

CHAPTER 217
SB 245-FN – FINAL VERSION

03/13/14 0921s
03/27/14 1125s
23Apr2014... 1442h
14May2014... 1795h
06/04/14 2006EBA

2014 SESSION

14-2666
06/03

SENATE BILL ***245-FN***

AN ACT relative to the siting of energy facilities.

SPONSORS: Sen. Forrester, Dist 2; Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1;
Sen. Fuller Clark, Dist 21; Rep. Vadney, Belk 2; Rep. Ladd, Graf 4;
Rep. Suzanne Smith, Graf 8; Rep. Ford, Graf 3; Rep. G. Chandler, Carr 1

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill:

- I. Modifies the membership and duties of the site evaluation committee.
- II. Modifies requirements for energy facility certificates.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the siting of energy facilities.

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

1 217:1 Energy Evaluation and Siting. RSA 162-H:1 is repealed and reenacted to read as follows:

2 162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy
3 facilities may have significant impacts on and benefits to the following: the welfare of the population,
4 private property, the location and growth of industry, the overall economic growth of the state, the
5 environment of the state, historic sites, aesthetics, air and water quality, the use of natural
6 resources, and public health and safety. Accordingly, the legislature finds that it is in the public
7 interest to maintain a balance among those potential significant impacts and benefits in decisions
8 about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay
9 in the construction of new energy facilities be avoided; that full and timely consideration of
10 environmental consequences be provided; that all entities planning to construct facilities in the state
11 be required to provide full and complete disclosure to the public of such plans; and that the state
12 ensure that the construction and operation of energy facilities is treated as a significant aspect of
13 land-use planning in which all environmental, economic, and technical issues are resolved in an
14 integrated fashion. In furtherance of these objectives, the legislature hereby establishes a procedure
15 for the review, approval, monitoring, and enforcement of compliance in the planning, siting,
16 construction, and operation of energy facilities.

17 217:2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation;
18 Definitions; Administrator. Amend RSA 162-H:2 by inserting after paragraph I the following new
19 paragraph:

20 I-a. “Administrator” means the administrator of the committee established by this chapter.

21 217:3 Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Energy.
22 Amend RSA 162-H:2, VI to read as follows:

23 VI. “Energy” means power, including mechanical power [~~or~~], useful heat, *or electricity*
24 derived from any resource, including, but not limited to, oil, coal, and gas.

25 217:4 Energy Facility Evaluation and Siting, Construction and Operation; Definitions;
26 Petitioner. Amend RSA 162-H:2, XI(c) to read as follows:

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

3 217:5 Energy Facility Evaluation and Siting, Construction and Operation; Definitions;
4 Renewable Energy Facility. Amend RSA 162-H:2, XII to read as follows:

5 XII. “Renewable energy facility” means electric generating station equipment and associated
6 facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts
7 ~~[but less than 120 megawatts]~~ and powered by wind energy, geothermal energy, hydrogen derived
8 from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas,
9 biomass technologies, solar technologies, or hydroelectric energy. “Renewable energy facility” shall
10 also include electric generating station equipment and associated facilities of 30 megawatts or less
11 nameplate capacity but at least 5 megawatts which the committee determines requires a certificate,
12 consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by
13 petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

14 217:6 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

15 162-H:3 Site Evaluation Committee Established.

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

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

20 (b) The commissioner of the department of environmental services, who shall be the vice-
21 chairperson of the committee;

22 (c) The commissioner of the department of resources and economic development;

23 (d) The commissioner of the department of transportation;

24 (e) The commissioner of the department of cultural resources or the director of the
25 division of historical resources as designee; and

26 (f) Two members of the public, appointed by the governor, with the consent of the
27 council, at least one of whom shall be a member in good standing of the New Hampshire Bar
28 Association, and both of whom shall be residents of the state of New Hampshire with expertise or
29 experience in one or more of the following areas: public deliberative or adjudicative proceedings;
30 business management; environmental protection; natural resource protection; energy facility design,
31 construction, operation, or management; or community and regional planning or economic
32 development.

