

Senate Energy and Natural Resources Committee

Daley Frenette 271-3042

SB 380-FN, relative to solid waste rules and landfill containment tests.

Hearing Date: February 15, 2022

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

Members of the Committee Absent : Senator Giuda

Bill Analysis: This bill:

I. Creates a committee to study the prohibition of any landfill in the state from accepting waste from municipalities with no solid waste plan.

II. Creates a committee to study the development of a solid waste disposal site evaluation committee.

III. Requires statutes and rules in effect at the time an application for a solid waste permit is complete to apply to the application.

IV. Requires the department of environmental services to consider the net public benefit when reviewing an application for a solid waste permit.

Sponsors:

Sen. Hennessey

Sen. Prentiss

Sen. Birdsell

Rep. Egan

Rep. Tucker

Sen. Watters

Sen. Sherman

Sen. Gannon

Rep. Suzanne Smith

Rep. Merner

Sen. Bradley

Sen. Ricciardi

Sen. Whitley

Rep. Massimilla

Who supports the bill: Senator Hennessey, Senate District 1, Tom Tower, Wayne Morrison, Eliot Wessler, Senator Ricciardi, Senate District 9, Matt Leahy, Forest Society, John Tuthill, and 380 others.

Who opposes the bill: Bryan Gould, Garret Trierweiler, Waste Management, Adam Sandahl, CMA Engineers, Kirsten Koch, BIA, Henry Veilleux, Resource Waste Management.

Who is neutral on the bill: None.

Summary of testimony presented:

Senator Hennessey, Senate District 1

- Senator Hennessey introduced an amendment for the bill that replaces section three of the original bill. As bill as amended creates a legislative committee to study prohibiting any landfill in the state from accepting waste from a municipality that does not have a solid waste management plan. The Senate Energy and Natural Resources Committee has heard great deal of testimony regarding solid waste and the New Hampshire's current capacity. Solid waste management plans can help reduce solid waste and prolong the life of our current landfills and any future landfills. There are many open questions regarding costs to our municipalities and to the state regarding these plans, the committee will study these questions.
- The bill also creates another committee to study the creation of a solid waste disposal site evaluation committee. The Senate Energy and Natural Resources Committee has heard testimony on potential issues with the siting of new landfills in the state. This committee will look at creating a site evaluation committee to evaluate proposed sites in the future.
- The amendment 0692s adds additional analysis requirements to the alternative site analysis requirements for permit applications
- Section 4 adds the word "net" to the public benefit requirement under New Hampshire solid waste management statutes 149-M.
- One of the most common issues that come up in solid waste public hearings is that we only require landfills to provide a public benefit, which is a low bar instead of a positive net public benefit. This adds parameters around the definition.

Senator Ricciardi, Senate District 9

- SB 380 makes slight, but much needed changes to our solid waste management statutes. By requiring a net public benefit for new landfills, looking at developing a site evaluation committee, and solid waste plans, this bill helps to set NH up for a more reasonable approach to the future New Hampshire's solid waste needs.

Bryan Gould, Casella Waste Systems

- There are some internal inconsistencies in the bill. These include a proposed definition of net public benefit that does not determine actual public benefit as well as unintended consequences of this bill.
- The first inconsistency is under section 2 paragraph 4-A of the bill. It says that the legislative committee to study the solid waste disposal site evaluation

committee concept is to determine a definition of net public benefit and what factors should go into that calculation. However, Section 4 on page 2 of the bill goes on to amend the current RSA 149-M:11 paragraph 3 to redefine public benefit before the study committee actually makes a determination.

