

CHAPTER 176  
SB 429-FN - FINAL VERSION

02/16/2022 0592s

2022 SESSION

22-2966  
07/10

SENATE BILL ***429-FN***

AN ACT relative to the site evaluation committee.

SPONSORS: Sen. Giuda, Dist 2; Sen. Watters, Dist 4; Sen. Ward, Dist 8; Rep. Harrington, Straf. 3;  
Rep. Vose, Rock. 9; Rep. Leishman, Hills. 24

COMMITTEE: Energy and Natural Resources

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AMENDED ANALYSIS

This bill:

I. Modifies the site evaluation committee to allow for agency designees, a quorum of 5 members, and expanded training.

II. Requires an adequate public notice of all committee proceedings pursuant to RSA 91-A.

III. Updates various fees to reflect changes previously approved by the fiscal committee.

IV. Clarifies that subsequent certificate holders remain responsible for associated costs.

V. Authorizes the committee to impose a fine for preliminary determinations of violations of any certificate issued within RSA 162-H.

VI. Provides for funding of all operating costs out of the site evaluation committee fund and allows the chair of the committee to seek additional funding.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

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

AN ACT relative to the site evaluation committee.

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

1 176:1 Energy Facility Evaluation, Siting, Construction and Operation; Site Evaluation Committee  
2 Established; Certain Designees Allowed. Amend RSA 162-H:3, I to read as follows:

3 I. There is hereby established a committee to be known as the New Hampshire site evaluation  
4 committee consisting of 9 members, as follows:

5 (a) The commissioners of the public utilities commission, the chairperson of which shall be  
6 the chairperson of the committee;

7 (b) The commissioner of the department of environmental services, who shall be the vice-  
8 chairperson of the committee, ***the commissioner may appoint a designee, but such designee shall not***  
9 ***serve as vice-chairperson,***

10 (c) The commissioner of the department of business and economic affairs or designee;

11 (d) The commissioner of the department of transportation, ***or designee,***

12 (e) The commissioner of the department of natural and cultural resources, the director of the  
13 division of historical resources, or designee; and

14 (f) Two members of the public, appointed by the governor, with the consent of the council, in  
15 accordance with RSA 162-H:4-b, III.

16 176:2 Energy Facility Evaluation, Siting, Construction and Operation; Site Evaluation Committee  
17 Established; Number of Members Modified. Amend RSA 162-H:3, III to read as follows:

18 III. [~~Seven~~] ***Five*** members of the committee shall constitute a quorum for the purpose of  
19 conducting the committee's business.

20 176:3 Energy Facility Evaluation, Siting, Construction and Operation; Site Evaluation Committee  
21 Established; Modifications to Mandatory Training. Amend RSA 162-H:3, VII to read as follows:

22 VII. All committee members ***and designees*** shall on an annual basis complete [~~a~~] ***a***  
23 ***comprehensive*** intensive training program on the provisions of RSA 162-H and the administrative rules  
24 adopted thereunder with respect to reviewing and evaluating applications for a certificate of site and  
25 facility, ***as well as training regarding energy infrastructure.*** All new committee members, and any  
26 designee to a subcommittee pursuant to RSA 162-H:4-a, II or III, shall complete the training program prior  
27 to serving on, respectively, any committee or subcommittee proceeding. The ***legal*** training shall be  
28 conducted by the department of justice ***and the training regarding energy infrastructure shall be conducted***  
29 ***by the department of energy.***

30 176:4 Energy Facility Evaluation, Siting, Construction and Operation; Powers and Duties of the  
31 Committee; Public Comment Required. Amend RSA 162-H:4, II to read as follows:

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1           II. The committee shall hold hearings as required by this chapter and such additional hearings as  
2 it deems necessary and appropriate *and in addition to the requirements under RSA 91-A, ensure*  
3 *adequate and timely public notice of no less than 7 calendar days.*

4           176:5 Energy Facility Evaluation, Siting, Construction and Operation; Application and Filing Fees.  
5 Amend RSA 162-H:8-a to read as follows:

6           162-H:8-a Application and Filing Fees.

