

HB 609-FN - AS INTRODUCED

2023 SESSION

23-0387

09/10

HOUSE BILL

609-FN

AN ACT relative to energy facility siting.

SPONSORS: Rep. Vose, Rock. 5; Rep. Edwards, Rock. 31; Rep. Bernardy, Rock. 36; Sen.
Watters, Dist 4

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill establishes the regulation of energy facility siting within the public utilities commission and establishes new procedures to replace the site evaluation committee.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to energy facility siting.

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

1 1 New Chapter; Energy Facility Siting. Amend RSA by inserting after chapter 363-C the
2 following new chapter:

3 CHAPTER 363-D

4 ENERGY FACILITY SITING

5 363-D:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy
6 facilities may have significant impacts on and benefits to the following: the welfare of the population,
7 private property, the location and growth of industry, the overall economic growth of the state, the
8 environment of the state, historic sites, aesthetics, air and water quality, the use of natural
9 resources, and public health and safety. Accordingly, the legislature finds that it is in the public
10 interest to maintain a balance among those potential significant impacts and benefits in decisions
11 about the siting, construction, and operation of energy facilities in New Hampshire; that undue
12 delay in the construction of new energy facilities be avoided and the construction of critical
13 infrastructure be encouraged; that full and timely consideration of environmental consequences be
14 provided; that all entities planning to construct facilities in the state be required to provide full and
15 complete disclosure to the public of such plans; and that the state ensure that the construction and
16 operation of energy facilities is treated as a significant aspect of land-use planning in which all
17 environmental, economic, and technical issues are resolved in an integrated fashion. In furtherance
18 of these objectives, the legislature hereby establishes a procedure for the review, approval,
19 monitoring, and enforcement of compliance in the planning, siting, construction, and operation of
20 energy facilities.

21 363-D:2 Definitions. In this chapter:

22 I. "Acceptance" means a determination by the commission that it finds that the application
23 is complete and ready for consideration.

24 II. "Administrator" means the administrator of the department established by this chapter.

25 III. "Affected municipality" means any municipality or unincorporated place in which any
26 part of an energy facility is proposed to be located and any municipality or unincorporated place
27 from which any part of the proposed energy facility will be visible or audible.

28 IV. "Certificate" or "certificate of site and facility" means the document issued by the
29 commission, containing such terms and conditions as the commission deems appropriate, that
30 authorizes the applicant to proceed with the proposed site and facility.

1 V. "Commencement of construction" means any clearing of the land, excavation or other
2 substantial action that would adversely affect the natural environment of the site of the proposed
3 facility, but does not include land surveying, optioning or acquiring land or rights in land, changes
4 desirable for temporary use of the land for public recreational uses, or necessary borings to
5 determine foundation conditions, or other preconstruction monitoring to establish background
6 information related to the suitability of the site or to the protection of environmental use and values.

7 VI. "Commission" means the public utilities commission.

8 VII. "Department" means the department of energy.

9 VIII. "Energy" means power, including mechanical power, useful heat, or electricity derived
10 from any resource, including, but not limited to, oil, coal, and gas.

11 IX. "Energy facility" means:

12 (a) Any industrial structure that may be used substantially to extract, produce,
13 manufacture, transport or refine sources of energy, including ancillary facilities as may be used or
14 useful in transporting, storing or otherwise providing for the raw materials or products of any such
15 industrial structure. This shall include but not be limited to industrial structures such as oil
16 refineries, gas plants, equipment and associated facilities designed to use any, or a combination of,
17 natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days
18 of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric
19 generating station and its associated facilities, plants for coal conversion, onshore and offshore
20 loading and unloading facilities for energy sources and energy transmission pipelines that are not
21 considered part of a local distribution network.

22 (b) Electric generating station equipment and associated facilities designed for, or
23 capable of, operation at any capacity of 30 megawatts or more.

24 (c) An electric transmission line of design rating of 100 kilovolts or more, associated with
25 a generating facility under subparagraph (b), over a route not already occupied by a transmission
26 line or lines.

27 (d) An electric transmission line of a design rating in excess of 100 kilovolts that is in
28 excess of 10 miles in length, over a route not already occupied by a transmission line.

