

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

Northern Pass Transmission, LLC

DE 15-460

**CITY OF CONCORD'S MEMORANDUM OF LAW**

The City of Concord, by and through its attorneys, the Office of the City Solicitor, hereby submits this legal memorandum to address the standard that should be applied by the Public Utilities Commission (“Commission”) for determining whether the proposed public crossings in Dockets DE 15-460 and DE 15-462 meet the requirement of providing “service to the public” as set forth in RSA 371:17, as well as the standard to determine whether the licenses may be exercised “without substantially affecting the public rights in said waters” as set forth in RSA 371:20.<sup>1</sup>

**I. BACKGROUND**

On October 19, 2015, Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (the “Applicants”) filed an application for a Certificate of Site and Facility with the Site Evaluation Committee (“SEC”) relating to the construction of a 192-mile high voltage transmission line from the Canadian border at Pittsburg to a substation located in Deerfield, commonly referred to as the Northern Pass Transmission Line Project (“Project”). The Project is an elective “merchant” or “participant funded” project that is not intended to meet any identified need for additional electric power in New Hampshire, or to address system reliability issues in New England generally. There are no specific customers that need the crossing in order to be “served.” The power transported over the new transmission line will not be available for distribution to New Hampshire residents. Rather, New Hampshire

---

<sup>1</sup> As the legal issues in Dockets DE 15-460 and DE 15-462 are similar, the City of Concord will be filing an identical memorandum of law in both of those proceedings.

utility companies will be required to purchase some of the power and have it transported back to New England to sell to its retail customers. The application is being heard under Docket No. SEC 2015-06.

As part of that application, Northern Pass Transmission, LLC and Eversource also filed petitions to construct and maintain electric lines across public waters. Those petitions are being heard by the Commission under Dockets DE 15-460 and DE 15-462. Northern Pass Transmission, LLC is seeking to construct and maintain new electric transmission lines and associated facilities across public waters. Eversource is seeking to relocate, rebuild and enlarge the existing facilities owned by PSNH to accommodate the new lines needed for the Project. The proposed facilities are projected to cross through a number of public waters, including Turtle Pond and the Soucook River, both of which are located in Concord. The City of Concord intervened in both of the public crossing dockets.

The Commission has issued an order requiring the parties to submit legal memorandum by May 2, 2016 regarding the standard for determining the scope of the proceedings, specifically: (1) whether the proposed public crossings meet the requirement of providing “service to the public” as set forth in RSA 371:17; and (2) whether the license may be exercised “without substantially affecting the public rights in said waters” as set forth in RSA 371:20. This legal memorandum addresses those issues.

## **II. ANALYSIS**

### **A. A License To Cross Public Water May Only Be Issued When Necessary To Meet The Reasonable Requirements Of Service To The Public**

RSA chapter 371 sets forth the manner in which property or rights may be acquired and/or accessed for utility purposes. RSA 371:1 addresses the process by which a public utility company can take *private land or property rights* through eminent domain. RSA 371:17

addresses the process by which a public utility can obtain a license to construct over, under or across *public waters and lands*. Both statutes require the construction to be “necessary . . . to meet the reasonable requirements of service to the public.” *Id.* With respect to public crossings, if the applicant can demonstrate that the crossing is “necessary” under RSA 371:17, then RSA 371:20 authorizes the Commission to grant a license if it “may be exercised without substantially affecting the public rights in said waters.” *In re New Hampshire Electric Cooperative, Inc.*, 2015 WL 222964 at \*2, DE 15-002, Order No. 25,786 (May 8, 2015).

Eversource and Northern Pass Transmission, LLC have argued that they are not required to establish that the public water crossings are “necessary” to meet the reasonable requirements of service to the public. That argument should be rejected for the following reasons.

The plain and ordinary language of RSA 371:17 contains the threshold requirement that a license may only be issued when the crossing is *necessary* to meet the reasonable requirements of service to the public. The language of RSA 371:17 cannot be disregarded. In matters of statutory interpretation, it is necessary to look to the language of the statute itself, and to “construe that language according to its plain and ordinary meaning.” *Appeal of Local Gov’t Ctr.*, 165 N.H. 790, 804 (2014). It is necessary to “interpret legislative intent from the statute as written,” and it is not permissible to “consider what the legislature might have said or add language that the legislature did not see fit to include.” *United States v. Howe*, 167 N.H. 143, 145 (2014) (quotation omitted). The goal is to “apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme.” *Id.* (quotation omitted).

A review of the plain language of RSA 371:17 makes it clear that the legislature intended to require a public utility or other applicant to demonstrate that the license to cross public waters

is necessary to serve the public. It would be entirely inappropriate to disregard that legislative intent by ignoring the plain language of the statute. Indeed, the Commission consistently addresses this threshold requirement in its orders. *See e.g., In re Northern Utilities*, 2015 WL 6663124, DG 15-090, Order No. 25,873 (March 22, 2016) (holding crossing was necessary to provide electric service to single private residences located on Twin Islands); *In re Petition for License to Construct and Maintain Electric Lines Over and Across the Newfound River in the Town of Bristol*, 2016 WL 9462012, DE 15-235, Order No. 25,870 (March 7, 2016) (holding crossing was necessary to correct reliability issues from using a large individual circuit); *In re Public Service Company of New Hampshire d/b/a Eversource Energy*, 2015 WL 8534447, DE 15-290, Order No. 25,848 (December 9, 2015) (holding crossing was necessary to serve residences on islands); *In re Public Service Company of New Hampshire d/b/a Eversource Energy*, 2015 WL 7429258, DE 15-272, Order No. 25,841 (November 17, 2015) (holding crossing was necessary for distribution system in Litchfield and Merrimack areas); *In re New Hampshire Electric Cooperative, Inc.*, 2015 WL 2229642, Order No. 25,786 (May 8, 2015) (holding crossing was necessary to serve a property located on an island). In each of these recent orders, the Commission made a specific finding that the proposed crossing was necessary to meet the reasonable requirements of reliable service to the public.

