

# Senate Energy and Natural Resources Committee

*Daley Frenette 271-3042*

**SB 367**, relative to the regulatory status of advanced recycling and manufacturing facilities.

**Hearing Date:** February 8, 2022

**Members of the Committee Present:** Senators Avard, Giuda, Gray, Watters and Perkins Kwoka

**Members of the Committee Absent :** None

**Bill Analysis:** This bill regulates advanced recycling and manufacturing facilities.

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**Sponsors:**

Sen. Avard

Sen. Watters

Sen. Hennessey

Sen. Bradley

Sen. Soucy

Sen. French

Sen. Cavanaugh

Rep. Pearl

Rep. Potucek

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**Who supports the bill:** Kirsten Koch, BIA, Craig Cookson, American Chemistry Council, Representative John Potucek, Rockingham-District 6, Mike Wimsatt, NHDES, Senator Bradley, Senate District 3, Senator French, Senate District 7, Susan Chase, Bruce Berk, Janet Moore, Judith Saum.

**Who opposes the bill:** Patricia Martin, Lynn Merlone, Jane Hershey, Anne Thomas.

**Who is neutral on the bill:** None.

**Summary of testimony presented:**

Senator Avard, Senate District 12

- The goal of this bill is to incentivize private investment to come to New Hampshire and develop another method of keeping plastic out of landfills and advanced recycling facilities. There is an ongoing issue with New Hampshire landfills. Allowing plastics that cannot be recycled into landfills is not an option.
- The bill also aims to establish a clear regulatory path for these types of recycling facilities to be treated as manufacturing facilities and not as solid waste facilities. 15 other states have passed similar regulations to meet with the intent to attract private investments to their states that would bring good jobs in stem fields and construction as well as other ways to recycle other hard handled

plastics. There are no other such facilities in the northeast, so we want this type of manufacturing in New Hampshire.

- Amendment 0195s that was written in conjunction with DES and the American Chemistry Council. It deletes the definition of refuse as requested by DES. It amends the language on page 4 regarding the authority of the department. Senator Avard is unsure if the amendment has completely satisfied the department, however he believes the amendment is sufficient.
- Senator Avard stated that his goal is to pass the enabling language to help New Hampshire and it can help our solid waste needs by diverting plastics from our landfills. It will also help recycling and help our economy by bringing good jobs in manufacturing and STEM fields

Kirsten Koch, BIA

- BIA serves as a statewide chamber of commerce, and they represent over 400 members. BIA supports SB 367. The bill furthers environmental sustainability and brings economic benefits to New Hampshire.
- The bill improves New Hampshire's solid waste management goals by preventing traditionally hard-to-recycle plastics from going into New Hampshire landfills. Instead, the bill gives advanced recycling facilities the opportunity to manufacture these products into a variety of reusable materials.
- The bill encourages advanced recycling facilities to come to New Hampshire for business ultimately creating more jobs for the local economy.
- The bill provides regulatory certainty for advanced recycling facilities. The main function of these facilities is to manufacture new materials, not dispose of waste. They need to be appropriated regularly.
- BIA believes that New Hampshire should welcome sustainable business and regulate advanced recycling facilities as manufactures.
- Senator Watters asked if there would be a way for the industry to make a commitment to source materials from New Hampshire. BIA would not be opposed to this.
- Senator Watters asked if the industry would be willing to help craft a purpose statement that specifically defines addressing the solid waste crises in New Hampshire.
- Senator Gray stated that many of New Hampshire's landfills already take in refuse from other states. He asked if it would be more appropriate to address this issue on a regional basis. Ms. Koch believes that this bill would contribute to reducing waste in all of New England. This type of regulation has been implemented in 15 other states but is not thoroughly present throughout New England. Overall, it will reduce waste that goes into landfills in New England as a whole.
- Senator Giuda asked if New Hampshire can mandate that other states segregate these types of plastics before they come to New Hampshire as a

condition of using New Hampshire landfills. Ms. Koch believes that question would be better answered by DES.

