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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

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*Testimony of Anya Trundy, Deputy Commissioner
Department of Administrative and Financial Services
Testifying in Opposition to*

LD 1349, An Act to Require Legislative Approval for a Contract to Operate the Juniper Ridge Landfill

*Sponsored by Sen. Michael Tipping
Before the Joint Standing Committee on Environment and Natural Resources*

Senator Tepler, Representative Doudera, and members of the Joint Standing Committee on Environment and Natural Resources; I am Anya Trundy, a Deputy Commissioner for the Department of Administrative and Financial Service (DAFS) and I am here today to provide testimony in Opposition to this bill on behalf of the Bureau of General Services (BGS).

I want to start by recognizing that many Committee members may be unaware of how the State came to own the Juniper Ridge Landfill. JRL was previously the West Old Town landfill associated with the Georgia-Pacific owned mill located in Old Town. In 2004, the State of Maine purchased the landfill from G-P for \$26 million cash provided by Casella under the OSA. This took the long-term liability of the landfill off the mill's balance sheet, as well as, provided much needed capital for G-P to build a biomass plant to reduce the mill's energy expenses, with the larger objectives of keeping the mill in operation, saving the jobs of those employed at the mill, and preserving a substantial percentage of Old Town's property tax base.

Opposition to the landfill has existed since the Legislature approved the original purchase. Nobody wants a landfill in their backyard, but whether you support or oppose JRL we all contribute to the generation of waste that needs to be disposed of. In 2003, the acquisition of JRL provided a desperately needed location for municipal waste and Casella was contracted to operate the landfill in a manner revenue-neutral to the State. Today, expansion of JRL is critical to maintaining the state's solid waste disposal capacity, providing the necessary disposal of bypass municipal solid waste for communities effected by the shutdowns of other processing facilities and disposal of sludge from municipal wastewater districts.

DAFS has not exceeded the authority granted to us by the Legislature when the State assumed ownership of JRL. Contrary to misinformation recently circulating among legislators; I want to be clear that BGS, has not extended the current and original 30-year Operating Services Agreement

with Casella for the operation of the State-owned Juniper Ridge Landfill. The expiration date of the OSA with Casella is still the original expiration date of February 5, 2034.

That being said, when you own a landfill, there are no perfect options, there are only best available options and they are limited. DAFS is not trying to pull a fast one, nor is DAFS hiding the ball. In my testimony today and in my response to Committee questions, I am going to be completely forthcoming about BGS's assessment of the situation and the State's options.

The fact of reality is that JRL accepts 52% of the waste landfilled in the state and is anticipated run out of licensed capacity in 2028. The Bureau of General Services, Department of Administrative and Financial Services, and the Mills' Administration feel strongly that the State's best available option for the future of the Juniper Ridge Landfill and the State's solid waste and sludge disposal needs, is to pursue a full expansion of the site's remaining capacity which is projected to extend the life of the landfill until 2040. This will buy the State sufficient time necessary to identify waste management alternatives to hopefully reduce our landfilling needs and a new State-owned landfill location.

The first step in the process is the Public Benefit Determination by the Maine Department of Environmental Protection (DEP). Application and approval of an expansion of JRL is separate from but contingent upon a Public Benefit Determination by DEP supporting expansion. DEP's Public Benefit Determination issued October 2, 2024, and supportive of expansion at JRL, subject to certain conditions, has been appealed to Superior Court by the Penobscot Nation and Conservation Law Foundation.

Though BGS has not yet submitted an application for expansion to DEP for approval, BGS intends to do so for the full remaining 12 million cubic yards of capacity. As a State-owned landfill, BGS will be the Applicant for an expansion of JRL, not Casella. However, DEP's approval of expansion being predicated upon Casella's investment in treatment of landfill leachate for PFAS, does require that the expansion of JRL and extension of the OSA be considered in tandem.

An extension of the OSA will not precede approval by DEP of BGS' application for expansion of JRL. The length of any extension of the OSA, if granted in the future, would be proportional to the volume of any expansion permitted by DEP and the corresponding estimated life of JRL beyond the OSA's current 2034 expiration.

There is one overriding reason, that executing an extension of the existing OSA with Cassella is the State's the best available option and in the State's best interest. Under the existing OSA, Casella indemnifies the State even after the closure of JRL and "until the expiration of the longest of the statutes of limitations applicable of Environmental Matters subject to the indemnification thereunder." This indemnification doesn't just apply to the premises, it also extends to off-premises groundwater or surface water contamination caused by the landfill.

DAFS would normally advocate that at the end of such a long term, a contract should be put out to bid rather than extended. But this situation is unique and the State's considerable interest in preserving this invaluable indemnification is reasonable justification for extending

the existing OSA with Cassella an additional six (6) years, which is only a 20% extension of the original 30-year term.

This is the only way to retain the indemnity clause of the existing OSA. If we put the OSA out to bid, it will sever the existing OSA. Even if Casella were the prevailing bidder, there is no guarantee and, indeed, it is unlikely that they would agree to the indemnity clause again.

Moreover, it's highly unlikely that another landfill operator waiting in the wings who is interested in operating JRL. Given that the landfill will have been operated by Casella for the last 30 years, there is no compelling business interest for assuming operations for the last six years of its life and assuming the considerable expense of post-closure care.

An extension of the OSA is not giving Casella a sweetheart deal; an extension of the OSA is holding Cassella to the indemnity clause, that for the 30-years of the OSA their compensation was structured to off-set the long-term liability of.

If LD 1349 becomes law, it will create a very political, high-stakes obstacle to clear at the end of an extensive and lengthy vetting process. If failure to garner two-thirds, prevents the State from extending the existing OSA, we will be left with two undesirable choices.

Choice 1: Prematurely close JRL before its full capacity has been reached in order to preserve indemnification of the State, at such a time when sufficient alternative landfill capacity has not been identified, licensed and come online, thus creating a crisis backup of solid-waste and waste-water sludge across Maine's communities.

Choice 2: Throw away the indemnity clause, requiring the State of Maine to accept all environmental and financial liability for the JRL premise and off-premise groundwater or surface water contamination caused by the Landfill.

In closing, I can't begin to convey how extra-ordinary it would be to require not only legislative approval, but two-thirds approval, of a contract that has been fully negotiated by the Executive Branch, including review by the Attorney General. We are gravely concerned about not just the statewide waste disposal crisis that requiring two-thirds legislative approval of any OSA contract extension would very likely create, but the precedent it would set with respect to other large-scale, high-value contracts, and the potential to paralyze the State's ability to contract for essentials services that we don't have the capacity or expertise to directly provide. The standard terms of State-contracts already overwhelming favor the State, if the Legislature can upend the results of good faith contract negotiations with Departments on the finish line, private entities will simply choose not to bid and do business with the State.

Thank you for allowing me to testify. I am happy to answer questions from the Committee.