CHAPTER 216
SB 366 - FINAL VERSION

02/15/2018 0379s
26Apr2018... 1551h

2018 SESSION

18-2736
10/03

SENATE BILL ***366***

AN ACT **relative to membership and procedures of the site evaluation committee.**

SPONSORS: **Sen. Bradley, Dist 3; Rep. Barry, Hills. 21**

COMMITTEE: **Energy and Natural Resources**

AMENDED ANALYSIS

This bill modifies the appointment of and procedures for service of public members of the site evaluation committee.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 216
SB 366 - FINAL VERSION

02/15/2018 0379s
26Apr2018... 1551h **18-2736**
10/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT **relative to membership and procedures of the site evaluation committee.**

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

216:1 Energy Facility Siting; Site Evaluation Committee. Amend RSA 162-H:3 to read as follows:

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, [~~at least one of whom shall be a member in good standing of the New Hampshire Bar Association, and both of whom 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; or community and regional planning or economic development~~] *in accordance with RSA 162-H:4-b, III*.

II. [~~The public members shall serve 4-year terms and until their successors are appointed and qualified. The initial term of one member shall be 2 years. 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 to be succeeded.~~

~~III. 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.~~

~~IV.~~] 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.***

[~~V.~~] ***III.*** Seven members of the committee shall constitute a quorum for the purpose of conducting the committee's business.

~~[VI. Any public member of the committee may be removed 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.~~

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

~~[VIII. [Repealed.]~~

~~IX.~~] ***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.

~~[X. An alternate public member who satisfies the qualification requirements of subparagraph I(f), excluding the New Hampshire Bar membership requirement, shall be appointed by the governor, with consent of the council. The alternate public member shall only sit on the committee or a subcommittee as provided for in paragraph XI.~~

~~XI.~~] ***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 chairperson shall appoint the alternate public member, or if such member is not available, the governor and council shall appoint a replacement upon petition of the chairperson. The replacement process under this paragraph shall also be applicable to subcommittee members under RSA 162-H:4-a~~] ***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.

216:2 Energy Facility Siting; Site Evaluation Committee; Subcommittees. Amend RSA 162-H:4-a, II to read as follows:

II. When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members. [~~The 2~~] *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.

216:3 New Section; Energy Facility Siting; Site Evaluation Committee; Public Members. Amend RSA 162-H by inserting after section 4-a the following new section:

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.

216:4 Energy Facility Siting; Public Hearing. Amend RSA 162-H:10, I-c to read as follows:

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 session 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 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.

216:5 Site Evaluation Committee; Membership; Continuity of Public Members.

I. As of the effective date of this act:

(a) Any existing public member of the site evaluation committee under RSA 162-H:3, I(f) shall continue as a public member of the committee under RSA 162-H:3, I(f), with no change in term; and

(b) Any existing alternate public member shall hereafter be considered one of the 5 public members appointed under RSA 162-H:4-b, I, with no change in term.

II. If a replacement public member has been appointed by the governor and council, under former RSA 162-H:3, XI, to the site evaluation committee or a subcommittee to address a certain matter, then such member shall continue to serve in that capacity until such matter is concluded.

III. The passage of this act shall not affect the membership of any existing subcommittee established under RSA 162-H:4-a.

216:6 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 08, 2018
Effective Date: August 07, 2018