



The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**



*Celebrating 25 years of protecting  
New Hampshire's environment.*

February 7, 2012

The Honorable James Garrity, Chairman  
House Science, Technology and Energy Committee  
Legislative Office Building, Room 304  
Concord, NH 03301

**RE: HB 1239 requiring the site evaluation committee to consider economic impact prior to issuing a certificate for an energy facility; and HB 1401 relative to site evaluations and certificates for energy facilities.**

Dear Chairman Garrity and Members of the Committee:

Thank you for the opportunity to comment on HB 1239 and HB 1401, both of which would amend RSA 162-H, Energy Facility Evaluation, Siting, Construction and Operation. Because these two bills relate to the same statute and are being heard by your Committee on the same day, I have taken the liberty of preparing a single letter of testimony relating to both bills, and respectfully request that a copy of this letter be included in the Committee's files on both bills. Pursuant to RSA 162-H:3, the Commissioner of the Department of Environmental Services serves as the statutory Chairperson of the Site Evaluation Committee (Committee or SEC). Based on my experiences in serving on the Site Evaluation Committee, I am concerned that both bills would substantially expand the authority of the Committee to review applications but give little guidance as to how that new authority would be exercised. In addition, the bills contain provisions that are ambiguous and would add uncertainty for the public and applicants before the Committee.

HB 1401 would require the Committee, in the process of determining whether to issue or deny a Certificate, to consider whether the proposed facility will provide net "demonstrable public benefits in the State of New Hampshire" within ten years. In addition, HB 1401 would require the Committee to consider "all reasonable alternatives" to a proposed facility. These sections of the legislation would substantially broaden the inquiry of the Committee but give little guidance as to any limitations on the role of the Committee or the factors or criteria the Committee would be expected to consider. Similarly, HB 1239 would require the Committee to consider the economic impact of a proposed facility. Requiring the Committee to consider every alternative, to predict whether any specific project will provide net "demonstrable public benefits" within ten years, or to predict the economic impact of a particular facility would effectively place the Committee in the role of determining the energy and economic policy for the state. Traditionally, however, significant decisions about energy and economic policy in New Hampshire are made through the legislative process with input from a broad range of stakeholders and interested parties, not through permitting decisions made by the executive

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branch on individual projects. Furthermore, the potential economic effects of a proposed energy project are often a matter of significant dispute. Most projects come with both economic advantages and disadvantages. The resolution or determination of a "net effect" of those impacts would be extremely subjective and often times would not be amenable to ready measurement. The Committee, although comprised of agency commissioners and directors has no staff, budget or facilities to undertake the new role envisioned by this legislation, and nor does it possess the expertise to fully assess competing economic evaluations. Rather, as provided in RSA 162-H, the Committee comes together on an "as needed" basis and fills the dual roles of a siting board and a "one stop" permitting authority.

In light of these considerations, it should be evident that HB 1239 and HB 1401 would substantially expand the role of the Committee, and in doing so may result in significant unintended consequences.

HB 1401 also adds a provision that would cause ambiguity and uncertainty in the procedural process by requiring an applicant to pay for the costs of experts and consultants hired by counsel for the public and by any intervenors in a proceeding. If such a provision were to become law, applicants would never be able to properly assess and budget for the costs associated with seeking a certificate from the Committee. At present, counsel for the public will normally file a motion with the Committee in advance of employing consultants and will request Committee approval to do so. In some cases intervenors have followed the same process. The Committee approval process ensures that unnecessary or unfair costs and expenses are not assessed against an applicant. This process has worked well in the past and there does not appear to be a need to add uncertainty to this part of the certificating process.

Finally, it should be noted that there are currently five pending bills that relate in some manner to the site evaluation process set forth in RSA 162-H, including HB 1401, HB 1239, HB 1428, SB 215 and SB 264. Each of these bills contains provisions that may result in significant unintended consequences, and in various respects are at odds with each other. It is certainly possible that some changes could be made that would improve the site evaluation process currently specified in RSA 162-H. However, this is a complex statute, and any potential amendments to the law should be considered in the light of a full understanding of the law's purpose, the history of its implementation, and a thorough understanding of how matters are currently considered and decided by the Site Evaluation Committee. Accordingly, if the Legislature is interested in pursuing possible amendments to RSA 162-H, I would recommend that all of the pending bills effectively be amended to create a single study committee. A study committee would be able to comprehensively review and understand all aspects of RSA 162-H and the role of the Committee in the siting determination process. With that understanding in mind, it may be easier to posit reforms that would not have unintended consequences and that would have the potential for improving the current review process. Alternatively, I would be pleased to work with your committee to arrange for a comprehensive briefing for interested legislators on RSA 162-H and the work of the Site Evaluation Committee. Based on such a briefing, your committee could determine what further steps may be appropriate.

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Thank you for allowing me the opportunity to explain my concerns. If you have any questions or require additional information, please contact me at 271-2958 or [Thomas.burack@des.nh.gov](mailto:Thomas.burack@des.nh.gov).

Sincerely,

A handwritten signature in cursive script that reads "Thomas S. Burack".

Thomas S. Burack, Commissioner  
Department of Environmental Services

cc: Sponsors of HB 1239 and HB 1401