Any reliance by Eversource or Northern Pass Transmission, LLC on the case *EnergyNorth Natural Gas Inc.*, Dockets DG 00-145 and 00-207, must also be rejected. The *EnergyNorth Natural Gas, Inc.* addressed whether service to only one customer within a service territory constitutes “service to the public.” 86 PUC 155 (2001) (Order No. 23,657). In that case, the applicant was a public utility that had a duty to provide service to all customers within its service territory, and for that reason, service to one customer was held to constitute “service to

the public.” *Id.* There was no dispute that the construction of the gas pipeline was needed for the customer, regardless of whether the crossing was sought by the public utility, the customer or the pipeline company. *Id.*

In its decision, the Commission noted that the standard for reviewing licenses under RSA 371:17 is whether the license petitioned for may be exercised without substantially affecting the public rights in said waters or lands. *Id.* Eversource and Northern Pass Transmission, LLC now rely on that statement to argue that they are not required to show that the public crossing is necessary in order to meet the requirements of service to the public. Northern Pass Transmission, LLC, Petition to Cross Public Waters at ¶5.<sup>2</sup> That argument should be rejected. The Commission still made a finding in *EnergyNorth Natural Gas, Inc.* that the requirement for “service to the public” was satisfied even though the proposed pipeline was necessary to serve only one customer. Moreover, even assuming the Commission sought to disregard the statutory requirement for “service to the public” in that case, such a decision would be incorrect because it contradicts the plain and unambiguous language of RSA 371:17. It is also important to note that Eversource and Northern Pass Transmission, LLC’s proposed interpretation of the *EnergyNorth Natural Gas, Inc.* case has not been followed in other subsequent cases. As set forth above, a review of cases over the last several years shows that the Commission consistently makes a finding confirming that the public crossing is necessary for “service to the public.”

It is also anticipated that Eversource and Northern Pass Transmission, LLC will argue “service to the public” is not required under RSA 371:17 because corporations and individuals may apply for a license for public crossing. This argument is without merit. RSA 371:17 allows corporations and individuals to seek a license for a public crossing in “the same manner prescribed for a public utility.” This means that a corporation or individual will be required to

---

<sup>2</sup> Counsel for Eversource made a similar argument at the pre-hearing conference in Docket No. 15-462.

demonstrate that the public crossing is necessary to obtain utility services. It is absurd to suggest that a corporation or individual would be allowed to construct facilities that cross public waters without meeting this threshold requirement.

Based on the foregoing, the City of Concord respectfully requests that the Commission require Eversource and Northern Pass Transmission, LLC to show that the crossings are necessary “to serve the public.” Here, the requests for a license should be denied because Eversource and Northern Pass Transmission, LLC will be unable to demonstrate that the Project is necessary to serve the public. As set forth above, there should be no dispute that this Project is an elective “merchant” or “participant funded” project that is not intended to meet any identified need for additional power in New Hampshire, or to address system reliability issues in New England generally. There are no specific customers that need the crossing in order to be “served.” Indeed, the power transported over the new transmission line will not be available for distribution to New Hampshire residents. Rather, New Hampshire utility companies will be required to purchase some of the power and have it transported back to New England to sell to its retail customers.

It is also significant that the New Hampshire legislature amended RSA 371:1 to clarify that this Project should *not* be considered necessary “to serve the public.” In 2012, RSA 371:1 was amended to clarify that a public utility is not allowed to take private land or property rights “for the construction or operation of an . . . electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO-New England or its successor regional system.” RSA 371:1. A review of the legislative history reveals that this amendment was adopted to prevent Northern Pass Transmission, LLC from taking private land by eminent domain. Laws 2012; 2:6; N.H.S. Jour. 120-57 (2012) (discussing that the purpose of

amendment was to clarify and ensure that private property could not be taken for the Project).<sup>3</sup>

The same analysis applies to RSA 371:17. Accordingly, regardless of the outcome of the application for the Certificate of Site and Facility pending at the SEC, there should be no dispute that this Project is not necessary to “serve the public.”

**B. The Standard For Determining Whether The Issuance Of A Public Crossing License Substantially Impacts Public Rights In The Waters**

The second issue to be addressed in the legal memorandum is the standard for determining whether the proposed Project may be exercised without substantially affecting the public rights in the public waters, and whether such a determination must take into consideration issues such as aesthetic/visual impacts and impacts on natural resources.

As set forth in its petition to intervene, the City of Concord is concerned about the proposed crossings because Turtle Pond is an area with important scenic and recreational value in the City of Concord. The Department of Energy has stated in its Draft Environmental Impact Statement that the proposed structures in this area will have an aesthetic/visual impact that increases current conditions at Turtle Pond from “moderate” to “strong.” The City of Concord also owns land that immediately borders the Soucook River. That parcel is part of the City of Concord’s Municipal Airport, and it is identified on the City of Concord’s records as Map 110, Block 1 and Lot 6. That particular parcel is governed by a Conservation Management Agreement between the City of Concord and a number of federal and New Hampshire state agencies, and it involves the protection of the Karner Blue butterflies.

The impact of aesthetics/visual impacts and natural resources are appropriate issues to be considered in this proceeding. *See, e.g., In re Androscoggin Electric Corporation*, 70 PUC 160 (1985) (Order No. 17,548) (considering aesthetics); *In re New Hampshire Electric Cooperative*,

---

<sup>3</sup> For the Commission’s convenience, the relevant portions of the Senate Journal are attached as Exhibit A.

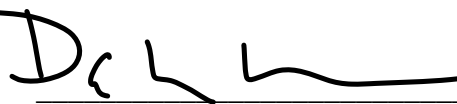
1967 WL 164086, Docket No. DE 4601, Order No. 9017 (December 20, 1967) (considering safety and aesthetics). However, the City of Concord recognizes that issues relative to the public water crossing are also being conducted during the pendency of the SEC application. During the SEC adjudicative hearings, there will be testimony and evidence submitted regarding the manner in which the proposed route impacts issues such as aesthetics and natural resources. To avoid duplication of the issues and to avoid any collateral estoppel issues, the City of Concord would agree to stipulate that the focus of the Commission should be solely on the functional use of the public waters and whether such use substantially impacts public rights in the waters. Any issues such as aesthetic/visual impacts and natural resources will be addressed in the SEC proceeding, and to the extent a license for a public crossing is issued, it would be contingent upon the Applicants receiving a final certificate and conditions from the SEC.

Respectfully submitted,

CITY OF CONCORD

May 2, 2016

By:



Danielle L. Pacik, Deputy City Solicitor  
41 Green Street  
Concord, New Hampshire 03301  
Telephone: (603) 225-8505  
Facsimile: (603) 225-8558  
dpacik@concordnh.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of May, 2016, seven copies of the foregoing were hand delivered to the Commission, as well as copies to Northern Pass Transmission, LLC and the Office of the Consumer Advocate.

