

# Senate Energy and Natural Resources Committee

*Joshua Schauer 271-3077*

**SB 537**, repealing the authorization for the public utilities commission to approve alternative forms of regulation.

**Hearing Date:** January 27, 2026

**Time Opened:** 11:09 a.m.

**Time Closed:** 11:29 a.m.

**Members of the Committee Present:** Senators Avard, Pearl, Watters and Rosenwald

**Members of the Committee Absent :** Senator McConkey

**Bill Analysis:** This bill repeals the authority that allows the public utilities commission to approve alternative forms of regulation for regulated utilities.

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**Sponsors:**  
Sen. Avard

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**Who supports the bill:** 2 Individuals signed in support of the legislation. Please contact Joshua.Schauer@gc.nh.gov for more information.

**Who opposes the bill:** 38 Individuals signed in opposition of the legislation. Please contact Joshua.Schauer@gc.nh.gov for more information.

**Who is neutral on the bill:** 2 Individuals signed neutral on this legislation. Please contact Joshua.Schauer@gc.nh.gov for more information.

## **Summary of testimony presented:**

### **Senator Kevin Avard, District 12**

- Senator Avard introduced the bill and briefly explained that it will repeal the authority that allows the PUC to approve alternative forms of regulation for utilities.

**Senator Rosenwald** asked who had requested that he introduce the legislation.

**Senator Avard** said that the executive branch requested it, specifically the Department of Energy.

### **Joshua Elliot, NH DOE**

- Mr. Elliot stated that the Department of Energy is in support of this bill.
- Clarified that the bill does not prohibit or repeal the ability for utilities to do

either alternative ratemaking or performance incentive mechanisms within the normal cost of service regulation framework.

- Stated that the department believes that more clarity is needed, specifically within RSA 378:28. He then read statute RSA 378:28 to the committee and audience.
- He expressed the importance of the line “prudent, used, and useful” in RSA 378:28 for the purpose of utility regulation.
- He stated that there is disagreement on performance-based mechanisms and if they need to be “prudent, used, and useful.”
- He asked the committee to clarify the language to ensure performance-based mechanisms are “prudent, used, and useful”

**Senator Watters** asked how this bill would affect a program like NHSaves.

**Mr. Elliott** stated that he did not believe there would be any impact on the NHSaves program.

**Senator Watters** followed up with a question about applying the “prudent, used, and useful” standard to the NHSaves program. He asked Mr. Elliot to look into that language. He then asked if there is a risk of cross purpose if, in the future, the legislature wants to adopt a performance-based rate-making structure.

**Mr. Elliott** stated that it was not the intention of the bill to impact NHSaves but they will look into it. He then explained that the legislature can craft future bills in a way that would harmonize with the current regulation standards. He added that this might not be possible.

**Deana Dennis, Community Power Coalition of New Hampshire (CBCNH)**

- She stated that the CBCNH has a neutral stance on SB 537.
- She asked the committee to refrain from taking tools from the commissions toolbox. Stated that if there are opportunities where alternatives and/or incentives could improve the regulation of public utility service in NH, the commission should be able to take advantage of those tools.

**Donald Kreis, Consumer Advocate**

- Mr. Kreis stated he is opposed to the legislation, but acknowledged there are concerns about alternative forms of regulation but advised the committee not to “throw the baby out with the bath water”.
- He reiterated the point that Josh Elliot had made about the tension between RSA 378:28 and the statute that authorizes alternative forms of regulation.
- Recommend that the statute be fixed rather than repealed.
- Discussed the two forms of alternative regulation. Explained that one form gives too much freedom for utilities to make profit, while the other form creates incentives for good performance and punishments for bad performance. He does not believe that incentive based alternative forms of regulation violate RSA 378:28
- Confirmed that repealing the alternative regulation statute would not have an

effect on the NHSAVES programs.

**Senator Avard** asked if Donald could draft some language that addresses the concerns raised with the bill.

### **Sam Evans-Brown, Clean Energy NH**

- Stated that Clean Energy NH is opposed to this bill. He said that if the alternative regulation program is repealed, it could hurt their ability to work on affordability issues.

### **Nick Krankoff, Conservation Law Foundation**

- Mr. Krakoff stated that he is opposed to SB 537. He claimed to have a shared interest in improving energy affordability but he did not believe that SB 537 is the correct approach to doing so.
- Noted that the bill assumes that alternative regulation approved in the Eversource rate case is responsible for the rate increase. Acknowledged that alternative regulation could possibly be a risk but that it was not the reason for the current rate increase.
- Cost of service regulation can also conflict with affordability goals. It may incentivize utilities to overinvest in capital projects or undertake large intensive projects to increase energy sales. Claimed that cost of service itself does not make rates more affordable.
- He spoke about alternative forms of regulation that use incentives to encourage utilities to contain costs and prioritize affordability. Mentioned performance-based rate making as a method of alternative regulation. Gave examples of performance-based rate making in Hawaii and Connecticut.
- Concerned that this bill would eliminate a tool that helps manage prices.

### **Michael Licata, Eversource**

- Mr. Licata said that Eversource is opposed to the bill.
- Claimed that the alternative forms of regulation statute was referenced extensively in the Eversource rate case and the elimination of the statute would prohibit the PUC from approving those forms of regulation.
- He was concerned that the business world will react negatively to the legislature repealing a statute that has been in place since 1994.
- He explained how performance-based rate making could work. Utilities are evaluated on several criteria which are compared to standard set by the Utilities Commission. Utilities would receive penalties if they do not meet the set standards. This would align financial incentives with facility performance.
- Requested that the committee does not entirely get rid of the statute but rather makes tweaks to improve the language. Stated that he would be happy to work with them on that.