



Healthy environment.  
Healthy economy.

Monday, April 26, 2021

Dear Senator

We appreciate your service to our state. We know this has been a difficult legislative session and it is far from over. Along with many others, we ask you now to give careful consideration to a piece of legislation before you that is important to us—**HB177.**

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NCABC is one of several grassroots organizations that support HB177 and together with those other organizations we represent thousands of voters throughout the state.

**We ask the NH Senate Energy and Natural Resources Committee members to vote OTP, and for the full Senate to support the bill.**

HB177 is a needed and timely legislative fix for a regulatory problem. Under its current rules, NHDES may issue permits for a landfill as long as it is more than 100 feet from a NH state park. We think a buffer that small makes no sense, and **we think a buffer of 2 miles, as proposed in HB177, is a compromise and good public policy.**

**In the short-run, HB177 is needed to protect Forest Lake State Park from landfill encroachment. In the long-run, it will protect all of our state parks.** One day it may protect a state park in your district, or maybe a state park that your constituents care deeply about.

HB177 has been carefully crafted, and it has been recently amended to address the concerns expressed in hours of hearings in the NH House. **HB177 is a good bill—it's simple; it solves a problem that requires a legislative fix; it does not trample on property rights; and it will not cost NH taxpayers a cent.**

Opponents of HB177 have raised a number of questions about the bill. We find many of their concerns unsupported and misleading. To help foster careful consideration of the bill, **we have prepared and have attached a series of Fact Sheets** addressing some of their claims:

1. Does HB177 Trample Property Rights?
2. Is HB177 Spot Zoning?
3. Does HB177 Usurp Local Control?
4. Is HB177 Unconstitutional?
5. Will HB177 Exacerbate a Capacity Shortage?
6. Will HB177 Increase Consumer Costs?
7. Will HB177 Increase Carbon Emissions?
8. Is HB177 Needed Given NHDES's Authority?
9. Is the 2 Mile Buffer Arbitrary?

These Fact Sheets present our **evidence and conclusions that the answer to all of the above questions is: NO**. We are happy to address anything in these Fact Sheets, or any other lingering issues you may have—**please feel free to call or email**. We are also happy to make available to Senators the legal and technical experts who have been advising us on NHDES permitting matters.

Sincerely,

A handwritten signature in black ink that reads "Eliot Wessler". The signature is written in a cursive style and is positioned above the typed name.

Eliot Wessler, President  
and on behalf of the NCABC Board of Directors

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# House Bill 177

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT prohibiting the siting of a landfill near a state park.

*Be it Enacted by the Senate and House of Representatives  
in General Court convened:*

1 New Paragraph; Permit Prohibited Near Certain Parks and Forest Lands. Amend RSA 149-M:9 by inserting after paragraph XIV the following new paragraph:

XV. No permit shall be issued by the department for the siting of a new landfill if any part of the actual solid waste disposal area is proposed to be located within 2 miles of the boundary of any state park. For purposes of this paragraph, “state park” means any state park managed by the state director of the division of parks and recreation pursuant to RSA 216-A:2. “State park” shall not include the state historic sites and recreational rail trails. Nothing in this paragraph shall be construed to prohibit the expansion of any existing landfills.

2 Effective Date. This act shall take effect upon its passage.

# 1. Does HB177 Trample Property Rights?

**The claim:** Property rights are diminished because HB177 would not allow a landfill to be built on a landowner's property if the footprint of the landfill is within 2 miles of one of 68 NH state parks.

**Our Point of View:** **On balance, HB177 will actually help protect property rights!** First things first: property rights are an absolutely critical component of a market economy and the preservation of individual liberties. But please consider:

- **Property rights are never absolute.** They always include a balancing of interests between property owners. Property owners cannot do *anything and everything* they might want to do! For one example, we **don't allow property owners to do whatever they want if it will significantly diminish the property rights of their neighbors.**
- Local zoning ordinances include many and varied restrictions on property rights, as do any number of NH laws designed to protect the environment. In many cases, **zoning or state law is far more restrictive than HB177.**
- There's no getting around it—**landfills significantly affect the rights of neighboring property owners**, due to odors, noise, water contamination, scavenger animals, etc.
- **NH's taxpayers effectively own NH's state parks. NH taxpayers' property rights would be violated** if the state allowed a private landfill developer to site a landfill so close to a NH state park that it interfered with the enjoyment of the park.