29 (e) A new electric transmission line of design rating in excess of 200 kilovolts.

30 (f) An electrical storage facility with a peak storage capacity of 30 megawatt-hours or
31 greater.

32 X. "Filing" means the date on which the application is first submitted to the commission.

33 XI. "Person" means any individual, group, firm, partnership, corporation, cooperative,
34 municipality, political subdivision, government agency or other organization.

35 363-D:3 Powers and Duties.

36 I. The commission shall:

37 (a) Evaluate and issue any certificate under this chapter for an energy facility.

1 (b) Determine the terms and conditions of any certificate issued under this chapter.

2 (c) Assist the public in understanding the requirements of this chapter.

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

6 III. The commission shall require from the applicant whatever information it deems
7 necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake,
8 and in the determination of the terms and conditions of any certificate under consideration.

9 IV. The commission shall conduct such reasonable studies and investigations as it deems
10 necessary or appropriate to carry out its duties and may employ a consultant or consultants, legal
11 counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall
12 be borne by the applicant or certificate holder. The commission is further authorized to assess the
13 applicant or certificate holder for all travel and related expenses associated with the processing of an
14 application under this chapter.

15 V. The commission may delegate to the administrator or such state agency or official as it
16 deems appropriate the authority to specify the use of any technique, methodology, practice, or
17 procedure approved by the commission within a certificate issued under this chapter, or the
18 authority to specify minor changes in the route alignment to the extent that such changes are
19 authorized by the certificate for those portions of a proposed electric transmission line or energy
20 transmission pipeline for which information was unavailable due to conditions which could not have
21 been reasonably anticipated prior to the issuance of the certificate.

22 VI. The commission may not delegate its authority or duties, except as provided under this
23 chapter.

24 VII. The commission shall issue such rules to administer this chapter, pursuant to RSA 541-
25 A, after public notice and hearing, as may from time to time be required.

26 363-D:4 Assertion of Jurisdiction; Exemption from Jurisdiction; Sizeable Changes or Additions;
27 Transfers of Certificates.

28 I. The commission may assert jurisdiction over any facility and associated equipment that it
29 determines requires a certificate, consistent with the findings and purposes of RSA 363-D:1, either
30 on its own motion or by petition of the applicant or 2 or more petitioners. "Petitioner" means a
31 person filing a petition meeting any of the following conditions:

32 (a) A petition endorsed by 100 or more registered voters in the host community or host
33 communities.

34 (b) A petition endorsed by 100 or more registered voters from abutting communities.

35 (c) A petition endorsed by the governing body of a host community or 2 or more
36 governing bodies of abutting communities.

1 II. The commission may exempt an energy facility from its jurisdiction when it determines
2 that other existing statutes provide adequate protection of the objectives of RSA 363-D:1. The
3 commission may grant such exemption within 60 days of acceptance of an application or filing of a
4 request for exemption with sufficient information to enable it to determine whether the proposal
5 meets the requirements set forth below. The commission shall hold a public hearing in each county
6 where the energy facility is proposed. The commission may exempt the applicant from the approval
7 and certificate provisions of this chapter, provided that the following requirements are met:

8 (a) Existing state or federal statutes, state or federal agency rules or municipal
9 ordinances provide adequate protection of the objectives of RSA 363-D:1;

10 (b) Response to the application or request for exemption from the general public
11 indicates that the objectives of RSA 363-D:1 are met through the individual review processes of the
12 state or federal agencies or municipalities; and

13 (c) All environmental impacts or effects are adequately regulated by other federal, state,
14 or local statutes, rules, or ordinances.

15 III. Commission approval shall be required for a sizeable change or addition to an energy
16 facility. A request for approval of a sizeable change or addition shall comply with RSA 363-D:6. The
17 commission shall adopt rules under RSA 541-A to define a sizeable change or addition.

18 IV. The commission shall administratively approve the transfer of a certificate within 90
19 days of a petition if it determines the new certificate holder has adequate financial, technical, and
20 managerial capability to assure construction and operation of the facility in continuing compliance
21 with the terms and conditions of the certificate.