33 II. The public members shall serve 4-year terms and until their successors are appointed
34 and qualified. The initial term of one member shall be 2 years. Any public member chosen to fill a
35 vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the
36 member who is to be succeeded.

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1 III. No public member nor any member of his or her family shall receive income from energy
2 facilities within the jurisdiction of the committee. The public members shall comply with RSA 15-A
3 and RSA 15-B.

4 IV. All members shall refrain from ex parte communications regarding any matter pending
5 before the committee.

6 V. Seven members of the committee shall constitute a quorum for the purpose of conducting
7 the committee's business.

8 VI. Any public member of the committee may be removed by the governor and council for
9 inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written
10 statement of the charges and an opportunity to be heard.

11 VII. The committee shall be administratively attached to the public utilities commission
12 pursuant to RSA 21-G:10.

13 VIII. Public members of the committee shall be compensated on a pro rata basis, based upon
14 the daily salary rate of an unclassified position at the initial step in grade FF as determined in
15 RSA 94:1-a, I(a). Such members shall keep detailed time records which shall be submitted to the
16 committee and used to determine the amount of compensation. Said compensation shall be a charge
17 against the site evaluation committee fund.

18 IX. The chairperson shall serve as the chief executive of the committee and may:

19 (a) Delegate to other members the duties of presiding officer, as appropriate.

20 (b) Perform administrative actions for the committee, as may a presiding officer.

21 (c) Establish, with the consent of the committee, the budgetary requirements of the
22 committee.

23 (d) Engage personnel in accordance with this chapter.

24 (e) Form subcommittees pursuant to RSA 162-H:4-a.

25 X. An alternate public member who satisfies the qualification requirements of subparagraph
26 I(f), excluding the New Hampshire Bar membership requirement, shall be appointed by the
27 governor, with consent of the council. The alternate public member shall only sit on the committee
28 or a subcommittee as provided for in paragraph XI.

29 XI. If at any time a member must recuse himself or herself on a matter or is not otherwise
30 available for good reason, such person, if a state employee, may designate a senior administrative
31 employee or a staff attorney from his or her agency to sit on the committee. In the case of a public
32 member, the chairperson shall appoint the alternate public member, or if such member is not
33 available, the governor and council shall appoint a replacement upon petition of the chairperson.
34 The replacement process under this paragraph shall also be applicable to subcommittee members
35 under RSA 162-H:4-a.

36 217:7 New Section; Site Evaluation Committee; Administrator. Amend RSA 162-H by inserting

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1 after section 3 the following new section:

2 162-H:3-a Administrator and Other Committee Support. There is hereby established within the
3 site evaluation committee the position of administrator who shall be an unclassified state employee.
4 In the alternative, the position may be filled by an independent contractor. The administrator shall
5 be hired by and under the supervision of the chairperson. The administrator, or chairperson in the
6 absence of an administrator, with committee approval, may engage additional technical, legal, or
7 administrative support to fulfill the functions of the committee as necessary. Any person to be hired
8 by the administrator shall be approved by the chairperson. All costs incurred under this section
9 shall be paid from the site evaluation committee fund established in RSA 162-H:21.

10 217:8 Section Heading. Amend the section heading of RSA 162-H:4 to read as follows:

11 162-H:4 Powers **and Duties** of the Committee.

12 217:9 Powers and Duties of the Committee. Amend RSA 162-H:4, I through IV to read as
13 follows:

14 I. The committee shall:

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

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

17 (c) Monitor the construction and operation of any energy facility granted a certificate
18 under this chapter **to ensure compliance with such certificate**.

19 (d) Enforce the terms and conditions of any certificate issued under this chapter.

20 (e) **Assist the public in understanding the requirements of this chapter**.

21 II. The committee shall hold hearings as required by this chapter and such additional
22 hearings as it deems necessary and appropriate.