- The second inconsistency is the statutory definition of public benefit. The current statutory definition applies to all proposed solid waste facilities. Under RSA 149-M:2 paragraph 9, facility is defined to mean a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment, or disposal of solid waste. The public benefits statute in RSA 149-M:11 applies to all such facilities. This includes transfer stations, MRF's, incinerators, and landfills. You must show public benefit for all of them. The subparagraph 3E in the bill only applies to landfills. Overall, RSA 149-M:11 has a list of criteria to determine public benefit that applies to all facilities and then paragraph 3E only mentions the incremental harms that a landfill would likely cause. There is nothing in this section that explains why landfills are to be treated any differently from any other facility.
- There is also an under-inclusive definition of public benefit. The term “net public benefit” suggests a weighing of all the advantages and disadvantages of a proposed facility. If this was the objective of the bill, it could not ignore the importance of statewide availability of reasonably priced disposal capacity, environmental harms that actually arise from overly expensive disposal, the effect of price competition, and the regional, national, and international market.
- The bill creates obstacles to defining a public benefit. Under section 3D of section 4 (page 3 lines 28-30), which is an amendment to paragraph 3 of RSA 149-M:11, reads “the ability of the proposed facility to reduce transportation costs and tipping fees so that waste generators within New Hampshire can reduce costs relative to the status quo”. This begs the question of whether it is only a public benefit to the state of New Hampshire if the facility will reduce transportation or tipping fees. I could stabilize tipping fees; it could mitigate increases. These would be benefits to the citizens of New Hampshire, but that would be ignored in this formulation of public benefit.
- Under section 3E, the bill assumes that there will likely be incremental harms from landfills and includes a laundry list of such potential harms. Loading up the statute with potential harms while ignoring potential benefits does not result in net public benefit. It is a thumb on the scale of DES's determination.
- Proposed subparagraph E also implicitly discredits the effectiveness of DES's regulation of waste facilities. The entire purpose of the hundreds of rules that DES has promulgated governing waste facilities is to prevent groundwater pollution, surface water pollution, greenhouse gas, and other emissions. Yet, this bill would require DES to consider impacts from exactly those sources. Mr. Gould asked if under this bill, DES is supposed to assume, contrary to 40 years of experience under this set of regulations, that the environmental protections accomplished by its rules are ineffective, that all leachates will be released from

the landfill, and that there will be no capture of landfill gas. Mr. Gould is unsure how DES is supposed to accomplish what the bill is asking it to accomplish in this section.

- Another unintended consequence of this bill is that the fiscal note describes the potential impacts on some municipalities in the state. DES says that it is unlikely to increase its cost. Mr. Gould is unsure how this can be the case under this bill because there are several impacts that DES does not have the expertise to consider. DES is not an expert in traffic and other aspects of the development of such a facility. Landfills owned by municipalities are exempt under RSA 149-M:117 from one requirement of the public benefit showing, but that exemption would not extend to proposed paragraphs 3D and E. This means that the Lebanon, Nashua, and Mount Washington Valley landfills in Conway would be subject to sections D and E which would increase their costs substantially and could prevent any expansions of those facilities.
- Mr. Gould stated that the bill is not based on science or good public policy. It is an attempt to kill a particular project. Mr. Gould also stated that this is not the purpose of the legislature, and the committee should vote this bill inexpedient to legislate.

Henry Veilleux, Resource Waste Management

- Mr. Veilleux spoke in opposition to the bill on behalf of Resource Waste Services. Resource Waste Services processes construction and demolition debris. They also recycle a great deal of material. Wood material goes to a market, and they sell the metals. What cannot be recycled goes to a landfill, but they do prevent a great deal of construction and demolition debris from being landfilled. They have facilities in Salem and Epping. They are the largest recycler of construction and demolition material.
- Mr. Gould already mentioned that the substantial change that is going to be made to the public benefit in this bill is also in the section that directs a study committee to investigate it. It seems inconsistent to put a major change in state statute before the study committee can make a determination.
- There is already a solid waste working group which some of the committee members may serve on. There are two study committees being proposed in this bill. There is a bill that is likely to pass the House of Representatives on the consent calendar that sets up another solid waste study committee. By the end of the session, there could be four study committee working groups. Most of the members of Senate Energy and Natural Resources Committee as well as the folks speaking on this bill will be in those same meetings because we will need the DES experts, the private sector, and the Senators looking at these issues. Due to this, Mr. Veilleux believes that take a step back and either direct the solid waste working group that Senator Gray works on to look at some of the issues in the bill or consolidate.

- This bill is attempting to try and stop a landfill up north. Whether or not this is good or bad is beside the point. The question is whether this is a good reason for the legislature to make dramatic changes which will affect all the other facilities. Mr. Veilleux does not believe this is worthwhile. We should take a measured approach to the issue.