22 363-D:5 Prohibitions and Restrictions. No person shall commence to construct any energy
23 facility within the state unless it has obtained a certificate pursuant to this chapter. Such facilities
24 shall be constructed, operated, and maintained in accordance with the terms of the certificate. Such
25 a certificate shall not be transferred or assigned without approval of the commission.

26 363-D:6 Application for Certificate.

27 I. All applications for a certificate for an energy facility shall be filed with the commission.

28 II. Upon filing of an application, the commission shall expeditiously conduct a preliminary
29 administrative review to ascertain if the application contains sufficient information to carry out the
30 purposes of this chapter. If the application does not contain such sufficient information, the
31 commission shall, in writing, expeditiously notify the applicant of that fact and specify what
32 information the applicant must supply.

33 III. Each application shall contain sufficient information to satisfy the application
34 requirements of each state agency having jurisdiction, under state or federal law, to regulate any
35 aspect of the construction or operation of the proposed facility and shall include each agency's
36 completed application forms. Upon the filing of an application, the commission shall expeditiously
37 forward a copy to the state agencies having permitting or other regulatory authority and to other

1 state agencies identified in administrative rules. Upon receipt of a copy, each agency shall conduct a
2 preliminary review to ascertain if the application contains sufficient information for its purposes. If
3 the application does not contain sufficient information for the purposes of any of the state agencies
4 having permitting or other regulatory authority, that agency shall, in writing, notify the commission
5 of that fact and specify what information the applicant must supply; thereupon the commission shall
6 provide the applicant with a copy of such notification and specification. Notwithstanding any other
7 provision of law, for purposes of the time limitations imposed by this section, any application made
8 under this section shall be deemed not accepted either by the commission or by any of the state
9 agencies having permitting or other regulatory authority if the applicant is reasonably notified that
10 it has not supplied sufficient information for any of the state agencies having permitting or other
11 regulatory authority in accordance with this paragraph.

12 IV. Each application shall also:

13 (a) Describe in reasonable detail the type and size of each major part of the proposed
14 facility.

15 (b) Identify both the applicant's preferred choice and other alternatives it considers
16 available for the site and configuration of each major part of the proposed facility and the reasons for
17 the applicant's preferred choice.

18 (c) Describe in reasonable detail the impact of each major part of the proposed facility on
19 the environment for each site proposed.

20 (d) Describe in reasonable detail the applicant's proposals for studying and solving
21 environmental problems.

22 (e) Describe in reasonable detail the applicant's financial, technical, and managerial
23 capability for construction and operation of the proposed facility.

24 (f) Document that written notification of the proposed project, including appropriate
25 copies of the application, has been given to the appropriate governing body of each affected
26 municipality, as defined in RSA 363-D:2, III. The application shall include a list of the affected
27 municipalities.

28 (g) Describe in reasonable detail the elements of and financial assurances for a facility
29 decommissioning plan.

30 (h) Provide such additional information as the commission may require to carry out the
31 purposes of this chapter.

32 V. The commission shall decide whether to accept the application within 60 days of filing. If
33 the commission rejects an application because it determines it to be administratively incomplete, the
34 applicant may choose to file a new and more complete application or cure the defects in the rejected
35 application within 10 days of receipt of notification of rejection.

36 VI. All state agencies having permitting or other regulatory authority shall report their
37 progress to the commission within 150 days of the acceptance of the application, outlining draft

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1 permit conditions and specifying additional data requirements necessary to make a final decision on
2 the parts of the application that relate to its permitting or other regulatory authority.

3 VII. All state agencies having permitting or other regulatory authority shall make and
4 submit to the commission a final decision on the parts of the application that relate to its permitting
5 and other regulatory authority, no later than 240 days after the application has been accepted.

6 VIII. Within 365 days of the acceptance of an application, the commission shall issue or deny
7 a certificate for an energy facility.

8 IX. If the commission, at any time while an application for a certificate is before it, deems it
9 to be in the public interest, it may temporarily suspend its deliberations and time frame established
10 under this section for a period not to exceed 90 days. Any further suspension shall be subject to the
11 consent of the applicant.

12 X. Notwithstanding any other provision of law, the application shall be in lieu of separate
13 applications that may be required by any other state agencies.