7           I. Except as provided in paragraph IV, a person filing with the committee an application for a  
8 certificate for an energy facility, a petition for jurisdiction, a request for exemption, or any other petition or  
9 request for the committee to take action, shall pay to the committee at the time of filing a fee determined  
10 in accordance with the fee schedule described in paragraph II. If an application for a certificate for an  
11 energy facility is deemed incomplete pursuant to RSA 162-H:7, VI, and a new application is submitted  
12 thereunder, the [unearned] *unused* portion of the initial application fee shall be refunded to the applicant  
13 or credited to the filing of the new application. The committee may in its discretion provide for a credit or  
14 refund in other circumstances that are unforeseen by the applicant.

15           II. The fees under paragraph I shall be determined in accordance with a fee schedule posted by  
16 the committee on its website, which shall include the following amounts, subject to subsequent  
17 modification under paragraph III:

18           (a) Application fee for electric generation facilities: [~~\$50,000~~] *\$60,000* base charge, *and*  
19 *\$20,000 for a certificate monitoring and compliance charge*, plus:

20           (1) [~~\$1,000~~] *\$1,200* per megawatt for the first 40 megawatts, and [~~\$1,500~~] *\$1,800* per  
21 megawatt for each megawatt in excess of 40 megawatts, for any wind energy system.

22           (2) [~~\$100~~] *\$120* per megawatt, for any natural gas or biomass fueled facility.

23           (3) [~~\$150~~] *\$180* per megawatt, for any coal or oil fueled facility.

24           (4) [~~\$200~~] *\$240* per megawatt, for any nuclear generation facility.

25           (5) *\$1,200 per megawatt, for renewable energy generation facilities.*

26           (b) Application fee for transmission facilities: [~~\$50,000~~] *\$60,000* base charge, *and \$20,000 for*  
27 *a certificate monitoring and compliance charge*, plus:

28           (1) [~~\$3,000~~] *\$3,600* per mile, for any electric transmission facility.

29           (2) [~~\$1,500~~] *\$1,800* per mile, for any natural gas pipeline.

30           (c) Application fee for other energy facilities: [~~\$50,000~~] *\$60,000* fee *and \$20,000 for a*  
31 *certificate monitoring and compliance charge.*

32           (d) Filing fees for administrative proceedings:

33           (1) Petition for committee jurisdiction: [~~\$10,500~~] *\$12,600.*

34           (2) Petition for declaratory ruling: [~~\$10,500~~] *\$12,600*, or [~~\$3,000~~] *\$3,600* if heard by a 3-  
35 member subcommittee.

36           (3) Certificate transfer of ownership: [~~\$10,500~~] *\$12,600*, or [~~\$3,000~~] *\$3,600* if heard by a  
37 3-member subcommittee.

38           (4) Request for exemption: [~~\$10,500~~] *\$12,600*, or [~~\$3,000~~] *\$3,600*  
39 if heard by a 3-member subcommittee.

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1 (5) Request to modify a certificate: [~~\$10,500~~] **\$12,600**, or [~~\$3,000~~] **\$3,600** if heard by a 3-  
2 member subcommittee.

3 ***II-a. All certificate monitoring and compliance charges shall be deposited in the site evaluation***  
4 ***committee fund established in RSA 162-H:21 and shall be nonlapsing and accounted for as a separate***  
5 ***line item.***

6 III. The committee shall review and evaluate the application fees and filing fees in the fee  
7 schedule in paragraph II at least once each year. The committee may increase or decrease any amount  
8 in the fee schedule by up to 20 percent [~~with prior approval of the fiscal committee of the general court,~~]  
9 provided that any such increase or decrease shall occur not more frequently than once during any 12-  
10 month period. Modifications to the fee schedule shall be posted on the committee website, with a link  
11 prominently displayed on the home page.

12 IV. Notwithstanding paragraph I, a petition for committee jurisdiction filed by a petitioner as  
13 defined in RSA 162-H:2, XI(a), (b), or (c) for a certificate for an energy facility shall not be subject to a  
14 filing fee. If the committee determines that it has jurisdiction over a proposed energy facility subject to any  
15 such petition, then the owner of the proposed energy facility shall be required to pay to the committee the  
16 petition for jurisdiction fee, in addition to the application fee determined in accordance with paragraph II  
17 for the type and size of the proposed energy facility.