Tom Tower

- Mr. Tower is a resident of Whitefield, New Hampshire. He spoke in support of SB 380. Mr. Tower supports all aspects of the bill.
- Mr. Tower spoke specifically to the importance of considering the net public benefit when reviewing an application for a solid waste permit. Every development project has its pros and cons. When the state and communities go through a permitting process it is an opportunity to take a holistic view of any given project and determine if it will bring more pros than cons. This net public benefit is crucial in good permitting and is unfortunately currently missing from New Hampshire's solid waste permitting process.
- For decades, DES has been instructed only to consider "gross" public benefit. In essence, considering the potential pros of a new project, but not how they may balance against any potential cons.
- SB 380 would allow DES to consider the other side of the ledger, using any reasonable analytic methods. SB 380 instructs DES to consider one specific kind of benefit previously ignored, which is the ability of the proposed facility to reduce transportation costs and resultant CO2 increases along with several kinds of harms that might equal or dwarf all benefits, such as noise, environmental pollution, reduced property values, and traffic incidents.
- DES does not have to compare costs and benefits quantitatively, but merely make an evidence-based finding that there is positive net public benefit.
- The economics and science of estimating net public benefit is completely routine and already developed. In fact, 41 years ago, President Reagan required all federal agencies to estimate the benefits and costs of their regulations, and make sure that benefits exceeded the costs in each case.
- The impacts of a solid waste site will be present in a community for multiple decades. We should make sure we consider all the pros and cons of a potential project and know that it will create a net public benefit before we permit. This section of the bill will help DES, modernizes our statutes and is just plain common sense.

Wayne Morrison

- Mr. Morrison is a resident of Mont Vernon, New Hampshire and owns property on Forest Lake in Whitefield, New Hampshire.

- Mr. Morrison supports SB 380. He believes that the bill is a smart, commonsense bill that acknowledges the need for solid waste reform to better serve and protect the health, safety, environmental interests, and solid waste disposal needs of citizens and businesses throughout the state.
- Mr. Morrison's supports all aspects of the bill; however, he spoke specifically on the portion of the bill that calls for the creation of committee to study the development of a solid waste disposal site evaluation committee. Siting a landfill is a complex, lengthy, costly, impactful process for applicants, for DES, and for the regional stakeholders who are impacted by decisions for decades to come. The siting process is often controversial. It is poorly understood and is often communicated publicly months or even years into the process and is often subject to a great deal of resistance and in some cases, legal action.
- Currently, the siting of a landfill is a reactive process triggered by a permit application. Forming a committee to study the development of a solid waste site evaluation committee would provide the opportunity to rethink this process. The site evaluation committee could proactively assess and catalog suitable landfill parcels in the state and assist DES and applicants by pre-screening those sites. The committee could also ensure potential sites are optimized and aligned with the states solid waste plan, waste reduction goals, capacity needs, and cited to minimize transportation and infrastructure costs by better aligning disposal site locations where waste is generated, and leachate processed.
- Rather than treating a landfill siting decision as a tactical or transactional event triggered by an application, a site evaluation committee could elevate the process to a more strategic level. Better aligning the states solid waste needs and more optimally leveraging their capacity. Additionally, a site evaluation committee could improve the transparency of the process by providing a vehicle for the applicants and stakeholders to review site plans raise concerns and render the decision at the front end of the process before significant investments are incurred by applicants, DES, and stakeholders.
- Landfills sit at the bottom of the solid waste hierarchy for good reason, they come with great risk and unwanted side effects that impact the health, safety, and environmental interests of our citizens, businesses, and tourists. If and when additional solid waste disposal capacity becomes necessary, improving the siting process now is an important step to ensure such decisions are made within the context of the state's solid waste plan and in the state's best interests.
- Mr. Morrison urged the committee to support SB 380 and help initiate the formation of a committee to investigate opportunities to drive much needed change and improvements in the solid waste disposal siting process.

John Tuthill

- Mr. Tuthill supports SB 380. He is from Acworth, New Hampshire. About 20 years ago, he was a member of the House Environment and Agriculture Committee.
- The solid waste industry has evolved and consolidated over the past couple of decades. There have been some positive developments, but municipalities at the local level are less and less able to interact directly with industry. Therefore, Mr. Tuthill believes the state has a role to assist with planning. He supports the bill as a vehicle and the concepts that it presents. He believes that it will require attention and work as we move forward, but it is an essential piece of what is going on between the House and the Senate this year given the situation in the North Country. This is an issue that not only affects NH, but also the Northeast. The issue is being discussed in New York, Vermont, and Massachusetts. This is one reason why New Hampshire is feeling the pressure we are with importation of both construction and demolition debris as well as municipal solid waste.
- Mr. Tuthill agreed with Mr. Veilleux's point about consolidating the study committees. Mr. Tuthill recommends considering what each of the committees are doing and then considering what the working group is doing under last years HB 413. We need time, perhaps a moratorium on permitting which is what happened with construction and demolition several years ago. This will allow the state to catch up after the long lapse of ineffective planning.
- It has occurred to Mr. Tuthill that the Office of Strategic Initiatives might be able to assist with this issue. DES also has resources to conduct planning potentially, but they need support. DES needs to fill vacancies and they need funding.
- Mr. Tuthill urged the committee to take the bill seriously and to move it forward. He also urged the committee to come up with a piece of legislation that will support local municipalities and protect the states interests in community development, environmental resources, and public health.