14 XI. This chapter shall not preclude an agency from imposing its usual statutory fees.

15 XII. The applicant shall immediately inform the commission of any substantive modification
16 to its application.

17 363-D:7 Role of State Agencies.

18 I. State agencies having permitting or other regulatory authority may participate in
19 commission proceedings as follows:

20 (a) Receive proposals or permit requests within the agency's permitting or other
21 regulatory authority, expertise, or both; determine completeness of elements required for such
22 agency's permitting or other programs; and report on such issues to the commission;

23 (b) Review proposals or permit requests and submit recommended draft permit terms
24 and conditions to the commission;

25 (c) Identify issues of concern on the proposal or permit request or notify the commission
26 that the application raises no issues of concern; and

27 (d) When issues of concern are identified by the agency, designate one or more witnesses
28 to appear before the commission at a hearing to provide input and answer questions of parties and
29 commission members.

30 (e) If the commission intends to impose certificate conditions that are different than
31 those proposed by state agencies having permitting or other regulatory authority, the commission
32 shall promptly notify the agency or agencies in writing to seek confirmation that such conditions or
33 rulings are in conformity with the laws and regulations applicable to the project and state whether
34 the conditions or rulings are appropriate in light of the agency's statutory responsibilities.

35 II. When initiating a proceeding, the commission shall expeditiously notify state agencies
36 having permitting or other regulatory authority or that are identified in administrative rules.

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1 III. Within 30 days of receipt of a notification of proceeding, a state agency not having
2 permitting or other regulatory authority but wishing to participate in the proceeding shall advise the
3 commission in writing of such desire and be allowed to do so provided that the commission
4 determines that a material interest in the proceeding is demonstrated, and such participation
5 conforms with the normal procedural rules of the commission.

6 IV. The commissioner or director of each state agency that intends to participate in a
7 proceeding shall advise the commission of the name of the individual on the agency's staff
8 designated to be the agency liaison for the proceeding. The commission may request the attendance
9 of an agency's designated liaison at a session of the commission to answer questions if that person
10 could materially assist the commission in its examination or consideration of a matter, and to add to
11 the public record of the proceeding.

12 V. All communications between the commission and agencies regarding a pending matter
13 shall be included in the official record and be publicly available.

14 VI. A state agency may intervene as a party in any commission proceeding in the same
15 manner as other persons under RSA 541-A. An intervening agency shall have the right to rehearing
16 and appeal of a certificate or other decision of the commission.

17 363-D:8 Disclosure of Ownership. Any application for a certificate shall be signed and sworn to
18 by the person or executive officer of the association or corporation making such application and shall
19 contain the following information:

20 I. Full name and address of the person, association, or corporation.

21 II. If an association, the names and residences of the members of the association.

22 III. If a corporation, the name of the state under which it is incorporated with its principal
23 place of business and the names and addresses of its directors, officers and stockholders.

24 IV. The location or locations where an applicant is to conduct its business.

25 V. A statement of assets and liabilities of the applicant and other relevant financial
26 information of such applicant.

27 363-D:9 Application and Filing Fees.

28 I. Except as provided in paragraph V, a person filing with the commission an application for
29 a certificate for an energy facility, a petition for jurisdiction, a request for exemption, or any other
30 petition or request for the commission to act, shall pay to the commission at the time of filing a fee
31 determined in accordance with the fee schedule described in paragraph III. If an application for a
32 certificate for an energy facility is deemed incomplete pursuant to RSA 363-D:6, V, a new application
33 is submitted thereunder, the unused portion of the initial application fee shall be refunded to the
34 applicant or credited to the filing of the new application. The commission may in its discretion
35 provide for a credit or refund in other circumstances that are unforeseen by the applicant.

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

4 (a) Application fee for electric generation facilities: \$60,000 base charge, and \$20,000 for
5 a certificate and compliance charge, plus:

6 (1) \$1,200 per megawatt for the first 40 megawatts, and \$1,800 per megawatt for
7 each megawatt in excess of 40 megawatts, for any wind energy system.

8 (2) \$120 per megawatt, for any natural gas or biomass fueled facility.

9 (3) \$180 per megawatt, for any coal or oil fueled facility.

