Bill as Introduced

SB 376- AS INTRODUCED

2000 SESSION

00-2627
03/01

SENATE BILL ***376***

AN ACT relative to the jurisdiction of the public utilities commission to determine consequential damages.

SPONSORS: Sen. Disnard, Dist 8; Rep. Guay, Coos 6

COMMITTEE: Energy and Economic Development

ANALYSIS

This bill modifies the jurisdictional statement relative to consequential damages for municipal purchases of electric utility property.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 376- AS INTRODUCED

00-2627
03/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand .

AN ACT relative to the jurisdiction of the public utilities commission to determine consequential damages.

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

1 Municipal Electric, Gas, or Water Systems; Additional Provisions for Electric Systems; Consequential Damages; Jurisdiction. Amend RSA 38:33 to read as follows:

38:33 Consequential Damages. [~~To the extent that~~] ***In matters over which*** the Federal Energy Regulatory Commission does not have jurisdiction, the commission shall determine, to a just and reasonable extent, the consequential damages such as stranded investment in generation, storage, or supply arrangements resulting from the purchase of plant and property from a utility and shall establish an appropriate recovery mechanism for such damages. The commission need not make such a determination when the municipality and utility agree upon the sale of utility plant and property.

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

Committee Minutes

Date: January 11, 2000
Time: 3:45
Room: SH 105 A

The Senate Committee on Energy Economic Development held a hearing on the following:

SB 376 relative to the jurisdiction of the public utilities commission to determine consequential damages.

Members of Committee present:

Senator F. King
Senator Below
Senator Cohen
Senator Disnard
Senator Johnson
Senator Roberge

The Chair, Senator Frederick W. King, Sr., opened the hearing.

Senator Frederick W. King, D. 1: I'll open the hearing on SB 376, relative to the jurisdiction of the public utilities commission to determine consequential damages.

I call on Senator Disnard, the sponsor of the bill.

Senator George F. Disnard, D. 8: Thank you very much Mr. Chair and members of the committee.

This bill is a direct response to RSA 38:33. It certainly is of great interest to me and many other people in which I have discussed it, and have spoken to me. However, many of you realise I am certainly not an expert in this area. It will save us time, concidering its 3:45, I request you allow me to ask the real expert in this field, that I'm aware of not to step on anyone's toes, to speak in my place and explain it. Sylvester Swierzy.

Senator Frederick W. King, D. 1: I have no objection to that. Thank you very much.

Mr Swierzy?

Sylvester Swierzy, Bedford: In this case, as far as RSA 38 is concerned, I was instrumental in having drafted, or having had drafted, the ammendment to the law. To simplify the municipalization process. There were two runs of it, at one point. The passage of the law conflicted with the restructuring legislation and it was abandoned, and it was recessiated in the next session, and became law in 1997.

As Senator Disnard mentioned, this was a direct response to the companies interpertation of a specific provision in RSA 38:33. And that is, it became apparent that as part of the settlement aggreement and actually in the settlement agreement on line 499, and let me quote "In the event of municipalization of a portion or piece in the service territory, pursuant to RSA 33 the PUC shall determine, to a just and reasonable extent, the consequential damages such as stranded investment in generation", and so on, and so forth. Any municipality shall be allowed to initate and continue plans equating with RSA 38. Municipilization is not conducted pursuant to RSA 38:33, municipilazation undertaken by any municipality, is carried out pursuant to Chapter 38 in its entirety not just that particular provision. Just singling out that one provision and allowing the company to circumvent the juristiction of the Federal Energy Regulatory Commission is grosly unfair.

The FERC has determined in order 888 that it is the form for determination of any stranded costs and any disputes, arising out of retail turned wholesale costumer, that is municipilazation. And to the extent that FERC determination is made with the respect to such stranded costs. The commision, our commission, is out of the picture. Now the company has taken a different position, the company has said, well if the FERC does its thing and we don't like it we can come back and then take another shot at it. So what this bill attemmpts to do is to clairfy the statute as it stands right now, by changing the four words "to the extent that" is deleted. And in matter over which the Federal Energy Regulatory Commission does not have juristiction the commission shall determine. That clarifies it, that makes it very, very specific. The FERC has juristicion, the company has the right to go to the Federal Energy Regulatory Commission, to seek recovery of stranded costs, and if the FERC says your not entitled to any, they don't have the right to come back and seek damages or recovery of stranded costs from, thruogh the process at our commission. On the other hand if the FERC awards stranded costs but the company deems that those stranded costs are

inadequate, in their opinion, they will not have an oppurtunity to come back and seek additional stranded costs.

It is just, it simplifies it because it states that its either one or the other, and in the event that the FERC has no juristiction than our commissioner shall make that determination. So we are not being unfair to the company, we are not being unfair to any utility whose wires any municipaity who seek to take over under the statute.

Senator Frederick W. King, D. 1: You said earlier in your introduction that FERC, in an order that they issued, claimed that they have the juristiction.