Elliot Wessler

- Mr. Wessler is a resident of Whitefield, New Hampshire and he spoke in support of the bill.
- The Senate has heard a lot of testimony this year that NH's rules for solid waste management are outdated and have not kept pace with legislative initiatives undertaken in the rest of New England. Enactment of SB 380 is not an end-all, but it is an important step in the right direction for our state.
- We believe the amendment on alternatives analysis is a critical part of the bill. A landfill permit applicant is already required under DES rules, specifically Env-Wt 534.02, to conduct an off-site alternatives analysis for any project that will result in more than one acre of permanent wetland impacts.
- The problem is, and it is a very big problem, DES rules are totally silent on what an alternatives analysis should look like. As a result, an applicant has no

guidance on how to conduct an alternatives analysis, and DES decision-makers have no established criteria to evaluate such analyses.

- DES readily acknowledges that this gap in its rules has existed for a couple of years and that it is problematic. DES acknowledges its single sentence rule on alternative analysis was originally conceived for small industrial projects, not for large projects such as landfills.
- In addition, the lack of guidance in statute creates problems. The biggest problem is the potential for DES to review applications and to reach decisions that are inconsistent with legislative priorities, priorities that are needed to guide a regulatory agency such as DES to fulfill the will of state residents.
- At present, the requirement is analogous to a black box exercise. A landfill applicant gets no guidance in DES rules, for example, as to how many alternatives it must consider, in what locations, what environmental characteristics it must evaluate, and what quality of life considerations it must address.
- SB 380 as amended will provide some minimal guidance from the legislature as to what the legislature expects from DES in evaluating future landfill permit applications. Specifically, the amendment makes clear that a landfill applicant must demonstrate that it has not chosen a location solely on the basis of what is good for the applicant, but rather must make a minimum showing that the location it has selected will not result in undue environmental damage or undue harms to the quality of life.
- Given the prospect of GSL permit applications being filed by DES in the next year or so, absent guidance from the legislature, DES will have to determine on the fly what an alternative analysis should look like. We think a far better solution is for the legislature to pass SB 380 as amended. Supporters of SB 380 are willing to work with the committee and DES on possible language revisions to make the amendment better.

Matt Leahy, Forest Society

- Mr. Leahy spoke in support of SB 380. Current state law holds that landfills are the least preferred method to deal with solid waste issues. The Forest Society views SB 380 as a way to start moving state policy away from the creation of more landfills and hopefully towards new methods to deal with all the waste and trash that we create.

Adam Sandahl, CMA Engineers

- Mr. Sandahl spoke in opposition to SB 380. Mr. Sandahl is the Vice President of CMA Engineers and is a licensed professional engineer in New Hampshire. He is also a Board Certified Environmental Engineer accredited by the American

Academy of Environmental Engineers and Scientists. He has 19 years of experience in civil and environmental engineering focusing on solid waste projects.