May 2, 2016

By:



Danielle L. Pacik, Deputy City Solicitor



## **EXHIBIT A**

Public and Municipal Affairs  
January 18, 2012  
2012-0257s  
01/04

#### **Amendment to SB 302**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the Honor and Remember Flag as an official symbol to recognize and honor fallen members of the armed forces and relative to certain maintenance at the rotary in the town of Epsom.

Amend RSA 3:3-d as inserted by section 2 of the bill by replacing it with the following:

3:3-d Display of Honor and Remember Flag. The Honor and Remember Flag shall be displayed above the state house in Concord immediately below the state flag on the following days:

- I. Gold Star Mother's Day, the first Sunday after Easter.
- II. Memorial Day, the last Monday in May.
- III. Independence Day, July 4.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Maintenance of Rotary. The department of transportation shall properly maintain the flag of the United States, the POW-MIA flag, and the landscaping at the rotary in the town of Epsom.

2012-0257s

#### **AMENDED ANALYSIS**

This bill adopts the national Honor and Remember Flag as the official symbol of the state of New Hampshire to recognize and honor fallen members of the armed forces.

This bill also requires the department of transportation to properly maintain the flags and landscaping at the rotary in the town of Epsom. The question is on the adoption of the Consent Calendar. Adopted, bills ordered to Third Reading.

Sen. White asserts Rule 2-15 on SB 253.

#### **REGULAR CALENDAR REPORTS**

##### **SPECIAL ORDER**

Without objection, HB 648 is Special-Ordered to the front of the Regular Calendar. Adopted.

##### **JUDICIARY**

HB 648, relative to eminent domain petitions by public utilities. Ought to Pass with Amendment, Vote 4-0. Senator Houde for the committee.

Senate Judiciary  
December 12, 2011  
2012-0018s  
06/10

#### **Amendment to HB 648**

Amend the title of the bill by replacing it with the following:

AN ACT relative to eminent domain by public utilities and establishing a committee to investigate procedures for obtaining a hearing for landowners whose property is being considered for eminent domain.

**B 302**

with the following:  
 ober Flag as an official symbol  
 mbers of the armed forces and  
 at the rotary in the town of

of the bill by replacing it with  
 ag. The Honor and Remember  
 ouse in Concord immediately  
 :  
 nday after Easter.  
 May.

2 the following and renumber-  
 it of transportation shall prop-  
 s, the POW-MIA flag, and the  
 psom.

**YSIS**

Remember Flag as the official  
 cognize and honor fallen mem-

of transportation to properly  
 : rotary in the town of Epsom.  
 nsent Calendar. Adopted, bills

**REPORTS**

**ER**

red to the front of the Regular

ions by public utilities. Ought  
 or Houde for the committee.

**IB 648**

with the following:  
 ublic utilities and establishing  
 edures for obtaining a hearing  
 s being considered for eminent

Amend the bill by replacing all after the enacting clause with the fol-  
 lowing:

1 New Section; Proceedings to Acquire Property or Rights. Amend RSA  
 371 by inserting after section 1-a the following new section:

371:1-b Acquisition Negotiations; Reference to Eminent Domain Prohib-  
 ited. No public utility, predecessor development entity, or agent of either,  
 shall refer to the use of eminent domain in any landowner negotiations,  
 unless the commission has first specifically authorized its use under this  
 chapter with respect to the affected landowner. Any landowner may file a  
 complaint with the commission under RSA 365:1 alleging violation of this  
 section. Upon a finding of violation, after notice and hearing, the public  
 utility or project-sponsoring affiliate shall be fined up to \$25,000 which  
 shall be deposited in the general fund. If a landowner makes an inquiry  
 concerning eminent domain, the public utility, predecessor development  
 entity, or agent of either, may provide the landowner with the commis-  
 sion's contact information without violating this section.

2 Right to Enter. Amend RSA 371:2-a to read as follows:

371:2-a Right to Enter. When ownership of land, upon or over which  
 a public utility desires to erect facilities, cannot be ascertained without  
 entry to do survey work, or, a public utility shall have filed a petition  
 under RSA 371:1 with respect to a particular tract of land, in either case  
 a public utility shall have the right to enter upon such land for the pur-  
 pose of surveying and making such other investigation as is necessary to  
 determine the locations of the boundaries of such land and of the facili-  
 ties it desires to erect thereon or thereover, and to determine the title to,  
 description of, or nature of such land. A public utility desiring to enter  
 land in pursuance of this section shall ~~make every reasonable effort to~~  
 notify **by certified mail** the owner or probable owner or owners thereof  
 of its desire to enter for the purposes aforesaid **at least 30 days** prior to  
 entry. **Notification shall include identification of the utility seek-**  
**ing to enter the land, the time and date of the proposed entry, and**  
**the portion or section of land to be surveyed or investigated. Upon**  
**the date specified for entry, the persons conducting the survey or**  
**investigation shall present themselves to the property owner and**  
**show identification.** The public utility shall pay the owner or owners  
 of any land it shall enter in pursuance of the provisions of this section for  
 any actual damage done upon entry.

3 New Section; Appraisal Required. Amend RSA 371 by inserting after  
 section 2-a the following new section:

371:2-b Appraisal Required.

I. A public utility shall have an impartial, qualified appraiser make  
 at least one appraisal of any property proposed to be acquired by emi-  
 nent domain. The owner shall have a reasonable opportunity to have the  
 property appraised by an independent, qualified appraiser, selected by  
 the owner. The public utility shall reimburse the owner the usual and  
 customary cost of the appraisal up to \$1,500 for each property.

II. No petition to acquire property or any interest in property through  
 eminent domain shall be filed under this chapter unless the owner shall  
 have first refused to voluntarily sell the affected property or interest  
 therein for an amount equal to 200 percent of the public utility's ap-  
 praised value thereof.

4 New Paragraph; Residential Owner Option. Amend RSA 371:5-a by  
 inserting after paragraph II the following new paragraph:

III. In all cases where residential property is taken pursuant to the  
 provisions of this section, a resident owner shall also be awarded rea-

sonable relocation and housing replacement expenses not to exceed 10 percent of the compensation ordered for the taking. If a residential tenant is also displaced as the result of any taking under this section, the tenant shall be awarded up to 6 months of the actual monthly rent being paid by the tenant prior to the notice given under section RSA 371:4, and reasonable relocation and housing replacement expenses not to exceed an additional 6 months of such monthly rent.

