part of the city's agreement with its partners is that towns are obligated to reduce waste. Many are small communities that don't have the capacity to do so. There are limited opportunities available to them to address waste reduction, recycling and composting.
- Solid waste can be the largest budget expense in small communities.
- This bill, even as amended, will provide funding opportunities to allow municipalities to expand or create recycling and waste reduction programs.
- NH is facing a disposal deficit with landfill capacity dwindling throughout the northeast.
- A plan for future disposal needs is critical and has been absent for more than a decade.
- This bill will provide resources to DES to develop a solid waste master plan.
- This will allow DES to increase technical assistance staff.
- The fund will allow municipalities to get more training and understand what recycling opportunities might exist.
- This will help fund solid waste planning.

Sen Daniels asked if Lebanon has a recycling committee.

Mr. Morgan said no. They have a number of groups such as Lebanon Energy Advisory, which addresses solid waste as well as other issues.

Sen. Daniels asked what those groups propose for reducing solid waste.

Mr. Morgan said Lebanon developed a food scrap composting drop off program. They developed an app to educate the public on what is and is not recyclable. Through education and program expansion they are addressing these issues.

Sen. D'Allesandro asked if there is a market for their recycling products.

Mr. Morgan said they have not had a problem. They process on site. They have agreements with buyers directly.

Sen. D'Allesandro asked what he perceives is the lifespan of his facility.

Mr. Morgan said currently the city's landfill is permitted for another 9-10 years; however they are working on a 60-70 year disposal plan for the site. He said we are talking a lot about landfills and if you look back 10-20 years with regard to how we managed waste, although we were using landfills,

equipment and technology used at that time was different. He said that 10-20 years from now could be different from today with regard to what is going to be available in the waste industry for managing waste. There are waste conversion technologies. NH is focused on making sure landfills last without looking to the future. Bills like this help provide opportunity for further discussion and research.

Sen. Giuda said it seems that a large part of the problem is the collapse of the recycling industry in that there is no market for it. He asked how this bill would help that.

Mr. Morgan did not know if this bill would address global recycling markets, however, he said there is an enormous amount of activity going on domestically throughout the United States through the government, tax incentives, and a variety of programs to help businesses expand their offerings to municipalities for recycling purposes. Part of the issue with the collapse is that the Covid-19 pandemic impacted transportation networks moving material overseas. This program would allow municipalities to take advantage of new emerging domestic markets and prepare materials for market. In Lebanon their material is all managed domestically. They have good relationships with buyers.

Sen. Rosenwald asked if the fiscal note on the original bill would be updated to reflect the changes in the amendment.

Steven Poggi – Waste Management of NH, Director of disposal operations for New England

- In NH, they operate the Turnkey recycling facility and landfill. They have over 200 solid waste and recycling collection trucks.
- They have a material recovery facility (MRF).
- They manage 40% of the solid waste generated in NH.
- He commended Sen. Watters and Rep. Ebel for the work they have done focusing on solid waste issues. They are participating in the working group. It will help NH increase recycling and waste diversion.
- They would like to see the recommendations of the working group before any significant legislation is adopted.
- His comments are based on the original bill.
- Encouraged by the revisions offered this morning.
- Has concerns with the original bill. The way they interpret it is that everyone pays into it and municipalities can get their funding back and apply for grants under the program, and businesses can also apply for those grants. The concern they have is that half of their customers are commercial industrial generators. For a small business, \$1.50 per ton is not a lot of money. For larger businesses, they don't have the ability to recoup those funds under the original bill. He asked that they be added.
- The other issue he raised is getting a bill like this on the books. There is nothing to limit future legislation to increase that fee to where it would be significant.

Rep. Karen Ebel

- In support.
- She has a summary of the commerce clause law and can provide it to the committee.
- She is in favor of the original bill and the amendment.
- NH is in a solid waste crisis. Additional funding is needed.
- Other states in our region are extremely active in this regard, but NH has done very little planning.

- Because China stopped taking our waste in 2019 and because of the problems that created for NH municipalities, she introduced a bill to create a study committee on solid waste management.
- Over an 8-week period they had 14 hearings with 50 stakeholders participating.
- All wished they had more guidance from the state on what to do with solid waste, particularly municipalities.
- She provided a link in her written testimony to recommendations of that study committee.
- They had to redefine our solid waste goal, which had been set to be achieved by the year 2000 and hadn't been updated.
- One goal was to update compost regulations. Food waste represents 20-25% of weight going into landfills. A bill has been passed to ensure that gets done.
- They also want to recast the long-range solid waste plan and that is in process.
- They created a solid waste working group that she chairs. They have looked at the effect of that commerce clause.
- Concerned that NH has done almost nothing with regard to a long-range solid waste plan while everyone around us is planning.
- The DES solid waste bureau hasn't had enough money.
- One of things they did as part of the recycling committee was discover that a majority of states have disposal surcharges on tipping fees. This is not unique. Many functions in the state are supported by fees. She realizes the amendment eliminates that but hopes the committee will keep in mind that NH is surrounded by states who use surcharges to fund their activities.
- Their reduction goals are to achieve 25% by 2030 and 45% by 2050 for solid waste reduction.
- She feels a responsibility to the people of NH to do something about the solid waste problem.
- The DES solid waste bureau is overwhelmed. The staff member is supposed to do a long-range plan, testify on all bills on solid waste, sit at hearings, work on composting regulations, prepare the 2001 biennial solid waste report and many other things. They are at a crisis level and need more help. The bureau needs the money now.