23 III. The committee may delegate the authority to monitor the construction or operation of
24 any energy facility granted a certificate under this chapter to **the administrator or** such state
25 agency or official [~~represented on the committee~~] as it deems appropriate, but [~~subject to RSA 162-~~
26 ~~H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and~~
27 ~~conditions of a certificate, or enforce a certificate]~~ **shall ensure that the terms and conditions of**
28 **the certificate are met**. Any authorized representative or delegate of the committee shall have a
29 right of entry onto the premises of any part of the energy facility to ascertain if the facility is being
30 constructed or operated in continuing compliance with the terms and conditions of the certificate.
31 During normal hours of business administration and on the premises of the facility, such a
32 representative or delegate shall also have a right to inspect such records of the certificate-holder as
33 are relevant to the terms or conditions of the certificate.

34 III-a. The committee may delegate to [~~an~~] **the administrator or such state** agency or
35 official [~~represented on the committee~~] **as it deems appropriate** the authority to specify the use of
36 any technique, methodology, practice, or procedure approved by the committee within a certificate

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1 issued under this chapter, or the authority to specify minor changes in the route alignment to the
2 extent that such changes are authorized by the certificate for those portions of a proposed electric
3 transmission line or energy transmission pipeline for which information was unavailable due to
4 conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

5 ***III-b. The committee may not delegate its authority or duties, except as provided***
6 ***under this chapter.***

7 IV. In cases where the committee determines that other existing statutes provide adequate
8 protection of the objectives of RSA 162-H:1, the committee may, within 60 days of acceptance of the
9 application, or filing of a request for exemption with sufficient information to enable the committee
10 to determine whether the proposal meets the requirements set forth below, and after holding a
11 public [~~informational~~] hearing in a county where the energy facility is proposed, exempt the
12 applicant from the approval and certificate provisions of this chapter, provided that the following
13 requirements are met:

14 (a) Existing state or federal statutes, state or federal agency rules or municipal
15 ordinances provide adequate protection of the objectives of RSA 162-H:1;

16 (b) A review of the application or request for exemption reveals that consideration of the
17 proposal by only selected agencies represented on the committee is required and that the objectives
18 of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

19 (c) Response to the application or request for exemption from the general public
20 indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the
21 participating agencies; and

22 (d) All environmental impacts or effects are adequately regulated by other federal, state,
23 or local statutes, rules, or ordinances.

24 217:10 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

25 V. In any matter before the committee, the presiding officer, or a hearing officer designated
26 by the presiding officer, may hear and decide procedural matters that are before the committee,
27 including procedural schedules, consolidation of parties with substantially similar interests,
28 discovery schedules and motions, and identification of significant disputed issues for hearing and
29 decision by the committee. Undisputed petitions for intervention may be decided by the hearing
30 officer and disputed petitions shall be decided by the presiding officer. Any party aggrieved by a
31 decision on a petition to intervene may within 10 calendar days request that the committee review
32 such decision. Other procedural decisions may be reviewed by the committee at its discretion.

33 217:11 New Section; Subcommittees. Amend RSA 162-H by inserting after section 4 the
34 following new section:

35 162-H:4-a Subcommittees.

36 I. The chairperson may establish subcommittees to consider and make decisions on

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1 applications, including the issuance of certificates, or to exercise any other authority or perform any
2 other duty of the committee under this chapter, except that no subcommittee may approve the
3 budgetary requirements of the committee, or any support staff positions paid for through the site
4 evaluation committee fund, propose the funding plan under RSA 162-H:21, or adopt initial or final
5 rulemaking proposals. For purposes of statutory interpretation and executing the regulatory
6 functions of this chapter, the subcommittee shall assume the role of and be considered the
7 committee, with all of its associated powers and duties in order to execute the charge given it by the
8 chairperson.

9 II. When considering the issuance of a certificate or a petition of jurisdiction, a
10 subcommittee shall have no fewer than 7 members. The 2 public members shall serve on each
11 subcommittee with the remaining 5 or more members selected by the chairperson from among the
12 state agency members of the committee. Each selected member may designate a senior
13 administrative employee or staff attorney from his or her respective agency to sit in his or her place
14 on the subcommittee. The chairperson shall designate one member or designee to be the presiding
15 officer who shall be an attorney whenever possible. Five members of the subcommittee shall
16 constitute a quorum for the purpose of conducting the subcommittee's business.

