

# TITLE XII

## PUBLIC SAFETY AND WELFARE

### CHAPTER 162-H

### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

#### Section 162-H:1

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

**Source.** 1991, 295:1. 1998, 264:1. 2009, 65:1, eff. Aug. 8, 2009. 2014, 217:1, eff. July 1, 2014.

#### Section 162-H:2

##### **162-H:2 Definitions.** –

- I. "Acceptance" means a determination by the committee that it finds that the application is complete and ready for consideration.
- I-a. "Administrator" means the administrator of the committee established by this chapter.
- I-b. "Affected municipality" means any municipality or unincorporated place in which any part of an energy facility is proposed to be located and any municipality or unincorporated place from which any part of the proposed energy facility will be visible or audible.
- II. [Repealed.]
- II-a. "Certificate" or "certificate of site and facility" means the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.
- III. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.
- IV. [Repealed.]
- V. "Committee" means the site evaluation committee established by this chapter.
- VI. "Energy" means power, including mechanical power, useful heat, or electricity derived from any resource, including, but not limited to, oil, coal, and gas.
- VII. "Energy facility" means:

- (a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.
- (b) Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.
- (c) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.
- (d) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.
- (e) A new electric transmission line of design rating in excess of 200 kilovolts.
- (f) A renewable energy facility.
- (g) Any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

VII-a. "Energy facility proceeding time and expenses" means time spent in hearings, meetings, preparation, and travel related to any application or other proceeding before the committee concerning an energy facility, either existing or proposed, and related reasonable out-of-pocket expenses.

VIII. "Filing" means the date on which the application is first submitted to the committee.

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

X. [Repealed.]

X-a. [Repealed.]

XI. "Petitioner" means a person filing a petition meeting any of the following conditions:

- (a) A petition endorsed by 100 or more registered voters in the host community or host communities.
- (b) A petition endorsed by 100 or more registered voters from abutting communities.
- (c) A petition endorsed by the governing body of a host community or 2 or more governing bodies of abutting communities.
- (d) A petition filed by the potential applicant.

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

**Source.** 1991, 295:1. 1997, 298:21-24. 1998, 264:2. 2007, 25:1; 364:3. 2008, 348:8. 2009, 65:2-4, 24, I-IV, eff. Aug. 8, 2009. 2014, 217:2-5, eff. July 1, 2014. 2015, 219:4, eff. July 8, 2015. 2017, 115:1, eff. Aug. 14, 2017.

### Section 162-H:3

#### **162-H:3 Site Evaluation Committee Established. –**

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

- (a) The commissioners of the public utilities commission, the chairperson of which shall be the chairperson of the committee;
- (b) The commissioner of the department of environmental services, who shall be the vice-chairperson of the

committee;

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

(d) The commissioner of the department of transportation;

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

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

II. All members, including those who sit for a member recused under paragraph VI, shall refrain from ex parte communications regarding any matter pending before the committee. This prohibition shall extend to those who sit on any subcommittee formed under RSA 162-H:4-a.

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

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

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

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

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

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

(d) Engage personnel in accordance with this chapter.

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

VI. If at any time a member must recuse himself or herself on a matter or is not otherwise available for good reason, such person, if a state employee, may designate a senior administrative employee or a staff attorney from his or her agency to sit on the committee. In the case of a public member, the procedure outlined in RSA 162-H:4-b, VI shall be followed.

VII. All committee members shall on an annual basis complete an intensive training program on the provisions of RSA 162-H and the administrative rules adopted thereunder with respect to reviewing and evaluating applications for a certificate of site and facility. All new committee members, and any designee to a subcommittee pursuant to RSA 162-H:4-a, II or III, shall complete the training program prior to serving on, respectively, any committee or subcommittee proceeding. The training shall be conducted by the department of justice.

**Source.** 1991, 295:1. 1995, 310:182. 1996, 228:41. 1997, 298:25. 2002, 247:2. 2003, 319:9. 2004, 257:44. 2007, 364:4. 2009, 65:5, eff. Aug. 8, 2009. 2014, 217:6, eff. July 1, 2014. 2015, 219:2, eff. July 8, 2015. 2017, 156:61, eff. July 1, 2017. 2018, 216:1, eff. Aug. 7, 2018.

