

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.242 Name of Bill: An act relating to authorizing the Public Service Board to regulate materials recovery facilities

Agency/Dept.: ANR/DEC

Author of Bill Review: Bryn Oakleaf

Date of Bill Review: 1/13/2014

Status of Bill (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

Recommended Position:

☐ Support ☐ Oppose ☒ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

There is one main provision in this bill which is to grant the Public Service Board the authority to regulate materials recovery recycling facilities. The bill does not define a materials recovery recycling facility, nor does it refer to the definition used by a different statute. The bill does indicate that a materials recovery recycling facility would be treated as a "company" as it is defined within the statute if not owned by a municipality.

The bill language indicates that the intent of the proposed expanded authority is to ensure there is no unfair competition for prices or access to services when there are four or fewer material recovery recycling facilities in operation in the State. Oversight by the Board would be conducted on rate and rate schedules as it would for any other company as defined under 30 V.S.A. §218 and 225. This expansion in authority is added to 30 V.S.A. §203 Jurisdiction of Certain Public Utilities. It is not clear in the bill why current conditions indicate that Board oversight is warranted.

2. Is there a need for this bill? *Please explain why or why not.* There is no demonstrated need, other than the inference, that pricing is not competitive amongst existing materials recovery recycling facilities. The last sentence in section (7) of 30 V.S.A. §203 of the bill does not clearly indicate if the threshold number of facilities includes municipally owned materials recovery facilities (MRF). It is important to clarify if "own" and "operate" are intended to be regarded separately or synonymously for purposes of identifying exempt facilities. As ANR defines MRFs ("recycling facilities" under Solid Waste Management Rule §6-201) there are currently more than four of these facilities operating in the State by more than one company, thus fulfilling what S.242 indicates as the threshold for sufficient competition among the facilities. Additionally, market forces are determining factors for the price point of each type of recyclable material collected and processed, as well as a specific facility's history of contamination among each bale sold. Materials Recovery Facilities may have the ability to minimize their contamination rate per bale but they do not have the advantage of determining the rate of sale per bale. That is primarily determined by the end user and extent of demand from the manufacturing industry for each product.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

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ANR would need to increase its data collection on MRFs that collect and process mandated recyclables as defined by 10 V.S.A. §6602(29) to assist with infrastructure development. This bill may create added burden to facilities that already struggle with external forces to cover their cost of collection, processing, and general facility maintenance and operations. Oversight from the Public Service Board may result in the unintended consequence of limiting the materials a facility may be able to collect and process in order to ensure that the sale of more desired materials covers facility costs.

- 4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** The Department of Public Service would take on the added burden of regulating another series of facilities and learning about the market forces that dictate their price points for each commodity sold. It is difficult to predict whether this added oversight is something the Department of Public Service will determine is beneficial for the public good to an extent that justifies the work required to regulate it.
- 5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example: public, municipalities, organizations, business, regulated entities, etc.)*
There would likely be fewer material types collected for recycling, and therefore, more materials disposed with the proposed oversight, which is in conflict with the goals of the Universal Recycling Law.

Although rate and rate schedules for non-municipal MRFs would be regulated by the Public Service Board there is mutual interest between municipalities and non-municipally operated MRFs to ensure the greatest amount of recyclable material is diverted from the waste stream. If limitations are imposed on MRFs for maximum prices, MRFs may need to charge users to cover expenses which then may limit the operational hours of the facility and require a reduction in their work force resulting in a reduction of total material the facility can process within a day.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Small recycling facilities, certain solid waste haulers (small haulers that are not capable of collecting and transporting as much material as large haulers), certain solid waste management districts (SWMD) such as Windham SWMD, and Northeast Kingdom SWMD, and municipalities. By having more MRFs to choose from there is potential for shorter hauling distances between collection points and drop off locations. Having more facilities may also increase the demand that each facility has for the highest value commodities that could result in payment for the materials to haulers rather than a tipping fee. The bill may also see support from municipalities that own and operate a MRF that may not have the technology or high collection and processing capabilities of a commercially operated MRF. This can cause municipalities to need a set minimum price per bale that they are willing to accept to ensure their operating and administration costs are covered since they are not able to process as much material in the same amount of time as a commercial MRF.

6.2 Who else is likely to oppose the proposal and why? Commercial MRF owners and operators, certain solid waste haulers (large hauling companies that benefit from favorable market rates that keep tipping fees down at large MRFs), and certain solid waste districts (Rutland County SWMD, and Chittenden SWMD). They may opt to oppose the bill because it creates unnecessary oversight of the facilities and does not benefit the public in any significant manner.

- 7. Rationale for recommendation:** *Justify recommendation stated above.* The bill does not demonstrate a need for the PSB to have oversight of these facilities, other than an inference that there is an issue with unfair

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competition. There is no indication from the stakeholder community that there is a need for oversight of rates and schedules. Market forces in place tend to limit rates. This bill would be disruptive to the implementation phase of the Universal Recycling law (Act 148), and may have unintended consequences. Additionally, the extent of oversight is vague. Solid Waste Management Rules (6-201) states "Recycling Facility means a facility that accepts, aggregates, stores or processes recyclable materials." In this sense ANR's definition of a MRF is very broad and inclusive of both public and privately operated facilities as well as facilities that only accept commercially generated recyclables. It is unclear from the proposed language what the extent of Public Service Board oversight would be. If MRFs are broadly defined by this bill, then the threshold of more than four operating MRFs by a single company has been met. Oversight of rate schedules will be burdensome to the Department of Public Utilities and to the Public Service Board due to the nature of the materials being exchanged on a global market with sale values prone to frequent and unpredictable fluctuations, and will increase challenges facing ANR during its implementation of Act 148.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

ANR neither supports nor opposes this bill, since there is no demonstrated need and, as written, the trigger point and ultimate sunset, as well as the regulatory intent and scope of regulation are unclear.

Commissioner has reviewed this document: _____

Date: 1/14/12

Secretary has reviewed this document: _____

Date: 1/15/12