**Our Conclusion:** **HB177 limits one and only one right—the right to use one's property to build a new landfill within 2 miles of a NH state park. This is a small price to pay to protect NH's state parks, and in any case, it is entirely consistent with precedent and policy.**

## 2. Is HB177 Spot Zoning?

**The claim:** We're not sure what opponents of HB177 mean by "spot zoning." The issue has been brought up most prominently by two Dalton residents who are the self-proclaimed largest landowners in Dalton—in other words, the two people (other than the site landowner) who stand to gain the most financially from a landfill in Dalton. Their argument (verbatim) is: "In New Hampshire, we trust our legislature to set general rules and not to spot zone out individual projects. This is a dangerous precedent. What happens next time, when a landfill is proposed in another town? Will you see a new bill asking for another legislative spot zoning 'no'? A bill saying 'no landfill shall be sited within 2 miles of X?'"

**Our Point of View:** No, HB177 is not spot zoning. We concede that the genesis of HB177 was to protect Forest Lake State Park from landfill encroachment. But the truth is **NHDES does not have the tools to balance the value of our state parks against the agency's primary mission to facilitate permits for private development.** HB177 is not zoning by another name. It is common sense and good public policy.

- **HB177 is narrow in scope, as it should be.** We doubt it creates a *slippery slope for copycat* bills related to landfill siting and/or state park protection. But even if it did, **the NH Legislature is fully capable of making judgments about the merits of such bills.**
- HB177 is serious legislation that is needed, and needed now. The **votes to move forward with HB177 in the NH House, against all odds, are a testament** to its serious purpose.

**Our Conclusion:** The spot zoning argument has no merit. This type of *slippery slope* argument simply serves moneyed interests that oppose HB177. Their argument belies what we believe—that the NH Legislature is able and stands ready to distinguish between legislating for a good purpose and legislating without good cause.

### 3. Does HB177 Usurp Local Control?

**The claim:** HB177 isn't about protecting NH's state parks; it isn't even about protecting Forest Lake State Park. It's about the NH Legislature usurping local control from the residents of Dalton.

**Our Point of View:** It is a Vermont corporation that is usurping local control.

- **Dalton has little control** in the first place over matters related to landfills. The NH Supreme Court has indicated on a number of occasions that **the state (in the form of NHDES) has primacy over virtually all matters related to landfill regulation**, other than local siting considerations.
- While the landfill has not yet been put to a direct test in Dalton, we know for a fact that **the vast majority of residents in the towns bordering Dalton (i.e., Whitefield, Bethlehem and Littleton) are vehemently opposed**. These towns, largely downwind and downstream of the landfill site, will bear environmental, quality of life, and traffic impacts much greater than Dalton's. In spite of this unanimous regional opposition, Casella pushes ahead.
- **Casella has told Dalton** town officials repeatedly, despite Dalton enacting its first zoning ordinance two years ago, that **the Town is powerless** to stop the juggernaut that is NHDES and the only option Dalton has left is to **accept the landfill and take the "deal"** that Casella is offering.

**Our Conclusion:** The argument that HB177 takes control from Dalton doesn't line up with anything that Casella, NHDES, or NH's Courts do or say. Moreover, landfills clearly have regional impacts, and to assume that one town should have the power to make decisions that will affect an entire region is antithetical to good government.

## 4. Is HB177 Unconstitutional?

**The claim:** Casella's attorney has suggested that HB177 either is or may be unconstitutional. It's unclear whether the claim is that the bill violates the US Constitution or the NH Constitution or both. The only easily discernible claim is that it is unconstitutional for a state to legislate such that it impedes interstate commerce.

**Our Point of View:** It is a true statement and a fair reading of the US Constitution and court precedent that **a state may not legislate to impede interstate commerce. But this is not the case with HB177**, and we cannot think of a good reason for this argument to be made to Senators in their deliberation over HB177. **We think the facts are clear—there is nothing about HB177 that would have any discriminatory effect on commerce that might possibly violate the US Constitution.**

- HB177 makes **no distinctions between corporations based on home state.**
- HB177 makes **no distinction regarding the state of origin** for any aspect of construction or operations of a landfill business.
- HB177, particularly as amended, **makes no distinction in the type of ownership** of a landfill facility.