### Section 162-H:3-a

**162-H:3-a Administrator and Other Committee Support.** – There is hereby established within the site evaluation committee the position of administrator who shall be an unclassified state employee. In the alternative, the position may be filled by an independent contractor. The administrator shall be hired by and under the supervision of the chairperson. The administrator, or chairperson in the absence of an administrator, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary. Any person to be hired by the administrator shall be approved by the chairperson.

**Source.** 2014, 217:7, eff. July 1, 2014. 2015, 219:3, eff. July 8, 2015.

### Section 162-H:4

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

I. The committee shall:

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

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

(c) Monitor the construction and operation of any energy facility granted a certificate under this chapter to

ensure compliance with such certificate.

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

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

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

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

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

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

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

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

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

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

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

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

**Source.** 1991, 295:1. 1997, 298:26. 2007, 364:5. 2008, 348:7. 2009, 65:6-8, eff. Aug. 8, 2009. 2014, 217:8-10, eff. July 1, 2014.

## Section 162-H:4-a

### 162-H:4-a Subcommittees. –

I. The chairperson may establish subcommittees to consider and make decisions on applications, including the issuance of certificates, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee may approve the budgetary requirements of the committee, approve any support staff positions, or adopt initial or final rulemaking proposals. For purposes of statutory interpretation and executing the regulatory functions of this chapter, the subcommittee shall assume the role of and be considered

the committee, with all of its associated powers and duties in order to execute the charge given it by the chairperson.

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

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

**Source.** 2014, 217:11, eff. July 1, 2014. 2015, 219:9, eff. July 8, 2015. 2018, 216:2, eff. Aug. 7, 2018.

## **Section 162-H:4-b**

### **162-H:4-b Public Members. –**

I. The governor, with the consent of the council, shall appoint 5 public members to serve on the committee or subcommittees as prescribed in this section. Such public members shall be residents of the state of New Hampshire with expertise or experience in one or more of the following areas: public deliberative or adjudicative proceedings; business management; environmental protection; natural resource protection; energy facility design, construction, operation, or management; community and regional planning or economic development; municipal or county government; or the governing of unincorporated places.

II. The public members shall serve 4-year terms and until their successors are appointed and qualified. Initial terms shall be staggered so that no more than 2/5 of the members' terms shall expire in the same year. Any public member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member who is succeeded.

III. At the time of appointment under paragraph I, 2 of the public members shall be designated as full committee members, as provided in RSA 162-H:3, I(f), at least one of whom shall be a member in good standing of the New Hampshire Bar Association. The terms of full members shall expire 2 years apart.

IV. All of the public members shall constitute a pool from which the chairperson of the committee shall draw for purposes of paragraphs V and VI. The chairperson may publish an impartial methodology that shall be used to determine when the chairperson may remove a public member from the pool for a particular draw based on criteria aimed at distributing the workload among public members. The development of such methodology shall not be subject to RSA 541-A.

V. When forming a subcommittee, the chairperson shall select from the pool, by a random draw, the one or 2 public members required to be on the subcommittee, as prescribed in RSA 162-H:4-a.

VI. If at any time a public member must recuse himself or herself from a matter before the committee or a subcommittee or is not otherwise available for good reason, the chairperson shall replace such member with another public member by means of a random draw from the pool of public members.

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

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

**Source.** 2018, 216:3, eff. Aug. 7, 2018.

## Section 162-H:5

### 162-H:5 Prohibitions and Restrictions. –

I. No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Such certificates are required for sizeable changes or additions to existing facilities. Such a certificate shall not be transferred or assigned without approval of the committee.

II. Facilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters; however, sizeable changes or additions to such facilities shall be certified pursuant to this chapter.

III. The applications shall be governed by the applicable laws, rules and regulations of the agencies and shall be subject to the provisions of RSA 162-F or RSA 162-H in effect on the date of filing. Notwithstanding the foregoing, an applicant may request the site evaluation committee to assume jurisdiction and in the event that the site evaluation committee agrees to assert jurisdiction, the facility shall be subject to the provisions of this chapter.