Sen. Hennessey said the way amendment is rewritten, the \$500,000 appropriated to the department for matching grants. She asked if that money actually helps them with their duties or is it just for matching grants.

Rep. Ebel said that was her first thought when saw the amendment. She said there are a lot of other bills that want the department to do a lot. We cannot keep putting more burdens on DES without giving them what they need to fulfill their duties. On page 2, line 1, it says the fund may be used to hire consultants, contractors, or to pay other necessary expenses associated with this chapter.

Sen. Giuda asked why DES didn't go through the normal budget process if they needed more staff.

Rep. Ebel believed they did. They were authorized to hire another person for the solid waste bureau. It's in process, so there will be two people instead of one.

Sen. Daniels asked why she believes staff at DES making plans is more effective at reducing solid waste than local volunteers educating residents on composting or making recommendations on separating things.

Rep. Ebel said it is a collaborative effort. He is correct that local groups are very effective in getting word out. One issue is to hand local groups what they need to educate people. A paper plan will become a living plan if you provide educational tools to municipalities. Municipalities were begging for assistance from the state during their working group meetings. In Massachusetts they have 8 facilitators that work directly with municipalities.

Rep. Ebel will provide a summary of the law on the commerce clause that includes summaries of court cases. The AG summarizes the court cases. She went on to say that NH relies quite a bit on private landfills, and they are subject to the restrictions of the commerce clause. The publicly owned landfills are not subject to the same restrictions. Surrounding states tipping fees are over \$100. NH is around \$80. Towns in neighboring states who want to save money look over the border at NH as an opportunity to save money.

Mike Wimsatt DES Director of Waste Management Division.

- He will speak to the amendment. The agency supports the amendment.
- With regard to the appropriation, they do not take a position, but they support the policy matters.
- Creates a new grant program where none currently exists in NH.
- His colleagues in neighboring states have robust grant programs to incentivize recycling and waste reduction and technologies.
- We are really behind in NH when it comes to incentives.
- Single sort recycling materials have to go to a MRF out-of-state to get processed because we don't have that kind of sorting facility in NH.
- With regard to the federal dollars that may be coming in, it is very likely some significant funds will be provided for grants, however it is not clear yet what it will look like. A portion will likely be a competitive grant program for states, counties, and municipalities to help advance recycling. A portion will also likely be a state territorial assistance grant (STAG) and there is a good chance NH will have access to that funding.
- The expectation for timing is that it likely will be available in the first quarter of the federal fiscal year but we might not see money until 2023. The DES will pursue it vigorously.
- With regard to the "shall" vs. "may" language on line 5 of page 2, the reason it is a "may" is because they don't know exactly what that grant program will look like from the EPA. It could be applicable to different things. It might not be appropriate to put all the STAG funds we would receive into this fund. There may be some for purposes not related to this fund. "Shall" would be too confining and they might not be able to comply with federal grant requirements.
- With regard to the surcharge discussion, when it was first passed, it was specifically targeted at out-of-state waste. It was collected for a few months and then the DES was advised to stop collecting the fee by the DOJ because it was in violation of the interstate commerce clause. The provision has remained on the books for many years, but it has not been implemented. He does not believe there was a specific court case in NH, but the AG was advised by ample case law.

Sen. Giuda asked what the date of that opinion was.

Mr. Wimsatt said the opinion that Rep. Ebel referred to was very recent.

Mr. Wimsatt

- As far as the budget process, he has been at this for a while and has struggled to keep this bureau resourced. There was a dismantling of positions over a number of years.
- This administration has been supportive of their solid waste efforts.
- In the last budget they advanced a number of positions, but they haven't filled those positions yet. They have five vacancies and are working to get them filled.

Sen. Giuda asked if those positions will be sufficient

Mr. Wimsatt said it will put them in a place to do much of the work that they have been unable to fulfill. He is optimistic.

Sen. Giuda asked if the DES would be willing to put language on line 5 page 2 of the amendment stating the funding can only be used for the purposes of this chapter.

Mr. Wimsatt said any monies put into this fund will be used for the purpose of the chapter.

Sen. Daniels asked if the solid waste management fund is structured solely for matching or if grants can be given out of it.

Mr. Wimsatt said the matching language is retained in the amendment. If the legislature wants funds available without a match, that could be changed. It is not clear what the match is.

Sen. Giuda asked if the department has a definition of a revolving special fund. He asked if there is an implication that communities will pay back any of this.

Mr. Wimsatt said that is a broad term used for a fund that will continue to exist beyond the biennium. It doesn't mean that funds are going to be repaid. A grant is not expected to be repaid.

Sen. D'Allesandro asked how many vacancies there are in the entire department.

Mr. Wimsatt did not know for certain but estimated it to be 50 or 60.

Sen. D'Allesandro asked if it is difficult to fill the allotted positions.

Mr. Wimsatt said yes. Engineering positions in the permitting section are difficult to fill because you need a professional license.

sc

Date Hearing Report completed: February 7, 2022