**Our Conclusion:** Opponents of HB177 as amended and voted out of the NH House have and may continue to raise issues related to the constitutionality of the bill. We think these arguments are made as a scare tactic — a threat that the constitutionality of the bill will be challenged in court, requiring NH at some point to litigate the matter. We hope you will not let that threat impede passage of a soundly reasoned bill.

**If this issue is raised at any point in the Senate's consideration of HB177, whether in Committee and/or before the full Senate, supporters of HB177 are prepared to make available, through direct testimony and/or legal briefs, the legal analysis of NCABC's attorney—Ms. Amy Manzelli of the BCM Law Firm in Concord NH.**

## 5. Will HB177 Exacerbate a Capacity Shortage?

**The claim:** There seem to be two parts to this claim. First, if the Dalton landfill is not permitted—and permitted quickly—we will soon run out of solid waste capacity. Second, the 2-mile buffer in HB177 removes from consideration too much NH land on which a new landfill can be built, and this somehow puts NH at risk of being able to permit new landfills when they are needed.

**Our Point of View:** **These claims are unfounded** given all available evidence.

- **Plenty of capacity is currently available**—in the North Country at the Mt. Carberry facility; downstate at Waste Management and other facilities; and also in NY and other neighboring states.
- **NHDES has found** that even with the eventual closure of the NCES facility, there is **no capacity shortage in the short-term**. Existing landfills can pick up any slack. This provides plenty of time for the industry to respond to any and all market events, including the failure of the proposed Dalton landfill to be permitted.
- HB177 enactment would still leave **more than 90% of the state's land area free to consider a new landfill. There is no evidence that there will be a problem finding alternative sites**. While Casella did a cursory job of evaluating sites other than Dalton, it found a number of other sites, including sites that would have significantly less environmental and quality of life impacts, and which are not anywhere near a NH state park.

**Our Conclusion:** **Currently there is no solid waste disposal capacity shortage, and there is no evidence that such a shortage is imminent. At some point in time, shortages may develop. At that time, HB177 will not be an obstacle. Enactment of HB177 will provide a strong signal to the solid waste management industry that it should be looking for new landfill sites that will not have dramatic impacts on our state parks.**



## 6. Will HB177 Increase Consumer Costs?

**The claim:** Enacting HB177 means Casella will not get permits to build its next landfill in Dalton right next to Forest Lake State Park. And as a direct result of this failure to win permits, communities that might have used the Dalton facility will pay more for solid waste disposal.

**Our Point of View: We don't really know how HB177 will impact solid waste disposal prices and neither does Casella!**

- As far as we know, Casella has provided **no evidence, e.g., from a market study**, of how prices will be affected in the solid waste market whether Casella builds a new landfill in Dalton or not. Therefore, **to claim that prices will increase is highly speculative.**
- **Casella will find sites for expanding capacity** if and when the business opportunity is favorable. Whether it expands its capacity or not, Casella will, like every other for-profit business, charge its customers whatever the market will bear, irrespective of its costs.
- The claim that prices will go up is speculative given the only direct regional evidence we know of shows prices have gone down. **When Dalton switched recently from using Casella's NCES facility to the Mt. Carberry facility, its costs went down, not up.** This fact has been confirmed by detailed cost analyses by the Dalton Select Board.

**Our Conclusion: The evidence suggests that prices are just as likely--if not more likely—to go down as up for communities that might otherwise contract with Casella for solid waste disposal at a facility in Dalton. At a minimum, they will have the option to switch to the Mt. Carberry facility, which may result in lower total costs, even for those communities that are more distant and may incur slightly higher transportation costs.**

## 7. Will HB177 Increase Carbon Emissions?

**The claim:** If HB177 is enacted, the proposed Dalton facility will not be eligible for permitting and therefore will not be built. Without a new landfill in Dalton, the distances waste-hauling trucks will travel from NH communities will increase, resulting in an increased carbon footprint for the state of NH.

