

SB 264 – AS INTRODUCED

2012 SESSION

12-2988

09/04

SENATE BILL        **264**

AN ACT            relative to energy facility site evaluations.

SPONSORS:        Sen. Odell, Dist 8; Rep. Bettencourt, Rock 4

COMMITTEE:      Energy and Natural Resources

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ANALYSIS

This bill makes changes in the site evaluation process for energy facilities.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to energy facility site evaluations.

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

1 1 Definitions; Energy Facility. Amend RSA 162-H:2, VII(c) to read as follows:

2 (c) An electric transmission line of design rating of 100 kilovolts or more, associated with  
3 a generating facility under subparagraph (b), over a route not already occupied by a transmission  
4 line or lines. ***Electric transmission lines with a design rating of less than 100 kilovolts shall***  
5 ***not be considered energy facilities under this chapter.***

6 2 Site Evaluation Committee. Amend RSA 162-H:3 to read as follows:

7 162-H:3 Site Evaluation Committee. The site evaluation committee shall consist of the  
8 commissioner of the department of environmental services or assistant commissioner as designee,  
9 the director of the division of water, the commissioner of the department of resources and economic  
10 development or the director of the division of economic development as designee, the commissioner of  
11 the department of health and human services or one of the 2 most senior administrators within the  
12 department responsible for management of public health services as designee, ~~the executive director~~  
13 ~~of the fish and game department,~~ the director of the office of energy and planning or deputy director  
14 as designee, the director of the division of parks and recreation, the director of the division of forests  
15 and lands, the director of the division of air resources, the commissioner of the department of  
16 transportation or assistant commissioner as designee, the commissioners of the public utilities  
17 commission, ***and*** a staff engineer designated by the commissioners of the public utilities  
18 commission~~], and the commissioner of the department of cultural resources or director of the division~~  
19 ~~of historical resources as designee].~~ The commissioner of the department of environmental services  
20 shall be chairperson of the committee, and the chairperson of the public utilities commission shall be  
21 vice-chairperson.

22 3 Powers of the Site Evaluation Committee. Amend RSA 162-H:4, III-a to read as follows:

23 III-a. The committee may delegate to an agency or official represented on the committee the  
24 authority to specify the use of any technique, methodology, practice, or procedure approved by the  
25 committee within a certificate issued under this chapter, or the authority to specify minor changes in  
26 the route alignment to the extent that such changes are authorized by the certificate for those  
27 portions of a proposed electric transmission line or energy transmission pipeline for which  
28 information was unavailable due to conditions which could not have been reasonably anticipated  
29 prior to the issuance of the certificate. ***The committee's authority to specify the use of any***  
30 ***technique, methodology, practice, or procedure is strictly limited to those techniques,***  
31 ***methodologies, practices, or procedures contained in state laws and rules.***

1 4 Powers of the Site Evaluation Committee. Amend RSA 162-H:4, V to read as follows:

2 V. Once an energy facility application has been accepted, the chairperson may designate a  
3 subcommittee of no fewer than ~~[7]~~ **5** members that shall consider such application. The  
4 subcommittee shall include the chairperson or the vice-chairperson of the committee, and at least ~~[3]~~  
5 **2** members selected from ~~[among]~~ the department of environmental services~~[-]~~ **and** the department  
6 of resources and economic development~~[-, and the fish and game department]~~. With the exception of  
7 the chairperson or vice-chairperson, each member of the committee may designate an employee from  
8 his or her agency to assume his or her responsibilities as a subcommittee member for the purposes of  
9 this paragraph, provided that such designee shall be a senior administrator within the agency,  
10 department, or division that the member represents under RSA 162-H:3. The chairperson may  
11 designate the assistant commissioner of the department of environmental services to assume his or  
12 her responsibilities as a subcommittee member for the purposes of this paragraph. For purposes of  
13 statutory interpretation and executing the regulatory functions of this chapter, the subcommittee  
14 shall assume the role of and be considered the committee, with all of its associated powers and  
15 duties.

16 5 Time Frames for Review of Renewable Energy Facilities. Amend RSA 162-H:6-a, I to read as  
17 follows:

18 I. Upon the filing of an application for a certificate for a renewable energy facility, the  
19 chairperson shall expeditiously forward to each of the other *participating* state agencies having  
20 jurisdiction, under state or federal law, to regulate the construction or operation of the proposed  
21 facility, a copy of the parts of the application that are relevant to its jurisdiction. Upon the filing of  
22 the copy, each of the other *participating* state agencies shall conduct a preliminary review as  
23 described in RSA 162-H:7, IV. To qualify for the time frames for review specified in this section, an  
24 application for a renewable energy facility shall include testimony, exhibits, and sufficient  
25 information to satisfy the application requirements of each state agency having jurisdiction, under  
26 state or federal law, to regulate the construction or operation of the proposed facility, and shall  
27 include each agency's completed application forms.

