

SB 281-FN – AS AMENDED BY THE SENATE

03/13/14 0920s

03/13/14 0987s

2014 SESSION

14-2721

06/04

SENATE BILL **281-FN**

AN ACT relative to the siting of wind turbines.

SPONSORS: Sen. Bradley, Dist 3; Sen. Forrester, Dist 2; Rep. Suzanne Smith, Graf 8;
Rep. Vadney, Belk 2; Rep. Ford, Graf 3; Rep. Rappaport, Coos 1

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill establishes guidelines for the site evaluation committee in adopting rules to govern the siting of large wind energy systems in New Hampshire.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

1 1 New Section; Siting of Large Wind Energy Systems. Amend RSA 162-H by inserting after
2 section 4 the following new section:

3 162-H:4-a Siting of Large Wind Energy Systems.

4 I. In this section:

5 (a) “Large wind energy system” means an electricity generating facility with a generating
6 capacity of over 100 kilowatts, consisting of one or more wind turbines, including any substations,
7 meteorological towers, cables, wires, and other buildings accessory to such facility.

8 (b) “Shadow flicker” means alternating changes in light intensity caused by the moving
9 blade of a wind energy system casting shadows on the ground and stationary objects.

10 II. In creating rules to govern the siting of large wind energy systems, the site evaluation
11 committee shall address, but not be limited to, the following:

12 (a) Visual impacts within a range of 10 miles from any part of the facility, and in its
13 discretion, impacts beyond 10 miles.

14 (b) Cumulative impacts to natural, scenic, recreational, and cultural resources from
15 multiple towers or projects, or both.

16 (c) Set-back requirements to protect property owners from undue health and safety
17 impacts such as noise, shadow flicker, and ice throw.

18 (d) The establishment of scientifically-based standards for project-related sound
19 pressure levels, both in the audible and low frequency ranges, and provisions for independent
20 monitoring to ensure on-going compliance.

21 (e) Impacts including, but not limited to, rare plants and natural communities;
22 exemplary examples of natural communities; threatened, endangered, or special concern wildlife
23 species and the primary habitat of these species; migrating and resident birds and bats; and high
24 elevation spruce-fir forests.

25 (f) A fire protection plan approved by the state fire marshal, after consultation with local
26 public safety authorities, as a condition for a certificate.

27 (g) A site decommissioning and restoration plan as a condition for a certificate, the costs
28 of which are independently assessed annually, requiring the applicant to provide that a secure

SB 281-FN – AS AMENDED BY THE SENATE
- Page 2 -

1 financial instrument is in place prior to the initiation of project construction that is sufficient to fund
2 the removal of all structures and site restoration. No secure financial instrument shall include the
3 projected salvage value of any structure to be decommissioned.

4 (h) The use of best available mitigation measures to avoid or minimize aesthetic,
5 ecological, health, and property value impacts as a condition for a certificate, and the establishment
6 of a methodology to evaluate and mitigate negative impacts on property values.

7 (i) The best available science and technology. The site evaluation committee may update
8 regulations and standards adopted by the committee as frequently as is appropriate based on
9 changes in science and technology.

10 2 Effective Date. This act shall take effect 60 days after its passage.

SB 281-FN FISCAL NOTE

AN ACT relative to the siting of wind turbines.

FISCAL IMPACT:

The Judicial Branch and New Hampshire Association of Counties state this bill, **as amended by the Senate (Amendments #2014-0920s and #2014-0987s)**, may increase state and county expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill enacts RSA 162-H:4-a to deal with the siting of large wind energy systems. The Branch states several sections in RSA 162-H may result in a fiscal impact. RSA 162-H:11 makes decisions of the site evaluation committee appealable to the supreme court pursuant to RSA 541. RSA 162-H:19, I and II provide for injunction and civil damage actions in the superior court. Lastly, RSA 162-H:19, II provides that violations of RSA 162-H:4-a would be an unspecified misdemeanor for a natural person and a felony for any other person. The Branch has no information on which to estimate how many additional actions might be pursued as a result of this bill. The Branch does have the costs associated with each type of action. Injunction actions are classified as average complex equity cases with an average cost of \$576.05 in FY 2014, \$668.25 in FY 2015, and \$683.30 in FY 2016 and each year thereafter. Actions in superior court for civil damages would be classified as average complex civil case with an average cost of \$633.81 in FY 2014, \$686.96 in FY 2015, and \$699.09 in FY 2016 and each year thereafter. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor. The Branch estimates a class A misdemeanor will cost \$59.11 in FY 2014, \$66.17 in FY 2015, and \$67.64 in FY 2016 and each year thereafter, and a class B misdemeanor will cost \$43.19 in FY 2014, \$46.99 in FY 2015, and \$48.02 in FY 2016 and each year thereafter. The felony offense would be treated as a routine criminal case with an average cost of \$425.27 in FY 2015 and \$433.34 in FY 2016 and each year thereafter. The acceptance of any administrative appeal, for a full appellate review or limited review, by the Supreme Court will increase costs by an indeterminable amount. The possibility for a case to be appealed may also increase costs. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since that timeframe there have been various changes that may impact the costs, such as the creation of the circuit court, the increase

in self-represented litigants, and the anticipated implementation of the NH e-court project in FY 2014.

The New Hampshire Association of Counties states to the extent individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Safety assumes any costs associated with the review of wind turbine projects will be absorbed into normal operating expenses, therefore this bill will not have a fiscal impact on the Department.

The Judicial Council states this bill will have no fiscal impact on the Council. The Council states it has no record of providing representation to an indigent defendant in connection with a criminal proceeding relating to the siting of a bulk energy facility. The Council also states historically the indigent defense delivery system has not provided representation to defendants charged with crimes who have allegedly violated some aspect of a law regulating commercial activities. Anyone charged with a crime in the context of a business or occupation would likely be defended and indemnified by his or her insurer or employer, and if gainfully employed would most likely not meet the eligibility requirements to qualify for the appointment of counsel at the state's expense.

The Department of Justice states this bill will not have a substantive fiscal impact on the Department.