**Our Point of View:** This analysis is flawed, at best.

- It assumes a new landfill in Dalton is the only option for NH communities, which we know is not true. **Some customers may end up using a facility that is closer than the proposed Dalton facility, which would likely result in reduced carbon emissions.**
- The claim is misleading because it focuses on NH's carbon emissions instead of the more appropriate metric of regional emissions, particularly since Casella says up to **half of Dalton's landfill capacity will be reserved for out-of-state trash.** The trash from states other than NH may be deposited in facilities less distant than Dalton would be, thus decreasing carbon emissions.

**Our Conclusion:** Casella's claim is flawed, as carbon emissions must be evaluated on a regional, not a state-wide basis. We believe the most likely scenario is that total regional carbon emissions will decrease if the proposed Dalton facility is not permitted due to HB177.

**One further note is warranted here:** it is ironic that Casella raises the issue of increased carbon emissions, given that Casella's permit applications and Traffic Study show the proposed route for trucks is as much as 26 miles longer than the most direct possible route. Casella has freely admitted to NH's Department of Transportation that it chose the proposed route so that its largest trucks bypass Littleton, a town with significantly more political clout than the towns along the proposed route. This shows little concern for carbon emissions—or social justice.

## 8. Is HB177 Needed Given NHDES' Authority?

**The claim:** There's no reason to legislate how far a landfill should be from a state park because NHDES rules are sufficient to protect state parks from environmental damage.

**Our Point of View:** There is lots of evidence that NHDES does not have the tools to protect our state parks from landfill impacts.

- **By its own admission, NHDES is under-resourced and understaffed.** This means key positions go unfilled, and as a result, project oversight is inadequate.
- **NHDES has not updated its solid waste management rules since 2003, despite a legal requirement to do so.**
- **NHDES' commitment to public input in its solid waste management program is less than clear,** given repeated expansions at Casella's NCEs facility despite strong public opposition, and a host of operational concerns.
- **NHDES has so far failed to require Casella to provide baseline data for its proposed Dalton site,** despite evidence from technical experts that it is absolutely critical.
- It appears that **NHDES has no regulations to distinguish between environmental impacts on virgin land or land adjacent to a state park, in contrast to environmental impact on land that is already spoiled** or has less intrinsic value.

**Our Conclusion:** This evidence demonstrates a regulatory gap that leaves our parks unprotected from the degradation of a nearby landfill. A reasonable conclusion is that developers come first, and the environment, public health and public opinion come second. HB177 obviously will not fix every problem with NHDES' regulation of landfills, but at least it can protect our state parks and their treasured legacy.

## 9. Is the 2-mile Buffer Arbitrary?

**The Claim:** A 2 mile buffer is arbitrary, and was chosen in order to kill the project, not protect state parks.

**Our Point of View:** The choice of a 2 mile buffer is a reasonable compromise that is wholly supported by the facts. Forest Lake State Park is not only within 2 miles of the proposed landfill site; it is within a couple hundred feet. Under existing NHDES rules, a landfill can be placed as close as 100 feet from a state park, and 200 feet from a lake. We know of no sensible rationale for this.

- **Buffers** are commonly used in land use laws, zoning ordinances, and land use regulation; they **are arbitrary by their nature.**
- 2 miles is consistent with other states' laws. House testimony on HB177 pointed out that **11 states have created buffers of several miles to protect parks and public land from landfills.**
- The choice of a 2 mile buffer is underpinned by **air quality data from landfills across the country.** Odors and noxious airborne chemicals have a range up to 5 miles from a landfill. A 2 mile buffer in HB177 is essentially a compromise between 5 miles and the current 100 feet.
- A 2 mile buffer is also underpinned by scientific evidence of the speed of groundwater flow, given the difficulty of groundwater contamination detection and remediation. **A 2 mile buffer provides a reasonable amount of time to detect and remediate landfill liner leaks after they occur; the existing 100 foot buffer clearly does not.**

**Our Conclusion:** A buffer greater than 2 miles between parks and landfills is justifiable and is much less arbitrary than a buffer of 100 feet. HB177 sets the buffer at 2 miles as a compromise to protect state parks from the worst of environmental insults, while at the same time balancing the property rights of landowners and their neighbors.