Senate Energy and Natural Resources Committee

Joshua Schauer 271-3077

HB 1138, limiting the placement of out-of-state waste going into New Hampshire landfills.

Hearing Date: April 16, 2026

Time Opened: 2:04 p.m. **Time Closed**: 2:28 p.m.

Members of the Committee Present: Senators Avard, Pearl, Rosenwald and Watters

Members of the Committee Absent : Senator McConkey

Bill Analysis: This bill limits the placement of out-of-state waste in New Hampshire landfills.

Sponsors:

Rep. N. Germana	Rep. J. Aron	Rep. Bixby
Rep. B. Boyd	Rep. Ebel	Rep. Haskins
Rep. N. Murphy	Rep. Potenza	Rep. Gruber
Sen. Fenton	Sen. Rosenwald	Sen. Watters

Who supports the bill: 52 Individuals signed in Support of the legislation. Please contact Joshua.Schauer@gc.nh.gov for more information.

Who opposes the bill: 1 Individuals signed in Opposition of the legislation. Please contact Joshua.Schauer@gc.nh.gov for more information.

Summary of testimony presented:

Nicholas Germana, Cheshire 15

- He started by addressing “the elephant in the room” which is whether limiting out-of-state waste would be challenged under the Interstate Commerce Clause. That concern is real. The chair of the House committee and he both served on a study committee on this issue and have discussed it with the Attorney General’s office.
- He said that the bill is designed with that legal risk in mind. It aims to strike a balance rather than impose a strict cap. A previous proposal would have limited future landfills to 15% of out-of-state waste. By contrast, this bill takes a phased approach: existing operators would be allowed up to 30% out-of-state waste until

2030, giving them time to adjust, and then move to a 15% limit going forward. At present, only one operator in the state would be affected by this change, Turnkey.

- The intent is to address the Interstate Commerce Clause concerns by maintaining a reasonable flow of interstate waste. New Hampshire currently exports about 10% of its waste, while importing significantly more. Even under this bill, the State would continue to import more waste than it exports. In addition, landfill expansions, not new "greenfield" sites, could still accept up to 30% out-of-state waste. He emphasized that this is not a ban, it's a calibrated limit.
- He stated that there is also a broader principle at stake. They often hear that solid waste is a regional issue. But said that the legislature was elected to represent New Hampshire, not the New England region. Meanwhile, surrounding states have imposed restrictions on what can be landfilled, particularly materials like mattresses, carpets, and PFAS-containing products. As a result, those materials are being sent to New Hampshire.
- In practice, that means New Hampshire has become the region's dumping ground, especially for waste that other states consider too risky to landfill themselves due to public health concerns. And it's important to note that this is not a true free market. Other states have already shaped the market through regulation, putting New Hampshire at a disadvantage.
- He questioned whether this bill be challenged in court and said it would be very likely, but that should not deter them from passing the bill. He stated that this legislature has previously passed laws knowing they would face legal challenges, and has spent significant resources defending them. In this case, the policy rationale is strong; protecting public health and the environment, and responding to what their constituents are asking for.
- He said that from an economic standpoint, the bill does not unduly burden landfill operators. Only one current operator would be affected. And even then, they have room to adjust. He provided an example and said that tipping fees in Massachusetts are significantly higher than those charged by facilities like Turnkey in Rochester. That means operators in NH could raise their fees on out-of-state waste and still remain competitive, since alternatives, such as shipping waste to Pennsylvania or Ohio, would involve higher total costs due to both fees and transportation.
- This bill preserves interstate commerce while placing reasonable limits on it. It balances economic interests with environmental protection and public health, and it ensures that New Hampshire is no longer disproportionately bearing the burden of the region's waste.

Senator Watters asked about his testimony regarding potential lawsuits, but he added there was no fiscal note on the bill.

Representative Germana said he could not speak to the fiscal note. It was a good question, but he did not have an answer and deferred to the department.

Senator Rosenwald said she is consistently concerned about litigation and asked whether he thought the DOJ has attorneys in the civil bureau with sufficient experience to defend against the lawsuits he predicted, or whether the Attorney General would need to hire outside counsel.

Representative Germana said he did not know, but noted that in the two bills they had considered, they had placed a cap on outside costs and the DOJ had never come to testify to raise that concern. He pointed to the DOJ's prior testimony regarding litigation concerns and said that if they had such concerns with this bill, they had not testified about them.

Mike Wimsatt, Waste Management Division NHDES

- Mr. Wimsatt stated that the agency is not taking a position on the bill and that he signed up to speak primarily to answer any questions the committee had.
- He noted that, based on the agency's experience regulating solid waste and permitting activities, legislation of this kind could raise concerns regarding potential violations of the interstate commerce clause.

Senator Pearl asked for clarification on the process following the issuance of an expansion permit. He questioned how the state could later modify the percentage of in-state versus out-of-state waste, noting that permits appear to authorize a certain capacity over time and asking whether a specific in-state percentage is required.

Mr. Wimsatt responded that this is not correct. He explained that permits do two key things; after making a public benefit determination, the agency requires facilities to maintain that public benefit throughout the life of the operation by making the facility available to receive in-state waste. However, permits do not specify a set ratio of in-state to out-of-state waste. He added that permitted facilities are authorized to use a certain amount of airspace annually and must report periodically on the volume and source of waste received. If the proposed legislation were enacted, compliance would be monitored over time. For example, if a facility reported midyear that 40% of its waste was from out of state, the agency would instruct the operator to reduce that proportion to ensure compliance with a 30% annual cap by year's end.