10 (4) \$240 per megawatt, for any nuclear generation facility.

11 (b) Application fee for transmission facilities: \$60,000 base charge, and \$20,000 for a
12 certificate monitoring and compliance charge, plus:

13 (1) \$3,600 per mile, for any electric transmission facility.

14 (2) \$1,800 per mile, for any natural gas pipeline.

15 (c) Application fee for other energy facilities: \$60,000 fee and \$20,000 for a certificate
16 monitoring and compliance charge.

17 (d) Filing fees for administrative proceedings:

18 (1) Petition for commission jurisdiction: \$12,600.

19 (2) Petition for declaratory ruling: \$12,600.

20 (3) Certificate transfer of ownership: \$12,600.

21 (4) Request for exemption: \$12,600.

22 (5) Request to modify a certificate: \$12,600.

23 III. All certificate monitoring and compliance charges shall be deposited in the energy
24 facility siting fund established in RSA 363-D:18 and shall be nonlapsing and accounted for as a
25 separate line item.

26 IV. The commission shall review and evaluate the application fees and filing fees in the fee
27 schedule in paragraph II at least once each year. The commission may increase or decrease any
28 amount in the fee schedule by up to 20 percent, provided that any such increase or decrease shall
29 occur not more frequently than once during any 12-month period. Modifications to the fee schedule
30 shall be posted on the commission website, with a link prominently displayed on the home page.

31 V. Notwithstanding paragraph I, a petition for commission jurisdiction filed by a petitioner
32 as defined in RSA 363-D:4 for a certificate for an energy facility shall not be subject to a filing fee. If
33 the commission determines that it has jurisdiction over a proposed energy facility subject to any
34 such petition, then the owner of the proposed energy facility shall be required to pay to the
35 commission the petition for jurisdiction fee, in addition to the application fee determined in
36 accordance with paragraph II for the type and size of the proposed energy facility.

37 363-D:10 Department of Energy and Counsel for the Public.

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1 I. The commission shall notify the commissioner of the department of energy and the
2 attorney general of all proceedings. Upon notification that an application for a certificate has been
3 filed with the commission in accordance with RSA 363-D:6, or that any other proceeding has been
4 commenced, the commissioner of the department in consultation with the attorney general shall
5 determine how to represent the public in seeking to protect the quality of the environment and in
6 seeking to assure an adequate supply of energy. The attorney general may appoint an assistant
7 attorney general as a counsel for the public. The counsel shall be accorded all the rights and
8 privileges, and responsibilities of an attorney representing a party in formal action and shall serve
9 until the decision to issue or deny a certificate is final.

10 II. The department in consultation with the attorney general shall conduct such reasonable
11 studies and investigations as it deems necessary or appropriate to carry out its duties and may
12 employ a consultant or consultants and other staff in furtherance of the duties imposed by this
13 chapter, the cost of which shall be borne by the applicant or certificate holder. The department is
14 further authorized to assess the applicant or certificate holder for all travel and related expenses
15 associated with an application or other proceeding under this chapter.

16 III. This section shall not be construed to prevent any person from being heard or
17 represented by counsel; provided, however, the commission may compel consolidation of
18 representation for such persons as have, in the commission's reasonable judgment, substantially
19 identical interests.

20 363-D:11 Public Information Sessions and Hearings.

21 I. At least 30 days prior to filing an application for a certificate, an applicant shall hold at
22 least one public information session in each county where the proposed facility is to be located and
23 shall, at a minimum, publish a public notice not less than 14 days before such session in one or more
24 newspapers having a regular circulation in the county in which the session is to be held, describing
25 the nature and location of the proposed facility. The applicant shall also send a copy of the public
26 notice, not less than 14 days before the session, by first class mail to the governing body of each
27 affected municipality. At such session, the applicant shall present information regarding the project
28 and provide an opportunity for comments and questions from the public to be addressed by the
29 applicant. Not less than 10 days before such session, the applicant shall provide a copy of the public
30 notice to the commission. The applicant shall arrange for a transcript of such session to be prepared
31 and shall include the transcript in its application for a certificate.