IV. [Repealed.]

**Source.** 1991, 295:1. 1998, 264:3. 2009, 65:9, 24, V, eff. Aug. 8, 2009.

## Section 162-H:6

**162-H:6 Time Frames.** – [Repealed 2009, 65:24, VI, eff. Aug. 8, 2009.]

### Section 162-H:6-a

**162-H:6-a Time Frames for Review of Renewable Energy Facilities.** – [Repealed 2014, 217:28, II, eff. July 1, 2014.]

## Section 162-H:7

### 162-H:7 Application for Certificate. –

I. [Repealed.]

II. All applications for a certificate for an energy facility shall be filed with the chairperson of the site evaluation committee.

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

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms. Upon the filing of an application, the committee shall expeditiously forward a copy to the state agencies having permitting or other regulatory authority and to other state agencies identified in administrative rules. Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having permitting or other regulatory authority, that agency shall, in writing, notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the state agencies having permitting or other regulatory authority if the applicant is reasonably notified that it has not supplied sufficient information for any of the state agencies having permitting or other regulatory authority in accordance with this paragraph.

V. Each application shall also:

- (a) Describe in reasonable detail the type and size of each major part of the proposed facility.
  - (b) Identify both the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the applicant's preferred choice.
  - (c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.
  - (d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.
  - (e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.
  - (f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each affected municipality, as defined in RSA 162-H:2, I-b. The application shall include a list of the affected municipalities.
  - (g) Describe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.
  - (h) Provide such additional information as the committee may require to carry out the purposes of this chapter.
- VI. The committee shall decide whether or not to accept the application within 60 days of filing. If the committee rejects an application because it determines it to be administratively incomplete, the applicant may choose to file a new and more complete application or cure the defects in the rejected application within 10 days of receipt of notification of rejection.
- VI-a. Public information sessions shall be held in accordance with RSA 162-H:10.
- VI-b. All state agencies having permitting or other regulatory authority shall report their progress to the committee within 150 days of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision on the parts of the application that relate to its permitting or other regulatory authority.
- VI-c. All state agencies having permitting or other regulatory authority shall make and submit to the committee a final decision on the parts of the application that relate to its permitting and other regulatory authority, no later than 240 days after the application has been accepted.
- VI-d. Within 365 days of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.
- VI-e. [Repealed.]
- VII. Notwithstanding any other provision of law, the application shall be in lieu of separate applications that may be required by any other state agencies.
- VIII. This chapter shall not preclude an agency from imposing its usual statutory fees.
- IX. The applicant shall immediately inform the committee of any substantive modification to its application.

**Source.** 1991, 295:1. 2009, 65:11-13, 24, VII, eff. Aug. 8, 2009. 2014, 217:12-14, 28, III, eff. July 1, 2014. 2017, 115:2, eff. Aug. 14, 2017.

## Section 162-H:7-a

### 162-H:7-a Role of State Agencies. –

- I. State agencies having permitting or other regulatory authority may participate in committee proceedings as follows:
- (a) Receive proposals or permit requests within the agency's permitting or other regulatory authority, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;
  - (b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;
  - (c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;
  - (d) When issues of concern are identified by the agency or committee, designate one or more witnesses to appear before the committee at a hearing to provide input and answer questions of parties and committee members; and
  - (e) If the committee intends to impose certificate conditions that are different than those proposed by state agencies having permitting or other regulatory authority, the committee shall promptly notify the agency or agencies in writing to seek confirmation that such conditions or rulings are in conformity with the laws and regulations applicable to the project and state whether the conditions or rulings are appropriate in light of the

agency's statutory responsibilities. The notified state agencies shall respond to the committee's request for confirmation as soon as possible, but no later than 10 calendar days from the date the agency or agencies receive the notification described above.

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

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

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

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

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

**Source.** 2014, 217:15, eff. July 1, 2014.

## Section 162-H:8

### 162-H:8 Disclosure of Ownership. –

Any application for a certificate shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

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

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

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

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

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

**Source.** 1991, 295:1, eff. Jan. 1, 1992.

## Section 162-H:8-a

### 162-H:8-a Application and Filing Fees. –

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

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

(a) Application fee for electric generation facilities: \$50,000 base charge, plus:

(1) \$1,000 per megawatt for the first 40 megawatts, and \$1,500 per megawatt for each megawatt in excess of 40 megawatts, for any wind energy system.

(2) \$100 per megawatt, for any natural gas or biomass fueled facility.