17 III. In any matter not covered under paragraph II, the chairperson may establish
18 subcommittees of 3 members, consisting of 2 state agency members and one public member. Each
19 state agency member may designate a senior administrative employee or staff attorney from his or
20 her agency to sit in his or her place on the subcommittee. The chairperson shall designate one
21 member or designee to be the presiding officer who shall be an attorney whenever possible. Two
22 members of the subcommittee shall constitute a quorum. Any party whose interests may be affected
23 may object to the matter being assigned to a 3-person subcommittee no less than 14 days before the
24 first hearing. If objection is received, the chairperson shall remove the matter from the 3-person
25 subcommittee and either assign it to a subcommittee formed under paragraph II or have the full
26 committee decide the matter.

27 217:12 Application for Certificate. Amend RSA 162-H:7, II to read as follows:

28 II. All applications for a certificate for an energy facility shall be filed with the [~~chairman~~]
29 **chairperson** of the site evaluation committee.

30 217:13 Application for Certificate. Amend RSA 162-H:7, IV and V to read as follows:

31 IV. Each application shall contain sufficient information to satisfy the application
32 requirements of each state agency having jurisdiction, under state or federal law, to regulate any
33 aspect of the construction or operation of the proposed facility, and shall include each agency's
34 completed application forms. Upon the filing of an application, the committee shall expeditiously
35 forward a copy to the state agencies having [~~jurisdiction~~] **permitting or other regulatory**
36 **authority and to other state agencies identified in administrative rules.** Upon receipt of a

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

12 V. 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 ~~any~~ other ~~choices~~ **alternatives**
16 **it considers available** for the site **and configuration** of each major part of the proposed facility
17 **and the reasons for 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 community in
26 which the facility is proposed to be located.

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

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

31 217:14 Application for Certificate. Amend RSA 162-H:7, VI-a through VI-d to read as follows:

32 VI-a. ~~[Within 30 days after acceptance of the application, the committee shall hold at least~~
33 ~~one public hearing in each county in which the proposed facility is to be located,]~~ **Public**
34 **information sessions shall be held** in accordance with RSA 162-H:10.

35 VI-b. All ~~participating~~ state agencies **having permitting or other regulatory authority**
36 shall report their progress to the committee within ~~5 months~~ **150 days** of the acceptance of the

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

4 VI-c. All [~~participating~~] state agencies ***having permitting or other regulatory authority***
5 shall make and submit to the committee a final decision on the parts of the application that relate to
6 its [~~jurisdiction~~] ***permitting and other regulatory authority***, no later than [~~8 months~~] ***240 days***
7 after the application has been accepted.

8 VI-d. Within [~~9 months~~] ***365 days*** of the acceptance of an application, the committee shall
9 issue or deny a certificate for an energy facility.

10 217:15 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the
11 following new section:

12 162-H:7-a Role of State Agencies.

13 I. State agencies having permitting or other regulatory authority may participate in
14 committee proceedings as follows:

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

18 (b) Review proposals or permit requests and submit recommended draft permit terms
19 and conditions to the committee;

20 (c) Identify issues of concern on the proposal or permit request or notify the committee
21 that the application raises no issues of concern;

22 (d) When issues of concern are identified by the agency or committee, designate one or
23 more witnesses to appear before the committee at a hearing to provide input and answer questions of
24 parties and committee members; and

25 (e) If the committee intends to impose certificate conditions that are different than those
26 proposed by state agencies having permitting or other regulatory authority, the committee shall
27 promptly notify the agency or agencies in writing to seek confirmation that such conditions or
28 rulings are in conformity with the laws and regulations applicable to the project and state whether
29 the conditions or rulings are appropriate in light of the agency's statutory responsibilities. The
30 notified state agencies shall respond to the committee's request for confirmation as soon as possible,
31 but no later than 10 calendar days from the date the agency or agencies receive the notification
32 described above.

33 II. When initiating a proceeding for a committee matter, the committee shall expeditiously
34 notify state agencies having permitting or other regulatory authority or that are identified in
35 administrative rules.