Sylvester Swierzy, Bedford: They have, yes. FERC ordered 888. In that order the FERC has asserted that it is the form for resolution, of any dispute of stranded costs arising out of retail turned wholesale costumer, RTW.

Senator Frederick W. King, D. 1: In RSA 38, chapter 38 deals only with the issue of municipalization.

Sylvester Sweirzy, Bedford: RSA 38 deals only with municipilazaton and the exert that we have here. The bill itself is the subparagraph that deals with consequential damages in that chapter. And you have it verbatim on the bill, and you see the change, the change is that "to the extent that" is struck out, and "in matters over which" is substituted. Whether that is clear enough, whether that makes it clear enough, I think its clearer than it was previously. Maybe we can have some better words here. Maybe we should say something to the effect that the FERC, having asserted juristiction, shall make a determination. And in the event that FERC has no juristiction, or in matters over which FERC has no juristiction, the commission shall make that determination as to what is stranded, what the consequential losses may be.

Senator Frederick W. King, D. 1: Questions?

Thank you very much.

Is there any one else who wishes to testify on SB 376?

I will close the hearing on SB 376.

Meeting closed at 3:55 pm

Respectfully submitted,
Jillian Nina Mason, Secretary

Speakers

SENATE Energy and Economic Development COMMITTEE

Date: 1/11/00 Time: 3:45 Public Hearing on: SB 316

Appearing in Favor: (Please print) Please check box at left if you wish to speak.

Speaking?	Name	Address	Representing
☐	ROY STEWART	BEDFORD	GR SY TAXPAYERS
☐	Susan Slack	SY Portsmouth 21st Council	SPNHF
☒	SYLVESTER SNIERZL	10 ESSEX RD. BEDFORD	GST
☒	SENATOR DISNARD		DIST 8
☐			
☐			
☐			
☐			
☐			
☐			

Appearing in OPPOSITION: (Please print) Please check box at left if you wish to speak.

Speaking?	Name	Address	Representing
☐			
☐			
☐			
☐			
☐			
☐			
☐			
☐			
☐			

Committee Report

Date: January 11, 2000 Time: 3:45 PM

The Senate Committee on Energy Economic Development held its hearing in Room 105-SH, Concord, New Hampshire.

BILL NO.: SB 376 TITLE: (New Title) relative to the jurisdiction of the public utilities commission to determine consequential damages, and authorizing municipalities to jointly issue municipal revenue bonds for the purchase of hydro-electric generation facilities.

Members of the Committee present:

Senator F. King
Senator Below
Senator Cohen
Senator Disnard
Senator Johnson
Senator Roberge

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☒ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Energy Economic Development

to which was referred Senate Bill SB 376

AN ACT relative to the jurisdiction of the public utilities commission to determine consequential damages.

VOTE: 6-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Clifton Below
For the Committee

|SB376 Docket

Bill Title: (New Title) relative to the jurisdiction of the public utilities commission to determine consequential damages, and authorizing municipalities to jointly issue municipal revenue bonds for the purchase of hydro-electric generation facilities.

Date	Body	Description
1/5/2000	S	Introduced and Ref. to Energy and Economic Development; SJ Convening Day, Pg.11
1/6/2000	S	Hearing, Jan. 11, 3:45 p.m., Room 105A, SH; SC1, Pg.2
1/31/2000	S	Committee Report, Ought to Pass, 2/3/2000 ; SC8, Pg.5
2/3/2000	S	Ought to Pass, MA, VV, OT3rdg, MA, VV; SJ 2, Pg.77
2/10/2000	H	Introduced and ref to Science, Tech & En; HJ18, p479
2/15/2000	H	Copy to Chairman on 2/15/2000
3/23/2000	H	Hearing Mar 28 10:00 RM304,LOB On Prop Am
3/29/2000	H	Full Comm Work Session Apr 5 10:00 RM304,LOB
4/7/2000	H	Full Comm Work Session Apr 11 10:00 RM304,LOB
4/7/2000	H	Full Comm Work Session Apr 12 10:00 RM304,LOB
4/13/2000	H	Full Comm Work Session Apr 18 1:00 RM304,LOB
4/26/2000	H	Maj Report OTP/AM for May 4 (vote 13-0;CC)
4/26/2000	H	Prop Comm Am{4049}(New Title); HC36, p1119-1120
5/4/2000	H	Passed with Am; HJ39, p1211 + 1236
5/11/2000	S	Sen. F. King Concur with House Amendment, MA, VV; SJ 14, Pg.384
5/11/2000	S	Enrolled Bill Amendment{4511}; Adopted; SJ 14, Pg.388
5/16/2000	H	5/4/2000 Enrolled Am{4511}, Adopted; HJ45, p1362
5/18/2000	S	Enrolled Bill; SJ 15, [See Perm. Journal]
5/18/2000	H	Enrolled; HJ46, p1463
5/23/2000	S	Signed by the Governor on 5/23/2000 Eff: 5/23/2000 Chap: 0164

Docket Abbreviations