28 6 Time Frames for Review of Renewable Energy Facilities. Amend RSA 162-H:6-a, V-IX to read  
29 as follows:

30 V. All participating state agencies shall report their progress to the subcommittee within  
31 ~~[90]~~ **60** days of the acceptance of the application, outlining draft permit conditions and specifying  
32 additional data requirements necessary to make a final decision.

33 VI. All participating state agencies shall make and submit to the subcommittee a final  
34 decision on the parts of the application that relate to its jurisdiction, no later than ~~[180]~~ **120** days  
35 after the application has been accepted.

36 VII. Within 30 days of the submission of final decisions under paragraph VI, the  
37 subcommittee shall hold a public hearing on the merits of the application, which shall be part of an

1 adjudicative proceeding as provided under RSA 162-H:10, II. At such public hearing, the  
2 subcommittee shall hear testimony and receive evidence submitted on behalf of the applicant, any  
3 intervenors, agencies with jurisdiction, and members of the public represented by counsel for the  
4 public appointed under RSA 162-H:9. At such public hearing the subcommittee may also receive  
5 comment from any member of the public on the application.

6 VIII. Within ~~[240]~~ **180** days of the acceptance of an application, the subcommittee shall issue  
7 or deny a certificate for a renewable energy facility.

8 IX. If the subcommittee at any time during its deliberations relative to an application for a  
9 certificate deems it to be in the public interest, it may temporarily suspend its deliberations ~~[and~~  
10 ~~enlarge the time frame established under this section to issue or deny a certificate]~~. **Temporary**  
11 **suspensions shall be limited to 10 days and the subcommittee shall provide the applicant**  
12 **with written notification of the reason for the temporary suspension as well as specific**  
13 **guidance on action, information, documents, or other necessary means to alleviate the**  
14 **temporary suspension. If the subcommittee determines it to be in the public interest it may**  
15 **extend its deliberations for a maximum of 60 days upon providing the applicant written**  
16 **notification of the specific reasons for the extension.**

17 7 Applications for Certificate. Amend RSA 162-H:7, IV-VI-d to read as follows:

18 IV. Each application shall contain sufficient information to satisfy the application  
19 requirements of each **participating** state agency having jurisdiction, under state or federal law, to  
20 regulate any aspect of the construction or operation of the proposed facility, and shall include each  
21 agency's completed application forms. Upon the filing of an application, the committee shall  
22 expeditiously forward a copy to the state agencies having jurisdiction. Upon receipt of a copy, each  
23 agency shall conduct a preliminary review to ascertain if the application contains sufficient  
24 information for its purposes. If the application does not contain sufficient information for the  
25 purposes of any of the state agencies having jurisdiction, that agency shall, in writing, notify the  
26 committee of that fact and specify what information the applicant must supply; thereupon the  
27 committee shall provide the applicant with a copy of such notification and specification.  
28 Notwithstanding any other provision of law, for purposes of the time limitations imposed by this  
29 section, any application made under this section shall be deemed not accepted either by the  
30 committee or by any of the state agencies having jurisdiction if the applicant is seasonably notified  
31 that it has not supplied sufficient information for any of the state agencies having jurisdiction in  
32 accordance with this paragraph.

33 V. Each application shall also:

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

36 (b) Identify both the preferred choice and any other choices for the site of each major  
37 part of the proposed facility.

1 (c) Describe in reasonable detail the impact of each major part of the proposed facility on  
2 the *aspects of the* environment *within the committee's jurisdiction* for each site proposed.

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

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

7 (f) Document that written notification of the proposed project, including appropriate  
8 copies of the application, has been given to the appropriate governing body of each community in  
9 which the facility is proposed to be located.

10 (g) Provide such additional information as the committee may require to carry out the  
11 purposes of this chapter.

12 VI. The committee shall decide whether or not to accept the application within ~~[60]~~ **30** days  
13 of filing. If the committee rejects an application because it determines it to be administratively  
14 incomplete, the applicant may choose to file a new and more complete application or cure the defects  
15 in the rejected application within 10 days of receipt of notification of rejection.

16 VI-a. Within 30 days after acceptance of the application, the committee shall hold at least  
17 one public hearing in each county in which the proposed facility is to be located, in accordance with  
18 RSA 162-H:10.

19 VI-b. All participating state agencies shall report their progress to the committee within 5  
20 months of the acceptance of the application, outlining draft permit conditions and specifying  
21 additional data requirements necessary to make a final decision.

22 VI-c. All participating state agencies shall make and submit to the committee a final  
23 decision on the parts of the application that relate to its jurisdiction, no later than ~~[8]~~ **6** months after  
24 the application has been accepted.