5 New Section; Project Delay; Option to Purchase. Amend RSA 371 by inserting after section 16 the following new section:

371:16-a Project Delay; Option to Purchase. If, after a period of 5 years, the project for which land or property rights were taken has not commenced, the utility shall offer the person from whom such land or rights were taken the first option to buy such land or rights at the current market value.

6 Committee Established. There is established a committee to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain.

7 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

8 Duties. The committee shall investigate the procedures available and potentially available to landowners for obtaining a hearing when their land is the subject of a petition filed with the public utilities commission by a utility seeking to take such property.

9 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

10 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2012.

11 Effective Date.

I. Sections 1 through 5 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

2012-0018s

#### AMENDED ANALYSIS

This bill modifies certain requirements pertaining to the taking of land or property rights by a utility. This bill also establishes a committee to investigate procedures for obtaining a hearing by owners of land that may be subject to eminent domain.

SENATOR HOUDE: Thank you, Mister President. On behalf of the Judiciary Committee, I move Ought to Pass with Amendment on HB 648. The committee amendment attempted to provide clarity in eminent domain proceedings, including protections from threat and use. However, for reasons I'll explain, I would ask the Senate to vote down the committee recommendation so that other amendments can be discussed here today.

ent expenses not to exceed 10  
the taking. If a residential ten-  
taking under this section, the  
f the actual monthly rent being  
n under section RSA 371:4, and  
ement expenses not to exceed  
rent.

Purchase. Amend RSA 371 by  
ew section:

ase. If, after a period of 5 years,  
ghts were taken has not com-  
from whom such land or rights  
or rights at the current market

blished a committee to investi-  
er when a petition is presented  
ility seeking eminent domain.

ll be as follows:

ointed by the president of the

representatives, appointed by  
es.

ceive mileage at the legislative  
committee.

te the procedures available and  
btaining a hearing when their  
the public utilities commission

y.  
the study committee shall elect  
the first meeting of the commit-  
ate member. The first meeting  
lays of the effective date of this  
shall constitute a quorum.

s findings and any recommenda-  
dent of the senate, the speaker  
ate clerk, the house clerk, the  
ore November 1, 2012.

all take effect 60 days after its

ks effect upon its passage.

#### ALYSIS

pertaining to the taking of land  
also establishes a committee to  
bearing by owners of land that

President. On behalf of the Ju-  
se with Amendment on HB 648.  
provide clarity in eminent do-  
men threat and use. However, for  
to vote down the committee  
can be discussed here today.

Can I speak to the recommendation?

PRESIDENT BRAGDON: Yes. Actually, one-minute recess.

Recess. Out of recess.

(The Chair recognized Sen. Houde.)

SENATOR HOUDE: Thank you, Mister President. We've all received emails, phone calls, and letters, so I won't take a lot of time this morning to explain to anyone on the floor or in the gallery what this bill is about. As it came over from the House, HB 648 sought to limit the use of eminent domain in the context of electric transmission projects to those necessary for system reliability. Some of us on the Committee and in the Senate had concerns with the implications of such a limitation. There were also questions raised about the need for a bill at all in light of Article 12-a of the Constitution, which provides protections from takings for private development purposes. Finally, there were issues about the interplay of current statutes dealing with eminent domain.

So, the bill was Re-referred to our committee, where we received at least eight amendments to consider, and I well imagine that we'll receive additional amendments, or variations of, again today. Needless to say, there has been vigorous debate on this topic. I feel it's important to note that the debate has not been along party lines, nor has it been deaf to concerns of landowners and the sanctity of private property rights. As the spouse of a woman whose family's business is farming, I well understand the intrinsic value of land and the necessity of being able to rely on the fact, absent of larger societal good, that it will be there tomorrow.

Again, in bringing out the recommendation of the Committee on the Committee's amendment, I understand that there's going to be some discussion about that amendment, but I would ask that you continue to discuss the amendments being brought today. Thank you, Mister President.

(The Chair recognized Sen. Forrester.)

SENATOR FORRESTER: Thank you, Mister President. I appreciate Senator Houde's comments. I would like to say that we...I'm recommending that we ought to vote for the amendment, have you pass it; we have further amendments coming forward that we want to add onto this.

(The Chair recognized Sen. Bradley for a question of Sen. Forrester.)

SENATOR BRADLEY: So, just to be clear--this is almost as if it's a parliamentary inquiry--you are recommending an Ought to Pass vote on the committee amendment?

SENATOR FORRESTER: Yes.

SENATOR BRADLEY: Thank you.

(The Chair recognized Sen. Rausch.)

SENATOR RAUSCH: Thank you, Mister President. Mister President, as a State Representative and member of the Public Works Committee, I worked to strengthen the eminent domain laws to help protect our New Hampshire citizens. And then, along came Connecticut, and we realized that we didn't do a good enough job, and we looked at more legislation to make sure we protected the citizens. And, in that process, it didn't take us too long to come to the realization that legislation was not good enough; it wasn't appropriate. We had to change the New Hampshire Constitution. And, we did that. And I worked on that, and I strongly supported that. That's where Article 12-a was instituted in 2006.

Passing legislation today is the wrong approach, and it only serves to be misconstrued and weaken 12-a of our Constitution. So, today I will be voting against this amendment and any subsequent amendment and House Bill 648. But my votes today reflect my strong support for the New Hampshire Constitution and Article 12-a and my strong support for our citizens' property rights. I hope you will join with me in voting to support Article 12-a and affirm our work in 2006 and send a message that Article 12-a is crystal clear and unequivocally supports and defends our citizens' property rights. Thank you.

(The Chair recognized Sen. Barnes for a question of Sen. Rausch.)

SENATOR BARNES: Senator, I don't disagree with anything you have said. A lot of us worked on that constitutional amendment and the citizens passed it about 85 to 15, I believe, was the final score.

SENATOR RAUSCH: Overwhelming.

SENATOR BARNES: The only question I ask you: During the conversation on Northern Pass, there's been conversation that eminent domain that you and I figured was safe with this constitutional amendment has been brought up time and time again by certain people in this discussion. Don't you think that it's proper to try to maybe tie things a little tighter together, seeing things have been brought up? And, I know it can go to court, but I don't think we need to take things to court all the time; I think we can take care of it in this chamber a lot of times. And, I'm concerned about the threat—I'll use the word 'threat'—of eminent domain that has speared this whole thing up and why these amendments are here today. In my opinion.

SENATOR RAUSCH: Legislation can be repealed; it can be changed. I believe it weakens it. I believe we have the Supreme Court for this specific reason: to affirm and support what we did in 2006, and if we weaken that, we weaken the Supreme Court's decision, and I think this is the wrong approach.