18 176:6 Energy Facility Evaluation, Siting, Construction and Operation; Counsel for the Public;  
19 Administrative Proceedings Included. Amend RSA 162-H:9, I to read as follows:

20 I. ***The chair or the administrator shall notify the attorney general of all administrative proceedings.***  
21 ***The attorney general may appoint an assistant attorney general as counsel for the public in administrative***  
22 ***proceedings.*** Upon notification that an application for a certificate has been filed with the committee in  
23 accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a  
24 counsel for the public. The counsel shall represent the public in seeking to protect the quality of the  
25 environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all  
26 the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall  
27 serve until the decision to issue or deny a certificate is final.

28 176:7 Energy Facility Evaluation, Siting, Construction and Operation; Public Hearing; Studies; Rules;  
29 Including Certificate Holders in Cost Responsibility. Amend RSA 162-H:10, V to read as follows:

30 V. The site evaluation committee and counsel for the public shall conduct such reasonable  
31 studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter  
32 and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties  
33 imposed by this chapter, the cost of which shall be borne by the applicant ***or certificate holder*** in such  
34 amount as may be approved by the committee. The site evaluation committee and counsel for the public  
35 are further authorized to assess the applicant ***or certificate holder*** for all travel and related expenses  
36 associated with the processing of an application ***or other proceedings*** under this chapter.

37 176:8 Energy Facility Evaluation, Siting, Construction and Operation; Enforcement; Imposition of  
38 Fine Allowed. Amend RSA 162-H:12, I to read as follows:

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1 I. Whenever the committee, or the administrator as designee, *makes a preliminary determination*  
2 [~~determines~~] that any term or condition of any certificate issued under this chapter is being violated, it  
3 shall, in writing, notify the [~~person holding the certificate~~] *certificate holder* of the specific violation and  
4 order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person  
5 has failed or neglected to terminate the violation, the committee may suspend the person's certificate, *or*  
6 *impose a fine not to exceed \$10,000 per day until the violation is corrected.* Except for emergencies, prior  
7 to any suspension, the committee shall give written notice of its consideration of suspension and of its  
8 reasons therefor and shall provide opportunity for a prompt hearing.

9 176:9 Energy Facility Evaluation, Siting, Construction and Operation; Enforcement; Certificate  
10 Clarification. Amend RSA 162-H:12, II to read as follows:

11 II. The committee may suspend a [~~person's~~] certificate if the committee determines that [~~the~~] *a*  
12 person has made a material misrepresentation in the application or, in the supplemental or additional  
13 statements of fact or studies required of the applicant, or if the committee determines that the person has  
14 violated the provisions of this chapter or any rule adopted under this chapter. Except for emergencies,  
15 prior to any suspension, the committee shall give written notice of its consideration of suspension and of  
16 its reasons therefor and shall provide an opportunity for a prompt hearing.

17 176:10 Energy Facility Evaluation, Siting, Construction and Operation; Fund Established; Funding  
18 Plan; Operating and Support Costs Included. RSA 162-H:21 is repealed and reenacted to read as  
19 follows:

20 162-H:21 Fund Established; Funding Plan. There is hereby established in the office of the state  
21 treasurer a nonlapsing, special fund to be known as the site evaluation committee fund. All application  
22 and other filing fees received by the committee under RSA 162-H:8-a shall be deposited in the fund. All  
23 moneys in the fund shall be continually appropriated to the site evaluation committee and shall only be  
24 used to pay for operating costs of the committee, including but not limited to, compensation and  
25 reimbursements made under RSA 162-H:22 for energy facility proceeding time and expenses, and  
26 administrator and other committee support costs under RSA 162-H:3, VII and RSA 162-H:3-a, except  
27 those costs paid by applicants under RSA 162-H:10. In the event lawful expenditures in a fiscal year are  
28 greater than the total fees and charges held in the site evaluation committee fund, the chair of the site  
29 evaluation committee, may request, with prior approval of the fiscal committee that the governor and  
30 council authorize additional funding from general funds not otherwise appropriated.

31 176:11 Effective Date.

32 I. Section 6 of this act shall take effect January 1, 2023.

33 II. Sections 5, 8, and 10 of this act shall take effect July 1, 2022.

34 III. The remainder of this act shall take effect 60 days after its passage.

Approved: June 07, 2022

Effective Date:

I. Section 6 effective January 1, 2023

II. Section 5, 8, and 10 effective July 1, 2022

III. Remainder effective August 6, 2022