25 VI-d. Within ~~[9]~~ **8** months of the acceptance of an application, the committee shall issue or  
26 deny a certificate for an energy facility.

27 8 New Section; Intervention. Amend RSA 162-H by inserting after section 9 the following new  
28 section:

29 162-H:9-a Intervention. Persons who can demonstrate that their rights, privileges, and other  
30 interests will be directly impacted by the applicant's proposal shall be eligible to participate in and  
31 be represented in the site evaluation and certification process as intervenors. At a minimum, such  
32 persons shall demonstrate that they reside in the town, city or unincorporated place of the proposed  
33 facility site, or an immediately abutting town, city or unincorporated place, and also demonstrate the  
34 potential for a clear and direct impact on their persons or property.

35 9 Public Hearing, Studies, Rules. Amend RSA 162-H:10, III-V to read as follows:

36 III. The site evaluation committee shall consider and weigh all evidence presented at public  
37 hearings and shall consider and weigh written information and reports submitted to it by members

1 of the public before[,] **and** during[~~—and subsequent to~~] public hearings. The committee shall grant  
2 free access to records and reports in its files to members of the public during normal working hours  
3 and shall permit copies of such records and reports to be made by interested members of the public  
4 at their expense.

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

9 V. The site evaluation committee [~~and counsel for the public~~] shall [~~jointly~~] conduct such  
10 reasonable studies and investigations as they deem necessary or appropriate to carry out the  
11 purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in  
12 furtherance of the duties imposed by this chapter, the **reasonable** cost of which shall be borne by  
13 the applicant in such amount as may be approved by the committee. The site evaluation committee  
14 and counsel for the public are further authorized to assess the applicant for all travel and related  
15 expenses associated with the processing of an application under this chapter.

16 10 Temporary Suspension of Deliberations. Amend RSA 162-H:14, I to read as follows:

17 I. If the site evaluation committee at any time during its deliberations relative to an  
18 application for a certificate deems it to be in the public interest, it may temporarily suspend its  
19 deliberations and time frame established under RSA 162-H:7, **subject to the limitations**  
20 **contained in RSA 162-H:6-a, IX.**

21 11 Findings and Certificate Issuance. Amend RSA 162-H:16 to read as follows:

22 162-H:16 Findings and Certificate Issuance.

23 I. The committee shall incorporate in any certificate such terms and conditions as may be  
24 specified to the committee by any of the other state agencies having jurisdiction, under state or federal  
25 law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the  
26 committee shall not **impose any terms, conditions, requirements or any other actions on the**  
27 **applicant that are more restrictive than those specified to the committee by any other state or**  
28 **federal agency having jurisdiction over the construction or operation of the proposed facility,**  
29 **and shall not** issue any certificate under this chapter if any of the other state agencies denies  
30 authorization for the proposed activity over which it has jurisdiction. The denial of any such  
31 authorization shall be based on the record and explained in reasonable detail by the denying agency.

32 II. Any certificate issued by the site evaluation committee shall be based on the record. The  
33 decision to issue a certificate in its final form or to deny an application once it has been accepted  
34 shall be made by a majority of the full membership. A certificate shall be conclusive on all questions  
35 of siting, land use, air and water quality, **sound, visual effects, and economic development.**

36 III. The committee may consult with interested regional agencies and agencies of border  
37 states in the consideration of certificates.

1 IV. The site evaluation committee, after having considered available alternatives and fully  
2 reviewed the environmental impact of the site or route, and other relevant factors bearing on  
3 whether the objectives of this chapter would be best served by the issuance of the certificate, must  
4 find that the site and facility:

5 (a) Applicant has adequate financial, technical, and managerial capability to assure  
6 construction and operation of the facility in continuing compliance with the terms and conditions of  
7 the certificate.

8 (b) Will not unduly interfere with the orderly development of the region with due  
9 consideration having been given to the views of municipal and regional planning commissions and  
10 municipal governing bodies.

11 (c) Will not have an unreasonable adverse effect on aesthetics, ~~[historic sites,]~~ air and  
12 water quality, the natural environment, and public health and safety.

13 (d) [Repealed.]

14 V. [Repealed.]

15 VI. A certificate of site and facility may contain such reasonable terms and conditions as the  
16 committee deems necessary and may provide for such reasonable monitoring procedures as may be  
17 necessary, ***except that the committee shall be prohibited from imposing terms, conditions,***  
18 ***requirements, or any other actions on the applicant that are more restrictive than those***  
19 ***imposed by any other state or federal agencies having jurisdiction over the construction or***  
20 ***operation of the proposed facility.*** Such certificates, when issued, shall be final and subject only  
21 to judicial review.

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

24 12 Effective Date. This act shall take effect 60 days after its passage.