SENATOR BARNES: Thanks a lot.

SENATOR RAUSCH: Thank you.

(The Chair recognized Sen. Larsen.)

SENATOR LARSEN: I rise to support the committee amendment. We understand that the core value that we were seeking was the protection of private property rights, and we are certainly supportive of that; that's in our Constitution, and many of us believe that the constitutional protections are very strong within our own Constitution. But, we've heard from those who live within this state that they are concerned that there are further issues that come before them, and they cannot wait to have some of these issues of their own personal property rights protected.

The committee amendment further protects many of the property owners within the Northern Pass right of way because it affords them protections from such things as what I would consider criminal threatening: threatening that you can use eminent domain when you don't have the authorization to do that. That is an affront and a threat that is false—falsely used. So, that protection alone within the committee amendment is a very good one.

Some of the other protections that speak to the right to enter a person's property or the market value is just further protections, but most impor-

each, and it only serves to  
institution. So, today I will  
subsequent amendment and  
my strong support for the  
2-a and my strong support  
will join with me in voting  
in 2006 and send a message  
to the people that we  
legally supports and defends

position of Sen. Rausch.)

see with anything you have  
an amendment and the citi-  
the final score.

you: During the conversa-  
ation that eminent domain  
stitutional amendment has  
tain people in this discus-  
to maybe tie things a little  
rought up? And, I know it  
take things to court all the  
number a lot of times. And,  
word 'threat' - of eminent  
and why these amendments

pealed; it can be changed.  
he Supreme Court for this  
we did in 2006, and if we  
s decision, and I think this

committee amendment. We  
were seeking was the pro-  
are certainly supportive of  
of us believe that the con-  
thin our own Constitution.  
in this state that they are  
that come before them, and  
issues of their own personal

many of the property owners  
se it affords them protections  
criminal threatening: threat-  
en you don't have the autho-  
a threat that is false - falsely  
committee amendment is a

the right to enter a person's  
protections, but most impor-

tant to me is we have heard from people from around the state that people  
have entered their property and made some kind of unauthorized threat  
that: "If you don't sell to us now we will use eminent domain later." If we  
wait for the courts to decide it could take two, three years for that to hap-  
pen, during which process many of the people will already feel they need  
to have agreed to some kind of an offer because they're fearful they'll get  
a lesser offer later on. So, the amendment before us in the committee is  
a decent one, and we know that there will be further fine-tuning of some  
of the other protections through further amendments. Thank you.

(The Chair recognized Sen. Luther.)

SENATOR LUTHER: I also want to support the committee amendment.  
I serve on the Judiciary Committee, and it was a unanimous vote on this.  
I think a lot of work was put into this; I know Senator Carson spent a  
lot of time working on this. There is a lot of good protections here. We  
have heard many stories about problems that landowners have had and  
I think this really addresses those issues. So, I support this wholeheart-  
edly. Thank you.

The question is on the adoption of the Committee Amendment. Adopted.

Sen. Carson offered a floor amendment.

Sen. Carson, Dist. 14

January 24, 2012

2012-0350s

01/04

#### Floor Amendment to HB 648

Amend RSA 371:2-b as inserted by section 3 of the bill by replacing it  
with the following:

371:2-b Appraisal Required. A public utility shall have an impartial,  
qualified appraiser make at least one appraisal of any property proposed  
to be acquired by eminent domain. The owner shall have a reasonable  
opportunity to have the property appraised by an independent, qualified  
appraiser, selected by the owner. The public utility shall reimburse the  
owner the usual and customary cost of the appraisal up to \$1,500 for  
each property.

SENATOR CARSON: Thank you, Mister President. What the amendment  
basically does is removes a particular section of the committee amend-  
ment that dealt with the 200 percent - we got a lot of feedback on that,  
and most of the feedback was negative. So, out of respect to a lot of the  
comments that we've received, I'm proposing that we remove that section.  
Thank you, Mister President.

(The Chair recognized Sen. Carson.)

SENATOR CARSON: Thank you, Mister President. I'd like to ask for a  
recess; this is not what I proposed to OLS, and we need to get it fixed.

Recess. Out of recess.

(The Chair recognized Sen. Carson.)

SENATOR CARSON: Thank you, Mister President. The wording is  
changed, but yes, it is correct.

Recess. Out of recess.

The question is on the adoption of the Floor Amendment. Adopted.

Sen. Forrester offered a floor amendment.



Sen. Bragdon, Dist. 11  
Sen. Forrester, Dist. 2  
Sen. Barnes, Dist. 17  
Sen. Merrill, Dist. 21  
January 25, 2012  
2012-0367s  
09/01

#### Floor Amendment to HB 648

Amend the title of the bill by replacing it with the following:

AN ACT relative to eminent domain petitions by public utilities.

Amend the bill by inserting after section 10 the following new section and renumbering the original section 11 to read as 12:

11 Proceedings to Acquire Property or Rights; Petition. Amend RSA 371:1 to read as follows:

371:1 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, ~~or a~~ pipeline, conduit, line of poles, towers, or wires across the land of another, or should acquire land, land for an electric substation, or flowage, drainage, or other rights for the necessary construction, extension, or improvement of any water power or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes. No public utility may petition for permission to take private land or property rights for the construction or operation of an electric generating plant *or an electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO - New England or its successor regional system operator.*

2012-0367s

#### AMENDED ANALYSIS

This bill modifies certain requirements pertaining to the taking of land or property rights by a utility. This bill also establishes a committee to investigate procedures for obtaining a hearing by owners of land that may be subject to eminent domain.

This bill also prohibits public utilities from petitioning for permission to take private land or property rights for the construction or operation of an electric generating plant or an electric transmission project that is not eligible for regional cost allocation by ISO - New England or its successor regional system operator.

SENATOR FORRESTER: Thank you, Mister President. I'd like to introduce Floor Amendment 367. The language in this amendment is about protecting the private property rights and the simple belief that, in New Hampshire, one's home is their castle, and their property should not be threatened without the dire need driven by unquestionable public good, and certainly not for the profit of another.

This amendment adds language to the last sentence in RSA 371:1 and reads as follows: "No public utility may petition for permission to take private land or property rights for the construction or operation of an electric generating plant or an electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO - New England or its successor regional system operator."