32 II. Within 45 days after acceptance of an application for a certificate pursuant to RSA 363-
33 D:6, the applicant shall hold at least one public information session as described in paragraph I in
34 each county in which the proposed facility is to be located and shall, at a minimum, publish a public
35 notice not less than 14 days before said session in one or more newspapers having a regular
36 circulation in the county in which the session is to be held, describing the nature and location of the
37 proposed facility. The applicant shall also send a copy of the public notice, not less than 14 days

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1 before the session, by first class mail to the governing body of each affected municipality. Not less
2 than 10 days before such session, the applicant shall provide a copy of the public notice to the
3 commission. The commission shall designate an individual to act as presiding officer of the
4 information session. The session shall be for public information on the proposed facility with the
5 applicant presenting the information to the public. The presiding officer shall also explain to the
6 public the process the commission will use to review the application for the proposed facility.

7 III. Upon request of the governing body of a municipality or unincorporated place in which
8 any part of the proposed facility is to be located, or on the commission's own motion, the commission
9 may order the applicant to provide such additional public information sessions as described in
10 paragraph I as are reasonable to inform the public of the proposed project.

11 IV. Within 90 days after acceptance of an application for a certificate pursuant to RSA 363-
12 D:6, the commission shall hold at least one public hearing in each county in which the proposed
13 facility is to be located and the applicant shall publish a public notice not less than 14 days before
14 such hearing in one or more newspapers having a regular circulation in the county in which the
15 hearing is to be held, describing the nature and location of the proposed facilities. Not fewer than 10
16 days before such session, the applicant shall provide a copy of the public notice to the commission.
17 The applicant shall arrange for a transcript of such session to be prepared. The commission shall
18 also send a copy of the public notice, not less than 14 days before the hearing, by first class mail to
19 the governing body of each affected municipality. The public hearings shall be joint hearings, with
20 representatives of the agencies that have permitting or other regulatory authority over the subject
21 matter and shall be deemed to satisfy all initial requirements for public hearings under statutes
22 requiring permits relative to environmental impact. Notwithstanding any other provision of law, the
23 hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings
24 otherwise required by any of the other state agencies; provided, however, if any of such other state
25 agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under
26 this chapter.

27 V. Subsequent public hearings shall be in the nature of adjudicative proceedings under RSA
28 541-A and shall be held in the county or one of the counties in which the proposed facility is to be
29 located or in Concord, New Hampshire, as determined by the commission. The commission shall
30 give adequate public notice of the time and place of each subsequent hearing.

31 VI. The commission shall consider and weigh all evidence presented at public hearings and
32 shall consider and weigh written information and reports submitted to it by members of the public
33 before, during, and subsequent to public hearings but prior to the closing of the record of the
34 proceeding. The commission shall provide an opportunity at one or more public hearings for
35 comments from the governing body of each affected municipality and residents of each affected
36 municipality. The commission shall consider, as appropriate, prior findings and rulings on the same
37 or similar subject matters, but shall not be bound thereby.

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1 363-D:12 Judicial Review. Decisions made pursuant to this chapter shall be reviewable in
2 accordance with RSA 541.

3 363-D:13 Monitoring and Enforcement.

4 I. The department shall monitor the construction and operation of any energy facility
5 granted a certificate under this chapter to ensure compliance with such certificate and enforce the
6 terms and conditions of any such certificate. The department may delegate the authority to monitor
7 the construction or operation of any energy facility granted a certificate under this chapter to such
8 state agency or official as it deems appropriate but shall ensure that the terms and conditions of the
9 certificate are met. Any authorized representative or delegate of the department shall have a right
10 of entry onto the premises of any part of the energy facility to ascertain if the facility is being
11 constructed or operated in continuing compliance with the terms and conditions of the certificate.
12 During normal hours of business administration and on the premises of the facility, such a
13 representative or delegate shall also have a right to inspect such records of the certificate-holder as
14 are relevant to the terms or conditions of the certificate.