- (3) \$150 per megawatt, for any coal or oil fueled facility.
  - (4) \$200 per megawatt, for any nuclear generation facility.
  - (b) Application fee for transmission facilities: \$50,000 base charge, plus:
    - (1) \$3,000 per mile, for any electric transmission facility.
    - (2) \$1,500 per mile, for any natural gas pipeline.
  - (c) Application fee for other energy facilities: \$50,000 fee.
  - (d) Filing fees for administrative proceedings:
    - (1) Petition for committee jurisdiction: \$10,500.
    - (2) Petition for declaratory ruling: \$10,500, or \$3,000 if heard by a 3-member subcommittee.
    - (3) Certificate transfer of ownership: \$10,500, or \$3,000 if heard by a 3-member subcommittee.
    - (4) Request for exemption: \$10,500, or \$3,000 if heard by a 3-member subcommittee.
    - (5) Request to modify a certificate: \$10,500, or \$3,000 if heard by a 3-member subcommittee.
- III. The committee shall review and evaluate the application fees and filing fees in the fee schedule in paragraph II at least once each year. The committee may increase or decrease any amount in the fee schedule by up to 20 percent with prior approval of the fiscal committee of the general court, provided that any such increase or decrease shall occur not more frequently than once during any 12-month period. Modifications to the fee schedule shall be posted on the committee website, with a link prominently displayed on the home page.
- IV. Notwithstanding paragraph I, a petition for committee jurisdiction filed by a petitioner as defined in RSA 162-H:2, XI(a), (b), or (c) for a certificate for an energy facility shall not be subject to a filing fee. If the committee determines that it has jurisdiction over a proposed energy facility subject to any such petition, then the owner of the proposed energy facility shall be required to pay to the committee the petition for jurisdiction fee, in addition to the application fee determined in accordance with paragraph II for the type and size of the proposed energy facility.

**Source.** 2015, 219:8, eff. July 8, 2015.

## **Section 162-H:9**

### **162-H:9 Counsel for the Public. –**

- I. Upon notification that an application for a certificate has been filed with the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final.
- II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

**Source.** 1991, 295:1, eff. Jan. 1, 1992.

## **Section 162-H:10**

### **162-H:10 Public Hearing; Studies; Rules. –**

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

I-a. Within 45 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the applicant shall hold at least one public information session as described in paragraph I in each county in which the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before said session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. The applicant shall also send a copy of the public notice, not less than 14 days before the session, by first class mail to the governing body of each affected municipality. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the information session. The session shall be for public information on the proposed facility with the applicant presenting the information to the public. The presiding officer shall also explain to the public the process the committee will use to review the application for the proposed facility.

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

I-c. Within 90 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one public hearing in each county in which the proposed facility is to be located and the applicant shall publish a public notice not less than 14 days before such hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. Not fewer than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The applicant shall arrange for a transcript of such session to be prepared. The committee shall also send a copy of the public notice, not less than 14 days before the hearing, by first class mail to the governing body of each affected municipality. The public hearings shall be joint hearings, with representatives of the agencies that have permitting or other regulatory authority over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

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

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

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

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

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

VII. As soon as practicable but no later than November 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A, relative to the organization, practices, and procedures of the committee and criteria for the siting of

energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility. Prior to the adoption of such rules, the office of strategic initiatives shall hire and manage one or more consultants to conduct a public stakeholder process to develop recommended regulatory criteria, which may include consideration of issues identified in attachment C of the 2008 final report of the state energy policy commission, as well as others that may be identified during the stakeholder process. Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information while the processing of the application continues.

**Source.** 1991, 295:1. 1997, 298:27. 2007, 364:7. 2009, 65:14. 2013, 134:2, eff. June 26, 2013. 2014, 217:16, eff. July 1, 2014. 2015, 219:11, eff. July 8, 2015; 268:3, eff. July 20, 2015. 2017, 115:3, 4, eff. Aug. 14, 2017; 156:64, eff. July 1, 2017. 2018, 216:4, eff. Aug. 7, 2018.