- CMA engineers is an established, well-regarded firm with two offices in NH and one in Maine. They are well positioned to provide testimony on this legislation, as they represent both public and private landfill owners and operators in the state. They have assisted their public and private clients with countless New Hampshire solid waste facility permit applications for more than 30 years and has worked with them to demonstrate public benefit requirements set out in existing NH RSA 149-M:11 that SB 380 proposes to amend.
- The environmental permitting process in NH is very comprehensive, and for solid waste management facilities, impacts such as noise, odor, traffic, groundwater, surface water, and emissions are studied, and data is provided to NHDES as part of the process for these facilities. This information is included with solid waste permit applications so that the NHDES can make a determination whether the applicant can meet existing, stringent permitting criteria set out in the solid waste permitting process. It is concerning that SB 380 proposes to require an additional assessment of many of these same impacts as part of what is being termed a “net” public benefit determination, and an “incremental harm” analysis with respect to landfills.
- Under the proposed bill, NHDES would be charged with making determinations of impacts with regard to property values, tourism, and outdoor recreation appear to fall outside of NHDES’s area of responsibility. NHDES requires submission of engineering and science information on the specific impacts listed in the bill- noise, odor, traffic, groundwater, surface water, and emissions. NHDES has the capability to review the engineering and science regarding those issues. The application of that engineering and science to the broad and poorly defined matters particularly of property values and tourism in general has no established basis and is beyond the technical capability of environmental regulatory agencies.
- Quantifying and measuring impacts to property values, tourism, and other outdoor recreation will prove difficult. Mr. Sandahl is concerned that because there are no standards establishing what would be an acceptable level of impact, a difficult and costly regulatory process will carry with it uncertainty that neither NHDES nor CMA Engineers clients can reconcile, nor look to benchmark a reasonable threshold of impact. To Mr. Sandahl’s knowledge, baseline studies in these areas are not regularly performed, and he believes this could become a situation where an already complex regulatory review process will also include a battle of the experts on these areas, to be sorted out by NHDES, and on appeal, the Waste Management Council.
- It is also noted that the “incremental harm” language seems out of place within the public benefit determination statute, as it makes reference only to “landfill”, yet the rest of the statute refers to solid waste management facilities. It seems

important that SB 380 have consistency within the existing statutory framework, which does not single out landfills. Mr. Sandahl asks if the intent of the bill for these broad and undefined assessments of property values, tourism, and outdoor recreation apply to solid waste transfer stations and recycling facilities. This will significantly complicate permit processes which are currently often not controversial and straightforward.

- Senator Watters asked Mr. Sandahl if he has seen the amendment to the bill and that since he prepares these kinds of public benefit statements, if these would need to be included if someone hired him to do a job. Mr. Sandahl stated that the public benefit demonstration is required when you are expanding a landfill. 90 percent of applications involve a facility that has already been established so this would apply to new facilities. In New Hampshire, you cannot build something very large without impacting a wetland in some way. The alternative site analysis is part of the wetland rules. If someone is applying for a major wetland application, they are required under the rules to do this exact analysis. Senator Watters asked if this would require those applicants to see if there is any other alternative site that they would then have to examine. Mr. Sandahl stated that this is already being done. It does make sense to evaluate what the best site is for your facility.
- Senator Avard stated that essentially they go through the whole process to find out where the best location is. Mr. Sandahl stated that it is certainly part of the evaluation. There are many factors that go into the selection process including factors revolving around access, wetlands, and the area around the site. Senator Avard stated that he assumes that if the bill is passed it would overcomplicate the process. Mr. Sandahl agreed and stated that the language of the bill duplicates processes that are already being done through other regulations.

Garret Trierweiler, Waste Management

- Waste Management is opposed to SB 380. Waste Management is the leading provider of waste management services in North America. In New Hampshire, Waste Management of NH, Inc. operates the Turnkey Recycling and Environmental Enterprise (TREE) facility, 4 solid waste transfer facilities, a recycling facility, and over 200 waste and recycling collection trucks. They manage nearly 40 percent of the solid waste generated in NH in some manner. This gives them a valuable perspective on the practical realities of managing solid waste and complying with laws and regulatory requirements in the state.
- Waste Management supports the work being done by the legislature concerning solid waste recycling and disposal practices and ways to increase waste diversion. The Recycling and Solid Waste Management Study Committee and the Solid Waste Working Group formed by the legislature will help to guide the planning for solid waste management in NH. They are participating in this planning effort and want to encourage the legislature to let the Solid Waste

Working Group complete this important planning before making significant changes, as SB 380 would, to the same requirements of solid waste management in the State that are the subject of the planning.