15 II. Whenever the department administratively determines that any term or condition of any
16 certificate issued under this chapter is being violated, it shall, in writing, notify the certificate holder
17 and the commission of the specific violation and order the person to immediately terminate the
18 violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the
19 violation, the department shall request the commission, which to suspend the person's certificate, or
20 impose a fine not to exceed \$10,000 per day until the violation is corrected. Except for emergencies,
21 prior to any suspension, the commission shall give written notice of its consideration of suspension
22 or imposition of a fine and of its reasons therefor and shall provide opportunity for a prompt hearing.

23 II-a. Disputes about compliance complaints shall be decided by the commission. The
24 commission can request the department to investigate such complaints, the results of which become
25 part of the compliance proceeding.

26 III. The commission may suspend a certificate if the commission determines that a person
27 has made a material misrepresentation in the application or, in the supplemental or additional
28 statements of fact or studies required of the applicant, or if the commission determines that the
29 certificate holder has violated the provisions of this chapter, or any rule adopted under this chapter.
30 Except for emergencies, prior to any suspension, the commission shall give written notice of its
31 consideration of suspension and of its reasons therefor and shall provide an opportunity for a prompt
32 hearing.

33 IV. The commission may revoke any certificate that is suspended after the certificate holder
34 has been given at least 90 days' written notice of the commission's consideration of revocation and of
35 its reasons therefor and has been provided an opportunity for a full hearing.

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1 V. Notwithstanding any other provision of this chapter, each of the other state agencies
2 having permitting or other regulatory authority shall retain all of its powers and duties of
3 enforcement.

4 VI. The full amount of the costs of consultants and other staff and expenses incurred by the
5 department or commission in connection with any enforcement action against a certificate holder,
6 including any action under this section and any action under RSA 363-D:16, in which the certificate
7 holder is determined to have violated any provision of this chapter, any rule adopted by the
8 commission, or any of the terms and conditions of the issued certificate, shall be assessed to the
9 certificate holder and shall be paid by the certificate holder to the commission only after the
10 determination of a violation. Any amounts paid by a certificate holder to the commission pursuant
11 to this paragraph shall be deposited in the energy facility siting fund established in RSA 363-D:18.

12 VII. There is hereby established within the department the position of administrator who
13 shall be an unclassified state employee. The administrator shall be hired by and under the
14 supervision of the commissioner.

15 363-D:14 Records. Complete verbatim records shall be kept by the commission of all hearings,
16 and records of all other actions, proceedings, and correspondence of the commission, including
17 submissions of information and reports by members of the public, shall be maintained, all of which
18 records shall be open to the public inspection and copying as provided for under RSA 91-A. Records
19 regarding pending applications for a certificate shall also be made available on a website.

20 363-D:15 Findings and Certificate Issuance.

21 I. The commission shall incorporate in any certificate such terms and conditions, in their
22 entirety and without addition, deletion or re-litigation, as may be specified to the commission by any
23 of the state agencies having permitting or other regulatory authority, under state or federal law, to
24 regulate any aspect of the construction or operation of the proposed facility; provided, however, the
25 commission shall not issue any certificate under this chapter if any of the state agencies denies
26 authorization for the proposed activity over which it has permitting or other regulatory authority.
27 The denial of any such authorization shall be based on the record and explained in reasonable detail
28 by the denying agency.

29 (a) The commission shall issue an order granting or denying a certificate. Such order
30 shall address all issues of concern expressed during the energy project proceeding. The order shall
31 specifically address public categories of comment to ensure that the public's voice has been heard
32 and recorded.

33 II. The commission shall issue an order granting or denying a certificate. Such order shall
34 summarize issues of concern expressed during public information sessions and hearings to ensure
35 that the public's voice has been heard.

36 III. Any certificate issued by the commission shall be based on the record. The decision to
37 issue a certificate in its final form or to deny an application once it has been accepted shall be made

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1 by a majority of the commission. A certificate shall be conclusive on all questions of siting, land use,
2 air and water quality.

3 IV. The commission may consult with interested regional agencies and agencies of border
4 states in the consideration of certificates.

5 V. After due consideration of all relevant information regarding the potential siting or
6 routes of a proposed energy facility, including potential significant impacts and benefits, the
7 commission shall determine whether to issue a certificate. In order to issue a certificate, the
8 commission shall find that:

9 (a) The applicant has adequate financial, technical, and managerial capability to assure
10 construction and operation of the facility in continuing compliance with the terms and conditions of
11 the certificate.