**HB 648**

with the following:

ons by public utilities.

o) the following new section read as 12:

ghts; Petition. Amend RSA

n order to meet the reason-  
at any public utility should  
-al pipeline, conduit, line of  
ther, or should acquire land,  
rainage, or other rights for  
ovement of any water power  
public utility, and it cannot  
as as to the necessity or the  
may petition the public utili-  
nts or for permission to take  
d purposes. No public utility  
nd or property rights for the  
rating plant or an electric  
ional cost allocation, for  
ffs, by ISO - New England

**YSIS**

aining to the taking of land  
establishes a committee to  
ring by owners of land that

petitioning for permission  
construction or operation  
transmission project that  
ISO - New England or its

resident. I'd like to intro-  
this amendment is about  
people belief that, in New  
property should not be  
reasonable public good,

in RSA 371:1 and  
permission to take  
or operation of an  
project not eligible  
transmission tar-  
system operator."

Senators, not long ago, you took an oath to defend the New Hampshire Constitution, and this morning we are here to defend the Constitution. In 2006, New Hampshire adopted an amendment to the State Constitution - now Article 12-a - to further refine when eminent domain could be exercised, and it reads: "No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property." The Legislature voted overwhelmingly to place this proposed amendment on the ballot in November, 2006. The vote on the House floor was 277-61; this Senate voted 24-0. The people voted to adopt the amendment by a margin of 85-15 percent. Also in 2006, Governor Lynch signed into law Senate Bill 287, introduced by Senator Odell, which reformed eight New Hampshire statutes governing the use of eminent domain. The legislation explicitly states public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities. This legislation paralleled the Legislature's consideration of CACR 30, the resolution that passed this body on a vote of 24-0 to put 12-a before the voters in November, 2006. Senate Bill 287 did not address one other statute governing eminent domain, RSA 371:1: the statute governing the use of eminent domain by utilities, which was first written over 100 years ago. It is now time for the Legislature to address this oversight and adopt the Bragdon, Forrester, Barnes, Merrill amendment to House Bill 648. Our amendment makes clear that the public use definition we applied to eight other statutes governing the use of eminent domain also applies to utilities.

The Northern Pass is the first project to surface since 2006 to reveal the inadequacy of RSA 371:1 in recognizing the new limits on eminent domain established by 12-a. House Bill 648 is an effort to rectify this gap, and this amendment adds clarity to the goal of the House-passed version. This is the first test of the true purpose of 12-a, and the land-owners of New Hampshire cannot afford the cost of failing this first test. While public purposes sometimes require the taking of private property by eminent domain as a last resort, it's completely inappropriate that New Hampshire citizens should live in fear of takings by private projects for private gain. By passing this amendment, we are fully recognizing the constitutional protections of all property owners in New Hampshire as voters themselves said they should be recognized when they adopted 12-a. Property owners should have the right to decide and should not be forced to accept a private project for private gain that will forever negatively impact their lives and property value.

We each took an oath to defend the New Hampshire Constitution when we took office. This oath applies to the entire Constitution, including 12-a. To allow this first big test of Article 12-a to fail would be an abdication of the oath we took upon entering office. We need to stand up today for all New Hampshire property owners as the Senate did in 2006 and make clear that the rights of property owners include protection from the use of the state's police power by eminent domain to take private property for another private development or use. I urge you to adopt this amendment and then vote Ought to Pass. Thank you, Mister President.

(The Chair recognized Sen. Merrill.)

SENATOR MERRILL: Thank you, Mister President. I rise in support of this floor amendment. Today, I think we find ourselves at the intersection of two very important policy areas. One: the basic right of protection of

our properties. And, second: our need to move into the future with what I would call—even though it's perhaps an overused word sometimes—a sustainable energy policy here in New Hampshire—one that supports and encourages economic development and the jobs that come with economic development, as well as environmentally responsible practices. Energy policy is a complex and an evolving area of policy and of business considerations.

So, this is a busy intersection we stand at; it's been a crowded one lately, but we're moving ahead today, and I think that's a good thing, and I think we're moving in the right direction. We all know that we're talking about eminent domain today, but I think we all recognize that this discussion came up in the context of a particular set of properties, or a particular part of our state. And, this is by way of saying I wanted to talk a little bit about how I personally, or the route that I personally took to get to the intersection we stand at today. So, again, we're talking about the very important issue of eminent domain, but it came up within the context, originally, of what does this mean for part of our state that I want to just talk about caring about deeply.

As some of you know, I serve on the Land and Community Heritage Investment Program Board, and also have had a long association with that program: serving as Interim Director at one time, and, back when I was in the House in the mid '90s, cosponsoring legislation that led, by several steps—as things seem to go in the Legislature—to the establishment of the program. And, I know that the particulars of LCHIP are something that gets evaded, and I don't site my history with LCHIP because, 'Gee, isn't that impressive that I've done this, and I've been in the Legislature for a long time?' But, rather, just to say that my involvement with that program, my desire to be involved with that program and to stay involved with it stems from a deep concern for, a love for, that which is special about New Hampshire. I come from the Seacoast area—of course I think the beach is great; I think the Seacoast is wonderful—but it comes from an appreciation for all that is wonderful about our state. I've also had a longstanding concern and interest in energy policy. Again, going back to when I served in the House, first on the Science, Technology, and Energy Committee, where I was pushing for the idea of: 'Let's go for energy conservation first whenever we can,' and I still support that concept. But, over the time since I first served on that committee I've seen great change here in New Hampshire, I think in terms of the interest of people in general in what our energy policy is going to look like. People want to see renewable energy encouraged and established here in the state; people don't want to see our air and our water polluted. Those are basic concepts now; it's kind of apple pie-ish at this point. So, again, those are basic concepts. How we get to that energy policy that meets those goals is a more complicated issue, and that's what we've run up against today, I think. Specifically, today's discussion takes us to the question of: Where, and to what extent, if at all, eminent domain is appropriate within the context of the development of energy policy. And I believe that the amendment we have before us addresses that legislative challenge we face on this intersection today, and I urge your support for that amendment. Thank you.

(The Chair recognized Sen. Sanborn.)