- SB 380 would significantly change current solid waste management law and policy in New Hampshire. Waste Management does not believe it is either practical or necessary to require that all 234 NH municipalities develop a plan and to prohibit the disposal of their solid waste until each of them has incurred the significant time and expense to prepare individual solid waste plans for review and approval by the state. Nor is there a need for additional siting procedures and criteria which go beyond the existing siting procedures and criteria which go beyond the existing, comprehensive public benefit requirements that must be met prior to permitting. Waste Management does not agree that an application should be reviewed under the regulations and statutes in effect after a completeness determination is issued by DES.
- The requirement that the 234 municipalities develop solid waste plans for review and approval by DES is administratively burdensome and unwarranted, especially while the work by the previously formed study committee is still underway. Moreover, this bill contains no requirements or criteria under which such plans are to be reviewed and approved.
- Most cities and towns periodically go out to bid for collection and/or disposal services and the location where their solid waste is disposed may change. This bill would require the municipalities to develop, or revise plans immediately, and submit them to the state for review. The bill does not address the effect this process will have on numerous existing contracts that assure the timely flow of the solid waste continuously generated within the state to permitted disposal sites. Reviewing and approving these plans initially, and subsequent revisions, will require additional agency staff resources and funding. These requirements will add further burdens on an agency that is already challenged by the demands that are being placed on it. This concept appears similar to what was required years ago when municipalities were asked to join solid waste districts and develop solid waste plans addressing similar matters. These districts were often found to be ineffective, were administratively cumbersome and expensive, required frequent modifications, generated disagreements, and as a result have in most cases been dissolved.
- The criteria for evaluating and siting solid waste facilities as spelled out in the solid waste rules are comprehensive and fully protective of public health and the environment. The current rules require projects to be subject to public review, comment, and hearings, and include a comprehensive technical evaluation by the NHDES. The current public benefit requirement is sufficiently comprehensive and carefully considered and applied to each application in the review process prior to issuing a permit. Additionally, these facilities must be reviewed and approved at the local level to ensure they comply with local zoning

and planning board requirements, which both include public review and hearings.

- Establishing a solid waste disposal site evaluation siting board to evaluate solid waste facilities, will bring with it additional unnecessary costs, time delays, and regulatory burdens to an already complex, and challenging process.
- The bill would task the proposed solid waste disposal siting committee with evaluating environmental and operational conditions to determine whether a site is appropriate, while also assessing any incremental effects of a landfill. These requirements are already addressed in the Solid Waste Rules and Federal, in the case of air, water, and wetlands, permitting requirements. Requiring another review from a yet to be determined board would add further complexity to an already complicated but effective process. For example, the bill proposes adding the potential impact of emissions associated from transportation of material to and from a proposed facility. To Waste Management's knowledge, this requirement is not imposed on any other businesses in the state. If such requirements were to be arbitrarily imposed on other industries, such as tourism, it is likely that a negative result would be obtained.
- Further, a "net" public benefit is proposed to be assessed on behalf of a host of community and/or abutting municipalities by an independent third-party. This leaves open the question as to how the qualifications of the third party are determined, how they are selected, and in what sense are they to be considered independent. A host community may be supportive of the facility, but an abutting municipality may not if they are not receiving direct benefits from the operation of the site. This law would expand the likelihood that an operator would need to enter host community agreements with all abutting communities, each with an associated host fee. This would increase cost considerably and these costs would be passed on to all municipalities using the facility.
- One provision of the bill Waste Management supports is that an application should be reviewed under the regulations and statutes in effect after the completeness determination is issued by DES.
- Senator Watters asked if Waste Management was looking into hydrogen and electric vehicles for haulage. Mr. Trierweiler stated that they are. Currently, their new hauling facility district in Rochester is transitioning to natural gas. The first step is getting off diesel. Mr. Trierweiler stated that he was recently at a presentation with Waste Management's national fleet director that talked about transitioning to electric vehicles. They will be piloting an electric vehicle collection vehicle in Londonderry. It will be one of the only ones in the United States. It is still early in the process, but yes, they are. Senator Avard asked if Waste Management in Nashua uses natural gas. Mr. Trierweiler was unsure.

Mike Wimsatt, DES

- DES is not taking a position of the bill but was willing to take any questions.