- Senator Watters asked for clarification regarding if these plastics can only be used to manufacture new products and not also be used as a type of fuel. Ms. Koch did not know the specifics of the use of the products; however, they can be turned into materials that can be used for other manufacturing needs.

Mike Wimsatt, DES

- DES is in support of SB 367. There are a few issues with the bill that they would like addressed.
- Lines 9-12 of the amendment reads “The department may make inspections of advanced recycling facilities to ensure compliance that post use polymers are used as raw materials for advanced recycling and are not refuse or solid waste. Failure to comply may result in classification as processing and treatment under the universal facility standards in Env-Sw 1000”. This language was in response to concerns raised by DES but is unlikely to happen. If a facility is doing well, there will be no reason to regulate them as a solid waste facility.
- Because the language of the bill involves sweeping exemptions for what can be considered solid waste, DES may struggle to find the authority to go in and inspect certain cases. DES recommends that the language be changed to more clearly define the authority of DES to go in and inspect cases that may not be considered solid waste.
- Mr. Wimsatt would like to ensure that DES is able to be responsive to citizens in the future in the unlikely event of a challenging scenario where their authority is called into question due to the bill’s language.
- Senator Watters asked if the authority DES has currently to regulate facilities as manufacturing facilities would ensure that the department can address siting and environmental concerns. Mr. Wimsatt said that Env-Sw 1000 are a set of broad rules that apply to a facility. Mr. Wimsatt also clarified that advanced recycling facilities have additional standards under the solid waste rules that apply to it. If SB 367 passes, those additional standards are eliminated. Senator Watters asked if DES would be willing to help change the language of the bill so that the purpose is to try to source materials for the facilities in-state instead of out-of-state. Mr. Wimsatt believes that this would be appropriate and desirable. He believes that advanced recycling facilities would be good for the state and that the facilities would be able to compete in the market. He would like to make sure that there is no language in the bill that would disincentivize people from opening these facilities in NH.
- Senator Giuda asked if the plastics that the facilities would use are segregatable for the purposes of being turned into something useful. Mr. Wimsatt confirmed that they are segregatable and explained that there are two ways this happens. Firstly, people may use a towns transfer station. The second way is the

recyclables are collected and sent to a materials recovery facility in Massachusetts where the recyclables are sorted and baled.

- Senator Giuda stated that New Hampshire a great deal of material sent to New Hampshire landfills comes from out of state. Senator Giuda asked if we can require other states to segregate the plastics out of the waste streams that eventually come to New Hampshire landfills. Mr. Wimsatt stated that no one is required by law to separate recyclables. However, other states have passed laws that require the separation of recyclables so it could also be done in New Hampshire.
- Senator Giuda acknowledged lines 9-12 of the amendment and asked if facilities would be given warnings prior to being reclassified as a process and treatment facility if they fail to comply. Mr. Wimsatt believes that the language is troublesome. The language that DES recommended was “the department is authorized to enter and inspect any advanced recycling facility to determine whether the storage of post-use polymers or recovered feedstocks poses a substantial threat to human health or the environment. The department may utilize its enforcement authorities under 149 M15 to address any such identified threats”. This will give DES the authority to use its existing authority under the solid waste statute to address problems and does not thrust the facility back into the solid waste realm. Senator Avard asked if DES uses this same standard with other manufacturing organization. Mr. Wimsatt clarified that this would be unique, and he suggested this because if this was not a facility that was taking recycled plastics, it would be taking raw polymers from the chemical manufacturing industry. There would be no food or beverage residues and therefore no reasons for DES to call it solid waste.
- Senator Avard asked how this would apply to other facilities that generate this waste. Mr. Wimsatt clarified that every facility generates solid waste. The difference is that this bill is addressing a facility that is receiving what is currently considered solid waste. The bills’ specific purpose is to exempt the facilities by not considering the material as solid waste.
- Senator Avard asked if some of the waste that the facilities would handle is waste that they would want to recycle. Mr. Wimsatt said this is unlikely because the materials have already been baled and are ready for the market. There is no place to put it.
- Senator Avard asked if the cost of sending the plastics out of state is an incentive for local municipalities to simply put it in a landfill instead. Mr. Wimsatt clarified that commodities prices are strong again and it is unlikely that that will happen. There is no doubt that some recyclables are making it to landfills anyway.
- Senator Avard stated that there are no other facilities like this in the region. He asked what Massachusetts does with all the plastics they receive. Mr. Wimsatt clarified that the recyclables to manufacturing facilities to be turned into products.