36 III. Within 30 days of receipt of a notification of proceeding, a state agency not having

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1 permitting or other regulatory authority but wishing to participate in the proceeding shall advise the
2 presiding officer of the committee in writing of such desire and be allowed to do so provided that the
3 presiding officer determines that a material interest in the proceeding is demonstrated and such
4 participation conforms with the normal procedural rules of the committee.

5 IV. The commissioner or director of each state agency that intends to participate in a
6 committee proceeding shall advise the presiding officer of the name of the individual on the agency's
7 staff designated to be the agency liaison for the proceeding. The presiding officer may request the
8 attendance of an agency's designated liaison at a session of the committee if that person could
9 materially assist the committee in its examination or consideration of a matter.

10 V. All communications between the committee and agencies regarding a pending committee
11 matter shall be included in the official record and be publicly available.

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

15 217:16 Public Hearing; Studies; Rules. Amend RSA 162-H:10 to read as follows:

16 162-H:10 Public Hearing; Studies; Rules.

17 I. *At least 30 days prior to filing an application for a certificate, an applicant shall*
18 *hold at least one public information session in each county where the proposed facility is to*
19 *be located and shall, at a minimum, publish a public notice not less than 14 days before*
20 *such session in one or more newspapers having a regular circulation in the county in*
21 *which the session is to be held, describing the nature and location of the proposed facility.*
22 *At such session, the applicant shall present information regarding the project and receive*
23 *comments from the public. Not less than 10 days before such session, the applicant shall*
24 *provide a copy of the public notice to the chairperson of the committee. The applicant*
25 *shall arrange for a transcript of such session to be prepared and shall include the*
26 *transcript in its application for a certificate.*

27 *I-a.* Within [30] 45 days after acceptance of an application for a certificate [of site and
28 facility], pursuant to RSA 162-H:7, the [site-evaluation committee] **applicant** shall hold at least one
29 [joint] public [hearing] **information session** in each county in which the proposed facility is to be
30 located and shall, **at a minimum**, publish a public notice not less than 14 days before said [hearing]
31 **session** in one or more newspapers having a regular circulation in the county in which the [hearing]
32 **session** is to be held, describing the nature and location of the proposed [facilities] **facility**. **Not**
33 **less than 10 days before such session, the applicant shall provide a copy of the public**
34 **notice to the presiding officer of the committee. The administrator, or a designee of the**
35 **presiding officer of the committee, shall act as presiding officer of the information session.**
36 **The session shall be for public information on the proposed facility with the applicant**

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1 *presenting the information to the public. The presiding officer shall also explain to the*
2 *public the process the committee will use to review the application for the proposed*
3 *facility.*

4 *I-b. Upon request of the governing body of a municipality or unincorporated place*
5 *in which the proposed facility is to be located, or on the committee's own motion, the*
6 *committee may order the applicant to provide such additional information sessions as are*
7 *reasonable to inform the public of the proposed project.*

8 *I-c. Within 90 days after acceptance of an application for a certificate, pursuant to*
9 *RSA 162-H:7, the site evaluation committee shall hold at least one public hearing in each*
10 *county in which the proposed facility is to be located and shall publish a public notice not*
11 *less than 14 days before such session in one or more newspapers having a regular*
12 *circulation in the county in which the hearing is to be held, describing the nature and*
13 *location of the proposed facilities. The public hearings shall be joint hearings, with*
14 *representatives of the [other] agencies that have [jurisdiction] **permitting or other regulatory***
15 ***authority** over the subject matter and shall be deemed to satisfy all initial requirements for public*
16 *hearings under statutes requiring permits relative to environmental impact. [The hearings shall be*
17 *for public information on the proposed facilities with the applicant presenting the information to the*
18 *site evaluation committee and to the public.] Notwithstanding any other provision of law, the*
19 *hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings*
20 *otherwise required by any of the other state agencies; provided, however, if any of such other state*
21 *agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under*
22 *this chapter; provided further, however, the ability or inability of any of the other state agencies to*
23 *join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any*
24 *member of the committee to act in accordance with this chapter.*