Senator Avard asked how much a lawsuit would cost the state.

Mr. Wimsatt said he was not qualified to estimate that cost.

Senator Pearl then asked whether applying such a requirement retroactively would effectively change the expectations established in previously issued permits.

Mr. Wimsatt said that as long as a public benefit determination had been made at the time of issuance, the permitted volume of waste would not change. However, facilities would need to ensure that no more than 30% of accepted waste came from out of state.

Senator Pearl followed up, noting that if a facility had been approved to accept a certain tonnage but could not obtain enough in-state waste to meet the 30% threshold, the restriction would effectively limit the total amount of waste the facility could accept.

Mr. Wimsatt agreed that this could occur. For example, if a facility were permitted to accept 200,000 tons annually but could only obtain 50,000 tons of in-state waste, it would be limited in how much out-of-state waste it could accept under a 30% cap. As a result, the facility might operate below its permitted capacity.

Senator Pearl asked whether this would amount to changing the terms of an already issued permit.

Mr. Wimsatt clarified that permits are not contracts and simply establish the maximum allowable volume of waste. However, he acknowledged that such legislation could, depending on available waste streams, effectively reduce the amount of waste a facility could accept in a given year compared to its permitted capacity.

Senator Pearl summarized that the department would, in effect, be reducing previously granted permitted capacity.

Mr. Wimsatt agreed that it was a fair characterization.

Mark Rouvalis, Waste Management of NH

- Mr. Rouvalis explained that he had previously worked closely with Director Wimsatt in defending the permit for a facility expansion, which was challenged by the Conservation Law Foundation and ultimately reviewed by the New Hampshire Supreme Court. That case addressed issues related to public need and capacity.
- He noted that the permit granted to the facility requires it to maintain capacity through 2034. As a result, he emphasized that the committee's questions about whether this bill would change the rules mid-permit are well-founded, as the permit is currently mid-year. He further explained that the permit does not impose restrictions on the proportion of in-state versus out-of-state waste, aside from the general requirement to maintain capacity for New Hampshire waste, as Director Wimsatt described.
- He stated that the "elephant in the room" is the interstate commerce clause. He argued that this issue had not been fully addressed and that his purpose in testifying was to focus on it.
- He asserted that the bill, as drafted, is patently unconstitutional, likening it to "a car heading toward a brick wall," with the commerce clause serving as that wall. He explained that, since at least the 1970s, courts at all levels, including the Supreme Court, have consistently addressed laws involving total or partial bans on out-of-state waste. These decisions establish that treating out-of-state

products differently from in-state products is unconstitutional, with virtually no exceptions in the context of private operators.

- He continued that because the bill proposes to regulate waste differently based on its origin, that by imposing percentage limits on out-of-state waste, it would likely be considered facially invalid and subject to legal challenge. He stated that, if he was advising a client, he would make clear that such a law would not survive judicial review.
- He also warned that the bill would place companies like Waste Management in a difficult position. He noted the company's longstanding working relationship with the Department of Environmental Services and the City of Rochester, as well as its efforts to maintain transparency with policymakers, including hosting facility tours and providing operational insight. He described the facility as well-run but emphasized that the legal issues must be addressed before considering operational impacts. He reiterated that the case law is clear and even partial restrictions or reductions on out-of-state waste are unlikely to withstand scrutiny.

Senator Rosenwald asked whether the state could charge higher fees for out-of-state waste than for in-state waste, drawing a comparison to higher fees sometimes charged to nonresidents for state parks or tolls. She asked whether such a distinction would be unconstitutional, or whether the issue is limited to outright caps.

Mr. Rouvalis explained that courts have ruled that charging different fees for out-of-state waste violates the interstate commerce clause and would therefore be unlawful. He emphasized that the key issue is differential treatment. A bag of household trash is the same regardless of whether it originates in Concord, New Hampshire, or Concord, Massachusetts. He clarified that regulations based on the type or characteristics of waste, such as limiting the percentage of food waste, are permissible, provided they apply equally to both in-state and out-of-state waste. However, imposing higher disposal costs solely on out-of-state waste, while exempting in-state waste, would not withstand constitutional scrutiny.

Senator Avard asked whether there might be exceptions for specific materials, such as mattresses.

Mr. Rouvalis responded that any such restriction must still be applied uniformly. The determining factor is not the type of material, but whether the rule treats in-state and out-of-state waste the same. A ban or limitation on a specific type of waste could be valid, but only if applied across the board.

Senator Watters described a prior legislative proposal that had support from Waste Management but did not advance due to COVID-19 disruptions. That proposal would have increased tipping fees on all waste, regardless of origin, and then rebated funds to municipalities to support waste reduction efforts. He suggested that such an approach could avoid interstate commerce clause issues because it does not discriminate based on the source of the waste.

Senator Avard asked whether that approach would be acceptable.

Mr. Rouvalis responded that it would depend on how the policy is structured, but noted that it begins by treating all waste equally. If revenues are collected uniformly and then distributed through state funding mechanisms, similar to other forms of state aid, it would not, on its face, discriminate against out-of-state waste. He emphasized that this differs fundamentally from proposals that impose direct restrictions or higher costs based on origin.

Mr. Rouvalis then addressed questions about litigation costs. Drawing on his experience as a litigator, he recalled advice from his senior partner, Jack Middleton, who described litigation as "the world's most expensive indoor activity," telling the committee to keep that in mind.

Senator Watters added that it is sometimes referred to as "the scent of billable hours."

JS
Date Hearing Report completed: April 20, 2026