SENATOR SANBORN: Thank you, Mister President. First, I want to thank all of our guests who have come down from the North Country in your diligence, in your work to ensure you have property protections,

JANUARY 2012

move into the future with what  
overused word sometimes—a  
 Hampshire—one that supports  
the jobs that come with eco-  
nically responsible practices.  
area of policy and of business

it's been a crowded one lately,  
and that's a good thing, and I  
We all know that we're talk-  
ing we all recognize that this  
particular set of properties, or a  
way of saying I wanted to talk  
note that I personally took to  
So, again, we're talking about  
ain, but it came up within the  
en for part of our state that I

and Community Heritage In-  
and a long association with that  
time, and, back when I was  
legislation that led, by several  
nature—to the establishment of  
of LCHIP are something  
with LCHIP because, 'Gee,  
and I've been in the Legisla-  
ary that my involvement with  
with that program and to stay  
for, a love for, that which is  
the Seacoast area—of course I  
is wonderful—but it comes  
ful about our state. I've also  
energy policy. Again, going  
on the Science, Technology,  
ing for the idea of: 'Let's go  
can,' and I still support that  
erved on that committee I've  
I think in terms of the inter-  
policy is going to look like.  
aged and established here in  
our water polluted. Those  
ish at this point. So, again,  
that energy policy that meets  
and that's what we've run up  
discussion takes us to the  
all, eminent domain is ap-  
ent of energy policy. And I  
addresses that legislative  
and I urge your support for

President. First, I want to  
from the North Country in  
have property protections,

and all of us here on the Senate floor thank you for being polite and articulate. I also want to thank Public Service, and ask that we all remind each other that they're a company who, in their eyes, are trying to do the right thing. Their employees are our neighbors, they're our friends, and they, too, have been very polite and articulate, and as a result of that, I support them. I also want to relate a shout-out for Senator Forrester, who has been steadfast in her support of everyone and the concept of providing personal property protections.

As many of you know, I am a Senator who has been on the back side of eminent domain not once but twice: kicked out of my house when I was seven years old, and then recently, in the City of Concord, where this city took property that I owned. Obviously, it's a very important issue to me. I am concerned that this amendment will not go far enough in protecting your property rights, and am very concerned that we'll be back here again soon addressing the same issue. However, that being said, I recognize there are certain days where we can't get a touchdown but have to move the ball further down the road, as my good friend Senator Bradley said and Senator Bragdon said to me the other day. So, I will be supporting this amendment and ask all of you to keep a very strong eye on the future of your protections, as I truly believe this is one of the most fundamental rights we have is the right to have and own our property and defend it. Thank you, Senator Bragdon.

(The Chair recognized Sen. Houde for a question of Sen. Merrill.)

SENATOR HOUDE: Thank you, Mister President. Thank you, Senator Merrill. I wanted to go back, because you had talked about the intercede of policy considerations for this. And, I understand that the Federal Energy Regulatory Commission—FERC—has issued an order, Order 1000, that, while in its infancy, contemplates public policy considerations such as the renewable energy portfolio standards into projects using cost allocation. Is it your understanding that the amendment offered today would preclude such considerations along the lines for Order 1000?

SENATOR MERRILL: I've of course only seen the language regarding that document from FERC recently, as is the case for all of us, I think, since it came out just this summer. My understanding is that at least one of the goals of that document is to take into consideration in the regional planning process for energy development the issues that have been identified in the states as public policy issues of concern, for example: encouragement of renewable energy. So, I think that that's an area that we will see the regional planning group, ISO—New England, working on; they just started to, is my understanding. And, I think it will address the issue of the possibility of including other factors other than system reliability, which has been the one that has been in the forefront before, but other policy considerations as they go forward. So, I wouldn't see the language as necessarily precluding the future consideration of other important factors.

SENATOR HOUDE: Thank you, Senator Merrill. Thank you, Mister President.

(The Chair recognized Sen. Forsythe.)

SENATOR FORSYTHE: Thank you, Mister President. I am going to support this amendment, but I do want to make a couple of comments about this process in general. First is, a vote for this amendment does not necessarily mean opposition to Northern Pass. There are plenty of folks that feel that it could be a good project that could be good for New

Hampshire. This is simply a bill that's looking at the eminent domain statutes and clarifying them in this context, and I think it's an important clarification.

The other point I want to make is, there's a lot of differing opinions, whether it's Senator Rausch, to vote completely against these, or Senator Bradley or Senator Carson offering up a different amendment. But, I firmly believe that all 24 Senators, just like in 2006 here, support Article 12-a and not taking property for private uses, it's just we differ in our opinion on how to go about that. Thank you, Mister President.

(The Chair recognized Sen. Larsen.)

SENATOR LARSEN: Thank you, Mister President. I rise to support this amendment, as well. I think people question, back when we first voted on 648, which was maybe last June, why we were studying this further. And, I think the reason we sent this into study—and I think it benefitted from that study—was that we were seeking an appropriate balance between what is a constitutional protection of private property typically taken for private gain. But, the balance also had to be made with the need in this state to allow for the common interest of having transmission lines go through areas in an appropriate way so that all benefit from both the ability to receive energy in an affordable manner. We worked through the summer and into the fall, and as recent as last night, amendments were appearing at our table with ways to find that appropriate balance. While it may not be perfect, I think this moves us into an arena where we can not only protect private property rights but allow for the further development, if it's approved, of energy alternatives and the continued support for renewable energy projects that may come up in our future, and that's what we were looking for as we pushed this into a study a good six months ago. So, I think we have arrived at least at a place where we've reached that balance, and one which, I'm sure in conference committee, we'll have further discussions on. So, I rise to support the amendment. Thank you.

(The Chair recognized Sen. Bradley.)

SENATOR BRADLEY: Thank you very much, Mister President. I think it's important to read Article 12-a; I don't believe anybody's done that to date. "No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property." A lot of you in this room worked to create that constitutional amendment, and 86 percent of the voters voted for it, for pretty obvious reasons. I have always felt in looking at the Northern Pass application that there's really no question that it was a private development, therefore, not eligible for use of eminent domain. And, when we last debated House Bill 648 on this floor in May, I think those of us who urged study said that we would be back and try to strengthen our eminent domain protections for people who were adversely impacted, not only by that Northern Pass project, but by, potentially, other projects. And, I think it's a testament to Senator Carson and my amendment that people, as they took a couple of deep breaths and looked at what was actually in the amendment, thought: Yeah, these are protections that protect property owners.