- Senator Avard stated that the language of the bill has been adopted by 15 other states. He asked if any of these companies have gone bankrupt. Mr. Wimsatt stated that he does not know. He does not believe that the facilities are at risk of failing.
- Senator Avard stated that this bill would open the door to developing these manufacturing businesses in NH. Mr. Wimsatt clarified that DES is supportive of the bill.
- Senator Gray believes that the distance from the treatment facilities is not cost effective. Mr. Wimsatt clarified that being closer to the supply is generally more helpful but believes that the facilities would be able to operate anywhere in the state.
- Senator Watters asked why DES's language was not used. Senator Avard clarified that it was his choice. He would like to begin the process. Senator Giuda disagreed with Senator Avard on the issue of the language. He believes that the current language does not give DES enough flexibility and it may disincentivize companies from locating in New Hampshire. Senator Avard believes that it is appropriate because of the difference of treatment between facilities that generate the solid waste and those that receive it.
- Senator Watters asked if it would make more sense based on New Hampshire's past experiences to allow DES to inspect and preemptively address issues. DES wants to be able to address very specific issues. Under current law, the materials are considered solid waste. If the bill passes with this language, they will not have the authority anymore because the material will no longer be considered solid waste.
- Senator Gray suggested blending the language of the bill with the language DES prefers.

Craig Cookson, American Chemistry Council

- ACC supports the bill. ACC strongly encourages the committee to ensure New Hampshire's interest by ensuring that greater amounts of post-use packaging materials, especially plastics, are recycled and converted into feedstocks for new plastics and other useful products.
- Advanced recycling helps to decrease plastic waste and support continued progress towards zero waste and sustainability goals for our communities.
- Residents of New Hampshire will have the opportunity to recycle greater amounts and types of plastics packaging. Advanced recycling takes hard-to-recycle plastics and refers to several different technologies that convert used plastics into their original building blocks.
- New Hampshire and the rest of the United States do a fairly good job of mechanically recycling soda bottles, water bottles, detergent bottles, etc., however it is challenging to mechanically recycle complexly engineered packaging such as pouches and tubes. These plastics greatly reduce food waste

and keep food fresh. This is important because food is a huge contributor to greenhouse gas emissions.

- Thanks to advanced recycling, these plastics can be recycled and converted into a versatile mix of products.
- This is a feedstock of raw material. One misconception is that they only produce fuel, but they can be used in a variety of recognizable products.
- Wendy's fast-food restaurant has recently begun using plastics cups made up of 20 percent recycled plastics thanks to advanced recycling. Herbal Essence, the beauty product company has also begun producing shampoo and conditioner bottles made of 50 percent certified recycled plastic.
- As manufacturers, the facilities are subject to a litany of federal, state, and local environmental regulations.
- It would be beneficial for New Hampshire to develop this industry and 15 other states have adopted similar legislation.
- Senator Watters asked Mr. Cookson if he would be opposed if they changed the language to give DES more flexibility. Mr. Cookson would prefer tighter language that is more prescriptive as opposed to granting the department almost carte blanche authority.
- Senator Watters thinks that it would be best for ACC to work with DES to create better language. ACC will be happy to help with any language suggestions.
- Senator Giuda asked if Mr. Cookson would be comfortable with Senator Gray's suggestion on blending the language. Mr. Cookson would like to look at the language first.

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Date Hearing Report completed: February 11, 2022