## Section 162-H:10-a

### 162-H:10-a Wind Energy Systems. –

I. To meet the objectives of this chapter, and with due regard for the renewable energy goals of RSA 362-F, including promoting the use of renewable resources, reducing greenhouse gas and other air pollutant emissions, and addressing dependence on imported fuels, the general court finds that appropriately sited and conditioned wind energy systems subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of wind energy systems in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a wind energy system or when specifying the type of information that a wind energy applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.

II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of wind energy systems, the committee shall address the following:

- (1) Visual impacts as evaluated through a visual impact assessment prepared in accordance with professional standards by an expert in the field.
- (2) Cumulative impacts to natural, scenic, recreational, and cultural resources from multiple towers or projects, or both.
- (3) Health and safety impacts, including but not limited to, shadow flicker caused by the interruption of sunlight passing through turbine blades and ice thrown from blades.
- (4) Project-related sound impact assessment prepared in accordance with professional standards by an expert in the field.
- (5) Impacts to the environment, air and water quality, plants, animals and natural communities.
- (6) Site fire protection plan requirements.
- (7) Site decommissioning, including sufficient and secure funding, removal of structures, and site restoration.
- (8) Best practical measures to avoid, minimize, or mitigate adverse effects.

**Source.** 2014, 310:5, eff. Aug. 1, 2014.

## Section 162-H:10-b

### 162-H:10-b Siting of High Pressure Gas Pipelines; Rulemaking; Intervention. –

I. To meet the objectives of this chapter, and with due regard to meeting the energy needs of the residents and businesses of New Hampshire, the general court finds that appropriately sited high pressure gas pipelines subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential benefits of such

systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a high pressure gas pipeline or when specifying the type of information that a high pressure gas pipeline applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.

II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of high pressure gas pipelines, the committee shall address the following:

- (a) Impacts to natural, scenic, recreational, visual, and cultural resources.
- (b) Health and safety impacts, including but not limited to, proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline.
- (c) Project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert in the field.
- (d) Impacts to the environment, air and water quality, plants, animals, and natural communities.
- (e) Site fire protection plan requirements.
- (f) Best practical measures to ensure quality construction that minimizes safety issues.
- (g) Best practical measures to avoid, minimize, or mitigate adverse effects.
- (h) Criteria to maintain property owners' ability to use and enjoy their property.

III. As soon as practicable, but no later than one year from the effective date of this section, the committee shall adopt rules, pursuant to RSA 541-A, consistent with paragraphs I and II of this section.

IV. The committee shall consider intervention in Federal Energy Regulatory Commission proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire.

**Source.** 2015, 264:1, eff. July 20, 2015.

### **Section 162-H:11**

**162-H:11 Judicial Review.** – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

**Source.** 1991, 295:1, eff. Jan. 1, 1992.

### **Section 162-H:12**

#### **162-H:12 Enforcement.** –

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

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

III. The committee may revoke any certificate that is suspended after the person holding the suspended certificate has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided an opportunity for a full hearing.

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

V. The full amount of costs and expenses incurred by the committee in connection with any enforcement action against a person holding a certificate, including any action under this section and any action under RSA 162-H:19, in which the person is determined to have violated any provision of this chapter, any rule adopted by the committee, or any of the terms and conditions of the issued certificate, shall be assessed to the person and shall

be paid by the person to the committee. Any amounts paid by a person to the committee pursuant to this paragraph shall be deposited in the site evaluation committee fund established in RSA 162-H:21.

**Source.** 1991, 295:1. 2009, 65:15, eff. Aug. 8, 2009. 2014, 217:17, 18, eff. July 1, 2014. 2015, 219:6, eff. July 8, 2015.

### **Section 162-H:13**

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

**Source.** 1991, 295:1, eff. Jan. 1, 1992. 2014, 217:19, eff. July 1, 2014.

### **Section 162-H:14**

#### **162-H:14 Temporary Suspension of Deliberations.** –

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

**Source.** 1991, 295:1. 2009, 65:16, 24, VIII, eff. Aug. 8, 2009. 2014, 217:19, eff. July 1, 2014.

### **Section 162-H:15**

**162-H:15 Informational Meetings.** – [Repealed 2014, 217:28, IV, eff. July 1, 2014.]

### **Section 162-H:16**

#### **162-H:16 Findings and Certificate Issuance.** –

I. The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the state agencies denies authorization for the proposed activity over which it has permitting or other regulatory authority. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.  
II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.  
III. The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.  
IV. After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the committee shall find that:  
(a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.  
(b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.  
(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water

quality, the natural environment, and public health and safety.

