

# Senate Energy and Natural Resources Committee

*Nikolas Liamos 271-7875*

**SB 159-FN-LOCAL**, relative to permits for the siting of new landfills.

**Hearing Date:** February 15, 2023

**Time Opened:** 1:33 p.m.

**Time Closed:** 1:53 p.m.

**Members of the Committee Present:** Senators Avard, Pearl, Birdsell, Watters and Altschiller

**Members of the Committee Absent :** None

**Bill Analysis:** This bill prohibits the department of environmental services from permitting unrestricted landfills.

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**Sponsors:**

Sen. Fenton

Sen. Altschiller

Sen. Watters

Rep. N. Murphy

Rep. Read

Rep. Bouldin

Rep. Fedolfi

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**Who supports the bill:** In total, 112 individuals signed in support of SB 159-FN. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (Nikolas.liamos@leg.state.nh.us).

**Who opposes the bill:** In total, 3 individuals signed in opposition of SB 159-FN. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (Nikolas.liamos@leg.state.nh.us).

**Who is neutral on the bill:** No individuals signed in as neutral to SB 159-FN. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (Nikolas.liamos@leg.state.nh.us).

**Summary of testimony presented in support:**

**Senator Donovan Fenton**

**Senate District 10**

- Senator Donovan Fenton introduced Senate Bill 159-FN.
- Senator Fenton stated that the purpose of SB 159-FN is to prohibit the Department of Environmental Services from issuing any new unlimited service area landfill permits.

- Senator Fenton stated that the language of SB 159-FN says unrestricted landfills when it should actually read unlimited area service landfill.
- Senator Fenton stated that a report stated that 45% of trash coming to New Hampshire's landfills is from out of state.
- Senator Fenton said that the state of Maine has banned the disposal of out of state waste in its state's landfills, and Vermont has enacted stringent guidelines for what kinds of trash can be disposed of in its landfills.
- Senator Fenton stated that the State's Solid Waste Plan takes some steps in the right direction but fails to address the problem of almost half of our state's waste from coming from out of state.
- Senator Watters asked for clarification, does SB 159-FN recognize that any new or expanded landfill applications must be consistent with RSA 149-M:29.
  - Senator Fenton confirmed SB 159-FN stays in line with RSA 149.
- Senator Watters asked if under SB 159-FN, as an aspect of the Department's decision making for applications for unlimited service area landfills, does the Department take into account how much waste will be from out of state under RSA 149:M-29.
  - Senator Fenton confirmed that is correct, and it is more about data collection and where the trash is coming from.
- Senator Altschiller asked for Senator Fenton to explain the difference between an unlimited service area landfill and a landfill.
  - Senator Fenton responded that an unlimited service area landfill essentially can accept trash from anywhere, while a limited service area landfill can only accept trash from certain counties or municipalities.
- Senator Avard stated that under our Constitution, it makes it hard for us to refuse trash from other places.
  - Senator Fenton responded that, Senator Avard is referring to the Commerce Clause, and that SB 159-FN does not violate this clause because we already issue limited serve area permits.
  - Senator Fenton stated that the crux of the problem is that almost half of our trash comes from out of state, and we need to do something soon to avoid an environmental disaster in our state.
- Senator Watters stated that he has spent a lot of time working with the Interstate Commerce Clause issues and legislation about tipping fees.
- Senator Watters asked if it would be fair to say that since SB 159-FN does not prohibit other states' waste as an import but says that the Department may look at the amount of other state's trash being imported when looking at the larger permit under the preview of RSA 149-M, it does not violate the Interstate Commerce Clause.
  - Senator Fenton stated that, that would be fair, and that New Hampshire is a growing state and he is not trying to limit expansion.

#### **Susan Richman**

- Susan Richman stated that she is happy that DES published a statewide waste management plan.
- Ms. Richman stated that she wonders if cumulative impact studies may be helpful when looking at unrestricted area landfills.

#### **John Tuthill**

- John Tuthill stated that other states have successfully accomplished what SB 159-FN tries to address.
- Mr. Tuthill stated that back in the 1970s, the legislature passed RSA 53-A, B and D, allowed for municipality ownership and district ownership of disposal facilities and to have the ability to enter into contracts with the private sector.
  - Mr. Tuthill stated that we know 40 years later that this has not been entirely effective, and that the privatization has really dominated the waste management systems in our state.
- Mr. Tuthill stated that the New Hampshire Attorney General issued a memo to the Solid Waste Working group that included ways to work within the Interstate Commerce Clause and regulate the flow of waste across our state's borders.
- Mr. Tuthill stated that issuing a permit that defines a service area makes sense.
- Mr. Tuthill stated that nothing in statute authorizes DES to negotiate permits.
- Mr. Tuthill asked what our state's procedure is to allow private corporations to operate disposal facilities, and that there are great liabilities associated with these facilities.
- Mr. Tuthill stated that DES does not have the wherewithal to implement the proposed regulations.
- Mr. Tuthill stated that we need to get reorganized with more of an emphasis on waste reduction and waste elimination.

## **Summary of testimony presented in opposition:**

### **Mike Wimsatt**

#### **Director of Waste Division, New Hampshire Department of Environmental Services**

- Mike Wimsatt stated that the Department of Environmental Services (DES) has several concerns.
  - Mr. Wimsatt stated that SB 159-FN has a technical flaw, in that it seeks to amend a statute that has been repealed.
    - Mr. Wimsatt explained that when the Director of DES certified to the Director of Office of Legislative Services and the Secretary of the State that DES updated its solid waste plan consistent with RSA 149-M:29, the before section was then repealed.
  - Mr. Wimsatt stated that the second issue is, the existing statute already direct DES to consider the public benefit when considering a landfill application will achieve the goals of the Solid Waste Management Plan.
    - Mr. Wimsatt stated that if SB 159-FN were to pass, it would introduce new language that is similar but different and it is DES's concern that this would create ambiguity to existing laws.
  - Mr. Wimsatt stated that the Department's third concern is that, the term unrestricted landfill is not defined.
    - Mr., Wimsatt stated that the term is not defined in the statute or the bill.
    - Mr. Wimsatt stated that it is the Department's understanding that it is the sponsor's intent to prohibit new landfills from accepting waste from an unlimited service area.

- Senator Watters pointed out that SB 159-FN states that the current language reads that an unlimited service area permit cannot be issued unless it meets the public good standard.
- Mr. Wimsatt stated that he hopes there will be an amendment introduced that removes that sentence.
- Mr. Wimsatt stated that he understands SB 159-FN as trying to only accept waste from specific geographical areas.
  - Mr. Wimsatt added that DES is unclear how it would exactly implement or enforce this.
- Senator Watters posed a hypothetical question, if a proposal for a new landfill comes before DES, and is under consideration under the public good consideration under the 10-year plan, would DES be able to negotiate a permit that does in fact limit the amount of waste that may come into a landfill from out of state.
  - Mr. Wimsatt declined to answer the question due to ongoing litigation.

**Neutral Information Presented:** None

NPL

Date Hearing Report completed: February 21, 2023