25 *II. [Except for informational hearings,] Subsequent hearings shall be in the nature of*
26 *adjudicative proceedings under RSA 541-A and may be held in the county or one of the counties in*
27 *which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site*
28 *evaluation committee. The committee shall give adequate public notice of the time and place of each*
29 *subsequent [session] **hearing.***

30 *III. The site evaluation committee shall consider and weigh all evidence presented at public*
31 *hearings and shall consider and weigh written information and reports submitted to it by members*
32 *of the public before, during, and subsequent to public hearings **but prior to the closing of the***
33 ***record of the proceeding.** [The committee shall grant free access to records and reports in its files*
34 *to members of the public during normal working hours and shall permit copies of such records and*
35 *reports to be made by interested members of the public at their expense.] **The committee shall***
36 ***consider, as appropriate, prior committee findings and rulings on the same or similar***

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1 ***subject matters, but shall not be bound thereby.***

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

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

13 VI. The site evaluation committee shall issue such rules to administer this chapter,
14 pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

15 VII. ***As soon as practicable but*** no later than ~~[January]~~ ***July*** 1, 2015, the committee shall
16 adopt rules, pursuant to RSA 541-A, relative to ***the organization, practices, and procedures of***
17 ***the committee and*** criteria for the siting of energy facilities, including specific criteria to be applied
18 in determining if the requirements of RSA 162-H:16, IV~~[(b) and (c)]~~ have been met by the applicant
19 for a certificate of site and facility. Prior to the adoption of such rules, the office of energy and
20 planning shall hire and manage one or more consultants to conduct a public stakeholder process to
21 develop recommended regulatory criteria, which may include consideration of issues identified in
22 attachment C of the 2008 final report of the state energy policy commission, as well as others that
23 may be identified during the stakeholder process. ~~[The office of energy and planning shall submit a~~
24 ~~report based on the findings of the public stakeholder process to the committee by January 1, 2014.]~~

25 217:17 Enforcement. Amend RSA 162-H:12, I to read as follows:

26 I. Whenever the committee, ***or the administrator as designee***, determines that any term
27 or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify
28 the person holding the certificate of the specific violation and order the person to immediately
29 terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to
30 terminate the violation, the committee may suspend the person's certificate. Except for emergencies,
31 prior to any suspension, the committee shall give written notice of its consideration of suspension
32 and of its reasons therefor and shall provide opportunity for a prompt hearing.

33 217:18 Enforcement. Amend RSA 162-H:12, IV to read as follows:

34 IV. Notwithstanding any other provision of this chapter, each of the other state agencies
35 having ~~jurisdiction~~ ***permitting or other regulatory authority*** shall retain all of its powers and
36 duties of enforcement.

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1 217:19 Records; Temporary Suspension of Deliberations. Amend RSA 162-H:13 and RSA 162-
2 H:14 to read as follows:

3 162-H:13 Records. Complete verbatim records shall be kept by the committee of all hearings,
4 and records of all other actions, proceedings, and correspondence of the committee, **including**
5 **submittals of information and reports by members of the public**, shall be maintained, all of
6 which records shall be open to the public inspection **and copying** as provided for under RSA 91-A.
7 **Records regarding pending applications for a certificate shall also be made available on a**
8 **website.**

9 162-H:14 Temporary Suspension of Deliberations.

10 I. If the site evaluation committee, at any time [~~during its deliberations relative to~~] **while** an
11 application for a certificate **is before it**, deems it to be in the public interest, it may temporarily
12 suspend its deliberations and time frame established under RSA 162-H:7.

13 II. [Repealed.]

14 217:20 Findings and Certificate Issuance. Amend RSA 162-H:16, I to read as follows:

15 I. The committee shall incorporate in any certificate such terms and conditions as may be
16 specified to the committee by any of the [~~other~~] state agencies having [~~jurisdiction~~] **permitting or**
17 **other regulatory authority**, under state or federal law, to regulate any aspect of the construction
18 or operation of the proposed facility; provided, however, the committee shall not issue any certificate
19 under this chapter if any of the [~~other~~] state agencies denies authorization for the proposed activity
20 over which it has [~~jurisdiction~~] **permitting or other regulatory authority**. The denial of any such
21 authorization shall be based on the record and explained in reasonable detail by the denying agency.