- Senator Watters said that there seems to be two issues. The first being the committee is supposed to look into it and secondly it makes some changes in statute. Senator Watters asked how the process should be undertaken. Mr. Wimsatt clarified that DES is not taking a position on the bill, however after reviewing the bill that it seems like the cart comes before the horse. There is a committee to study the site evaluation criteria and also what net benefit will look like, but then there is a provision that puts that benefit into statute upon passage. Others have expressed concerns about DES's ability to evaluate certain aspects of the net public benefit and DES shares those concerns. DES does not have the expertise or professionals who are necessarily equipped to evaluate some of these particular impacts that are really in some sense separate from looking specifically at management of waste out of a given site. If it were to pass they would need to look at it very carefully and would require guidance from the legislature on what it really means and how they would make a determination and we would need to have the ability to bring in contractors or experts who would help them with the various provisions.
- Senator Watters pointed out the bottom of page 3 of the bill where it describes the change and provides a list of what the net benefits should include. It mentions the reduced transportation, tipping fees, and the net incremental harms are to be included. Senator Watters asked how DES would respond to making determinations on what is listed in sections C, D, and E. Mr. Wimsatt stated that it is something DES would need to spend some time with. They have no experts on transportation. They do have people in their air division who have looked at specific issues related to air quality and transportation, but beyond that they do not have the proper staff that are equipped to evaluate that.
- Senator Watters brought up the issue of waste coming from out of state. Senator Watters asked if the bill would have any effect on this issue. Mr. Wimsatt stated that he is not sure how the bill would be implemented, but if it were to be implemented as it is written there could be a scenario where the agency would evaluate increased truck traffic and increased transportation of out of state waste into the state. They may find that these increases do not have any net public benefit for NH citizens, so it could impact that. He stated that he is not qualified to address the possibility of issues arising with interstate commerce.
- Senator Watters asked if when reviewing an application, DES would potentially be able to look at the percentage that the company was willing to say would be dedicated to in-state waste. Or, would they not be able to do that under the ICC. Mr. Wimsatt stated that it is not uncommon for an applicant to provide information in estimates about what portion of the waste they accept would be in-state versus out of state. You can infer that even if it is not provided in the sense that the net public benefit analysis as currently conducted requires them to estimate what the need for in-state waste capacity will be and what portion of that need would be served by a proposed facility. Mr. Wimsatt believes that simple math could find the answer to how much waste comes from out of state.

- Senator Watters asked if a third alternative such as passing a bill that tells DES to initiate rule making on net public benefit and then giving DES guidance as to what the legislature means by that. He asked if this is the direction the bill is headed. Mr. Wimsatt did not know the answer to the question. One of the concerns DES has is that there is a committee that is to look at this issue and decide whether it makes sense and if it does, what it should look like and at the same time, the bill is trying to do it before the committee exists. They also have looked at the bill and much of the language under the net public benefit provisions looks a lot like what a site evaluation committee might do. This is not what DES does. DES is not a site evaluation committee they are a permit authority. If it were the will of the legislature to have this more expansive review of net public benefit, then that seems to be more properly housed under like a site evaluation committee that might be well outside the agency.
- Senator Watters brought up the amendment to the bill and asked if this means that they will have to search around the state for any potential piece of land and do a full analysis of it as a potential site for a landfill. Mr. Wimsatt stated that the current requirement for an alternative analysis is solely housed in the wetland rules without regard for the type of facility that is being proposed and could cause a wetlands impact. That review is to determine if there is another site or another way of doing things that would result in a lesser impact on wetlands specifically. There may be problems with that. DES believes the bill would require applicants for a land permit for a solid waste facility at a new site would need to evaluate other sites in the state that might also be suitable for a landfill. It appears to do a full net public benefit analysis on the other sites and compare them and determine which site is more appropriate. It seems somewhat notional because typically when a landfill applicant comes to DES they already have a site or have the opportunity to own a site. DES does not know whether they would only be required to do an alternatives analysis on sites that they could own or they could just look land that no one has interest in selling. There is a lack of clarity and the possibility to increase DES's workload.
- Senator Avard asked if this would delay or impact current applications. Mr. Wimsatt stated that one of the main reasons DES is not taking a position on this issue is because there is a current application that could be impacted by the bill.
- Senator Avard asked if there is an issue with transparency. Mr. Wimsatt stated that DES tries to be as transparent as possible. They do put up submittals and correspondence available on the DES website so that any party that is interested can easily access it. They conduct the required public hearings for appropriate applications. They will hold public information meetings when there is a particular issue of great interest. One of the frustrations that people have is that the public information meeting is specifically for taking testimony on the application that is being suggested. They take the testimony, but the only real response the people get is a "thank you for your testimony" which can be

unsatisfying. Before the public hearing, they try to have a public information meeting that involves more back and forth conversation so that people understand the process.

- Senator Avard asked if DES would have to hire additional staff or require more funding. Mr. Wimsatt stated that if the bill was passed, they would have to spend a lot more time on their public benefit determination work and that could mean hiring additional staff or hire contractors. The agency would possibly have to hire contractors at the expense of the applicant.

DF

Date Hearing Report completed: February 22, 2022