12 (b) The site and facility will not unduly interfere with the orderly development of the
13 region with due consideration having been given to the views of municipal and regional planning
14 commissions and municipal governing bodies.

15 (c) The site and facility will not have an unreasonable adverse effect on aesthetics,
16 historic sites, air and water quality, the natural environment, and public health and safety.

17 (d) Issuance of a certificate will serve the public interest.

18 V. A certificate of site and facility may contain such reasonable terms and conditions,
19 including but not limited to the authority to require bonding, as the commission deems necessary
20 and may provide for such reasonable monitoring procedures as may be necessary. Such certificates,
21 when issued, shall be final and subject only to judicial review.

22 VI. The commission may condition the certificate upon the results of required federal and
23 state agency studies whose study period exceeds the application period.

24 363-D:16 Penalties.

25 I. The superior court may enjoin any act in violation of this chapter.

26 II. Whoever commits any willful violation of any provision of this chapter shall be guilty of a
27 misdemeanor if a natural person, or guilty of a felony if any other person.

28 363-D:17 Severability. If any provision of this chapter, or application thereof to any person or
29 circumstance is held invalid, the invalidity does not affect other provisions or applications of the
30 chapter which can be given effect without the invalid provisions or applications, and to this end, the
31 provisions of this chapter are severable.

32 363-D:18 Fund Established. There is hereby established in the office of the state treasurer a
33 nonlapsing, special fund to be known as the energy facility siting fund. All application fees and
34 other filing fees received by the commission under RSA 363-D:9 shall be deposited in the fund. All
35 moneys in the fund shall be continually appropriated to the department for purposes of monitoring
36 and enforcement pursuant to RSA 363-D:13. All other operating costs of the department or

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commission, excepting those costs paid by applicants under RSA 363-D:3,IV and 363-D:10,II, shall be funded through appropriations from the general fund.

2 Application of Receipts. Amend RSA 6:12, I(b)(319) to read as follows:

(319) Moneys deposited in the ~~[site evaluation committee]~~ **energy facility siting** fund established in RSA ~~[162-H:21]~~ **363-D:18**.

3 Reference Added; Public Utilities. Amend RSA 362:4-c, I to read as follows:

I. The term "public utility" shall not include any entity determined by the Federal Energy Regulatory Commission to be an exempt wholesale generator, nor shall it include any corporation, company, association, limited liability company, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court, solely by virtue of owning, operating, or managing any plant or equipment or any part of the same which has received a certificate of site and facility as an energy facility or as a bulk power supply facility pursuant to **RSA 363-D or former** RSA 162-H after July 1, 1998, or are sold after July 1, 1998, for the generation or sale of electricity or for transmission of electricity from such a plant to an interconnection with the transmission grid.

4 Reference Deleted; Department of Energy. Amend RSA 12-P:5, VII to read as follows:

VII. Ensure that the department provides all necessary support to the public utilities commission, ~~[the site evaluation committee,]~~ office of the consumer advocate, and any other entity that is administratively attached to the department.

5 Reference Changed; Endangered Species Act; Exemptions. Amend RSA 212-A:13, III to read as follows:

III. The provisions of RSA 212-A or any rule promulgated under this chapter shall not interfere in any way with the siting or construction of any energy facility as ~~[defined in RSA 162-H:2]~~ **regulated under RSA 363-D**.

6 References to Site Evaluation Committee Changed. Amend the following RSA provisions to replace the term "site evaluation committee" with the term "public utilities commission": 12-P:7-a; 162-R:1; 162-R:3; 162-R:4; 162-R:6.

7 References to RSA 162-H Changed; Site Evaluation Committee. Amend the following RSA provisions to replace the term "RSA 162-H" with "RSA 363-D": 162-R:1; 162-R:3; 162-R:4; 162-R:6.

8 Repeal. RSA 162-H, relative to energy facility evaluation, siting, construction and operation, is repealed.

9 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0387
1/10/23

**HB 609-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to energy facility siting.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, as introduced, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

AGENCIES CONTACTED:

Departments of Energy and Justice, and Judicial Branch