22 217:21 Findings and Certificate Issuance. Amend RSA 162-H:16, IV to read as follows:

23 IV. [~~The site evaluation committee, after having considered available alternatives and fully~~
24 ~~reviewed the environmental impact of the site or route, and other relevant factors bearing on~~
25 ~~whether the objectives of this chapter would be best served by the issuance of the certificate, must~~
26 ~~find that the site and facility]~~ **After due consideration of all relevant information regarding**
27 **the potential siting or routes of a proposed energy facility, including potential significant**
28 **impacts and benefits, the site evaluation committee shall determine if issuance of a**
29 **certificate will serve the objectives of this chapter. In order to issue a certificate, the**
30 **committee shall find that:**

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

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

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

3 (d) [Repealed.]

4 217:22 New Subparagraph; Findings and Certificate Issuance. Amend RSA 162-H:16, IV by
5 inserting after subparagraph (d) the following new subparagraph:

6 (e) Issuance of a certificate will serve the public interest.

7 217:23 New Section; Fund Established; Funding Plan. Amend RSA 162-H by inserting after
8 section 20 the following new section:

9 162-H:21 Fund Established; Funding Plan.

10 I. There is hereby established in the office of the state treasurer a nonlapsing fund to be
11 known as the site evaluation committee fund. All moneys in the fund shall be continually
12 appropriated to the site evaluation committee and shall only be used to pay for operating costs of the
13 committee, including costs incurred under RSA 162-H:3-a and the compensation paid to the public
14 members of the committee under RSA 162-H:3, VIII.

15 II. The site evaluation committee fund shall be funded upon request of the committee by a
16 one-time grant, not to exceed \$500,000, which may be received in installments, from the renewable
17 energy fund established in RSA 362-F:10. The initial transfer to the fund shall occur following
18 approval by the fiscal committee of the general court of a proposed budget plan for fiscal year 2015
19 as provided in paragraph III. Any subsequent transfer requests of the one-time grant from the
20 renewable energy fund shall require prior approval of the fiscal committee.

21 III. Prior to July 1, 2014, the site evaluation committee shall submit a proposed budget plan
22 for fiscal year 2015 to the fiscal committee of the general court for approval. The site evaluation
23 committee shall be entitled to reimbursement from each applicant for reasonable administrative
24 expenses directly associated with processing the applicant's application during fiscal year 2015.
25 Such expenses shall include the compensation paid to the public members of the committee, the
26 administrator's time processing the application, and any other reasonable administrative cost
27 directly associated with the application, but shall exclude state agency review and hearing time. All
28 reimbursements paid by applicants to the site evaluation committee under this paragraph shall be
29 deposited in the fund.

30 IV. Prior to December 1, 2014, the site evaluation committee shall submit a permanent
31 funding plan, including recommendations for legislative action, to the governor, speaker of the house
32 of representatives, and senate president covering the long-term operations of the committee. When
33 developing the permanent funding plan, the site evaluation committee shall consider potential
34 funding sources, including but not limited to the imposition of reasonable application fees and the
35 use of general funds. The site evaluation committee shall consider whether a dedicated fund is
36 necessary as part of a permanent funding plan. The plan shall describe the costs of the ongoing

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1 administration of the site evaluation committee's duties, including state agency expenses associated
2 with processing an application under this chapter. The plan shall include recommendations for the
3 ongoing funding of the site evaluation committee's operations, including reimbursement for the
4 hearing and review time of members of the committee and state agency staff. The plan shall make
5 recommendations for funding sources to meet those needs, except that such funding sources shall not
6 include annual operating fees imposed on energy facilities or further use of the renewable energy
7 fund. The plan shall provide an estimate of revenues from application fees and additional funding
8 sources.

9 217:24 Applicability.