(d) [Repealed.]

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

V. [Repealed.]

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

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

**Source.** 1991, 295:1. 2009, 65:18-21, 24, IX, eff. Aug. 8, 2009. 2014, 217:20-22, eff. July 1, 2014. 2015, 264:2, eff. July 20, 2015.

## **Section 162-H:17**

**162-H:17 Bulk Power Facility Plans.** – [Repealed 2009, 65:24, X, eff. Aug. 8, 2009.]

## **Section 162-H:18**

**162-H:18 Review; Hearing.** – [Repealed 2009, 65:24, XI, eff. Aug. 8, 2009.]

## **Section 162-H:19**

**162-H:19 Penalties.** –

I. The superior court, in term time or in vacation, may enjoin any act in violation of this chapter.

II. Any construction or operation of energy facilities in violation of this chapter, or in material violation of the terms and conditions of a certificate issued under this chapter, may result in an assessment by the superior court of civil damages not to exceed \$10,000 for each day in violation.

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

**Source.** 1991, 295:1. 2009, 65:22, eff. Aug. 8, 2009.

## **Section 162-H:20**

**162-H:20 Severability.** – If any provision of this chapter, or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end, the provisions of this chapter are severable.

**Source.** 1991, 295:1, eff. Jan. 1, 1992.

## **Section 162-H:21**

**162-H:21 Fund Established; Funding Plan.** –

I. There is hereby established in the office of the state treasurer a nonlapsing, special fund to be known as the site evaluation committee fund. All application fees and other filing fees received by the committee under 162-H:8-a shall be deposited in the fund. All moneys in the fund shall be continually appropriated to the site evaluation committee and shall only be used, except as provided in paragraph III, to pay for compensation and reimbursements made under RSA 162-H:22 for energy facility proceeding time and expenses.

II. All other operating costs of the committee, including, but not limited to, administrator and other committee support costs under RSA 162-H:3-a and public member compensation and reimbursements that are not paid from the site evaluation committee fund pursuant to paragraph I, except those costs paid by applicants under

RSA 162-H:10, shall be funded through appropriations from the general fund.

III. In the fiscal biennium ending June 30, 2019, if the funds available to the committee to pay the operating costs specified in paragraph I or II are insufficient to permit the committee to pay all such operating costs, then upon request of the committee and approval of the fiscal committee of the general court, the shortfall shall be funded through a transfer from the renewable energy fund established in RSA 362-F:10 to the site evaluation committee fund in an amount not to exceed \$480,000. Any amount transferred but not expended for such shortfall during the 2018-2019 biennium shall lapse back to the renewable energy fund at the end of the biennium.

**Source.** 2014, 217:23, eff. July 1, 2014, July 11, 2014. 2015, 219:7, eff. July 8, 2015.

## **Section 162-H:22**

### **162-H:22 Compensation and Reimbursement. –**

I. The public members of the committee shall be compensated for all time spent on committee business, including compensation and reimbursement for energy facility proceeding time and expenses. Compensation shall be provided on a pro rata basis, based upon the daily salary rate of an unclassified position at the initial step in grade FF under RSA 94:1-a, I(a).

II. State agencies represented on the committee shall be reimbursed for energy facility proceeding time and expenses incurred by their respective members or designees, except that time spent for the first 3 full days of their participation with respect to any application or other proceeding concerning an energy facility shall not be subject to reimbursement. The rate of reimbursement to each respective agency shall be based on a pro rata share of the employee's salary, benefits, and related costs.

III. The department of justice shall be reimbursed in the same manner as described in paragraph II for energy facility proceeding time and expenses that are incurred by the counsel for the public.

IV. All persons or agencies seeking compensation or reimbursement under this section shall keep detailed time and expense records which shall be submitted to the chairperson or administrator and used to determine the amount of compensation or reimbursement. The chairperson or administrator shall develop a recordkeeping system and accounting and payment procedures.

V. Funding for all compensation and reimbursement under this section shall be as provided in RSA 162-H:21.

**Source.** 2015, 219:5, eff. July 8, 2015.