10 I. The provisions of this act shall apply to any application received by the site evaluation
11 committee on or after July 1, 2014 and to any matter for which an adjudicative hearing has not
12 commenced before July 1, 2014. The parties in any pending matter for which an adjudicative
13 hearing has not commenced before July 1, 2014 shall have a reasonable opportunity to supplement
14 filings under provisions of this chapter.

15 II. Any method of collecting fees or other assessments from applicants for the ongoing
16 operations of the site evaluation committee established by the legislature during the 2015 legislative
17 session shall apply to all matters subject to the provisions of RSA 162-H as amended by this act. An
18 applicant in a matter subject to the provisions of RSA 162-H as amended by this act shall be entitled,
19 as applicable, to an appropriate credit or adjustment for expenses paid by the applicant under
20 RSA 162-H:10, V or RSA 162-H:21, III prior to when the method of collecting fees or other
21 assessments goes into effect. The purpose of this provision is to ensure that all matters subject to
22 this act, whenever filed, are subject to such enactment, while also preventing the over collection of
23 fees and payments from the applicant.

24 III. Pending matters before the site evaluation committee for which an adjudicative hearing
25 was commenced prior to July 1, 2014 shall be governed by the law in effect prior to the effective date
26 of this act.

27 217:25 Transitional Responsibilities; Site Evaluation Committee.

28 I. The site evaluation committee as amended by section 6 of this act may act when the
29 second public member is appointed by the governor with the consent of the council under RSA 162-
30 H:3, I(f). Such appointment shall occur no later than October 1, 2014. The committee as amended
31 under this act shall be responsible for all matters under RSA 162-H, except as provided in paragraph
32 II.

33 II. The site evaluation committee in existence prior to the effective date of this act shall
34 continue to have authority to act on matters before it until all such matters for which it is
35 responsible have been resolved, through rulings on requests for rehearing or reconsideration. The
36 committee in existence prior to the effective date of this act shall be responsible for any matter for

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1 which an adjudicative hearing was commenced prior to the date on which the committee as amended
2 under this act is authorized to act pursuant to paragraph I.

3 III. Notwithstanding any other provision of RSA 162-H, until such time as the site
4 evaluation committee as amended by section 6 of this act is authorized to act, the committee in
5 existence prior to the effective date this act shall continue to process all matters before the
6 committee; shall seek to hire the administrator and other support as needed as provided in RSA 162-
7 H:3-a; and shall continue the rulemaking process pursuant to RSA 162-H:10, VII. The actions of the
8 committee in existence prior to this act shall be deemed the actions of the site evaluation committee,
9 as amended, for all such purposes. The administrator shall be empowered to act in all matters under
10 the supervision of the chairperson of the committee in existence prior to this act. Supervision shall
11 transfer to the chairperson of the committee as amended under this act when the second public
12 member is appointed pursuant to paragraph I.

13 217:26 Site Evaluation Committee; Reimbursement for Agency Time. If subsequent legislation
14 provides for reimbursement for the hearing or review time of members of the site evaluation
15 committee or state agency staff, then reimbursement shall also be made in the same manner for such
16 time spent prior to the effective date of such subsequent legislation on matters that are subject to
17 this act.

18 217:27 New Subparagraph; Application of Receipts. Amend RSA 6:12, I(b) by inserting after
19 subparagraph (316) the following new subparagraph:

20 (317) Moneys deposited in the site evaluation committee fund established in
21 RSA 162-H:21.

22 217:28 Repeal. The following are repealed:

- 23 I. RSA 4-C:6, II(e), relative to energy facility evaluation committee.
- 24 II. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.
- 25 III. RSA 162-H:7, VI-e, relative to time frames for applications for certificates.
- 26 IV. RSA 162-H:15, relative to informational meetings.

27 217:29 Effective Date.

28 I. Sections 24, 25 and RSA 162-H:21, III as inserted by section 23 of this act shall take effect
29 upon its passage.

30 II. The remainder of this act shall take effect July 1, 2014.

31
32 Approved: July 11, 2014

33 Effective Date: I. Sections, 24, 25 and RSA 162-H:21, III as inserted by section 23 shall take effect
34 July 11, 2014.

35 II. Remainder shall take effect July 1, 2014.