Fast forward six months: We've had a debate about how to make sure that 12-a, the clear intention of 12-a is replicated in 371:1, the section of law that we're debating today. Senator Forrester's done a really good

ing at the eminent domain  
t, and I think it's an impor-

a lot of differing opinions,  
tely against these, or Sena-  
different amendment. But, I  
in 2006 here, support Article  
es, it's just we differ in our  
Mister President.

sident. I rise to support this  
back when we first voted on  
re studying this further. And,  
and I think it benefitted from  
appropriate balance between  
ate property typically taken  
to be made with the need in  
of having transmission lines  
that all benefit from both the  
manner. We worked through  
t as last night, amendments  
and that appropriate balance.  
oves us into an arena where  
ghts but allow for the further  
ernatives and the continued  
may come up in our future,  
e pushed this into a study a  
e arrived at least at a place  
which, I'm sure in conference  
on. So, I rise to support the

ch, Mister President. I think  
believe anybody's done that to  
be taken by eminent domain  
another person if the taking  
t or other private use of the  
t to create that constitutional  
voted for it, for pretty obvious  
he Northern Pass application  
a private development, there-  
n. And, when we last debated  
t those of us who urged study  
lengthen our eminent domain  
y impacted, not only by that  
other projects. And, I think  
my amendment that people,  
I looked at what was actually  
are protections that protect

ate about how to make sure  
licated in 371:1, the section  
Forrester's done a really good

job, I think, of trying to outline what the issues are. Her approach is a little bit different than the approach that Senator De Blois and I took. I think we assumed that the simplest approach is the best approach: Put Article 12-a, the clear language of it, into the statute, and then say no private development entity—that's what we're talking about here—can petition the Public Utilities Commission for use of eminent domain.

So, we're trying to get to the same place. I think that the Forrester amendment is going to pass, and I congratulate Senator Forrester for her tenaciousness in making that happen. But, this was the intent that Senator De Blois and I had of how to solve this problem in the simplest way and in the most New Hampshire way because it's a New Hampshire constitutional amendment that would be adjudicated in our amendment by the Public Utilities Commission.

The one concern that I have with the Forrester-Bragdon amendment is use of terms like "regional cost allocation" and "regional transmission tariffs approved by ISO". Are we not potentially ceding the federal and regional regulators' state jurisdictional authority? I just raise that as a question. I think we are. And, for those of you who are going to support it today, I urge you to be prepared for what you ask for; we may get it, and we may be back here debating how to make sure that the protections I think that all 24 of us agree should be in law, not just Constitution, are actually in law and not ceded to regional or federal authorities. Thank you.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Sen. Larsen, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Forrester, Forsythe, Houde, Groen, Sanborn, Odell, White, Kelly, Lambert, Larsen, Boutin, Barnes, Merrill, Prescott, Bragdon.

The following Senators voted No: Bradley, Luther, Carson, De Blois, Rausch, D'Allesandro, Morse, Stiles.

Yeas: 16 - Nays: 8

Adopted.

PRESIDENT BRAGDON: Do we have an amendment yet from Senator Larsen?

SENATOR LARSEN: Mister President, my amendment was prepared, but we are further amending my amendment and I don't have that in my possession yet. So, I would ask for a brief recess.

Recess. Out of recess.

PRESIDENT BRAGDON: Just five more minutes, for the people in the audience. A new copy of an amendment from Senator Larsen about a study committee has just been received and we just need time to look at it.

Recess. Out of recess.

Sen. Larsen offered a floor amendment.

Sen. Larsen, Dist. 15  
January 25, 2012  
2012-0373s  
01/09

#### Floor Amendment to HB 648

Amend the title of the bill by replacing it with the following:



AN ACT relative to eminent domain by public utilities and establishing a commission to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain, develop a framework for the state to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

Amend the bill by replacing all after section 5 with the following:

6 New Section; Commission Established. Amend RSA 371 by inserting after section 16 the following new section:

371:16-a Commission Established.

I. There is established a commission to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain, develop a framework for the state to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

II. The members of the commission shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of transportation, or designee.

(d) One commissioner of the public utilities commission, or designee, appointed by the chairperson of the commission.

(e) One member of the office of energy and planning, appointed by the governor.

III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The commission shall investigate the procedures available and potentially available to landowners for obtaining a hearing when their land is the subject of a petition filed with the public utilities commission by a utility seeking to take such property. The commission shall also develop a framework for the state to provide use rights to transmission developers, formulate policies which, in so far as practicable, encourage the burying of transmission lines along state rights-of-way and base payments on a percent of profitability.

V. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

VI. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2012.

7 Repeal. RSA 371:16-a, relative to the commission to develop a framework for the state to formulate policies relative to transmission developers, is repealed.

8 Effective Date.

I. Sections 1 through 5 of this act shall take effect 60 days after its passage.

II. Section 7 of this act shall take effect November 1, 2012.

III. The remainder of this act shall take effect upon its passage.

2012-0373s

## AMENDED ANALYSIS

This bill modifies certain requirements pertaining to the taking of land or property rights by a utility. This bill also establishes a commission to investigate procedures for obtaining a hearing for landowners whose property is being considered for eminent domain, develop a framework to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

SENATOR LARSEN: Thank you, Mister President. I rise to offer Amendment 0373s. This amendment addresses what the Committee had, which was creating a committee to study the procedural rights of the landowner when a petition is presented to the PUC by a utility seeking eminent domain. The addition here establishes a commission, but it adds into that study another duty, which is to develop a framework for the State to provide use rights to transmission developers on state-owned rights of way, developing policies to encourage burying lines where practicable, and establishing a structure for payment. This, I hope, sends a message that New Hampshire is open for business; we want the jobs that burying lines would bring. We want transmission developers to look at ways where we can have environmentally sustainable and state sustainable policies. The State of Maine passed corridor protections and established corridors for transmission line development and established lease arrangements such that the State would make money from the leased property. What we're discussing today and what has been in the newspaper is not the only transmission line development that may come to this state. And so, I think it's wise for our State to develop a framework for us to find ways to use our existing highway right-of-ways, our state right-of-ways, to encourage burying lines if possible and to figure out a way that the State receives some revenues from that policy. This commission is set up to include the Department of Transportation, the Public Utilities Commission, and the Office of Energy Planning, so that there are other voices at the table and we would get some responses from them by November of the end of this year. I think it's a way of us saying that we in New Hampshire believe that jobs that relate to this are important and we need to find responsible ways to accomplish that. So, I urge your support for Amendment 0373s and thank you for the time.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

A roll call was requested by Sen. Prescott, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Sanborn, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes, De Blois, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Rausch.

Yeas: 23 - Nays: 1

Adopted, bill ordered to Third Reading.

Recess. Out of recess.

**COMMERCE**

SB 74-FN, relative to the life settlements act. Inexpedient to Legislate, Vote 3-2. Senator White for the committee.

Sen. White moved to Lay on the Table SB 74-FN. Adopted.

Sen. White asserts Rule 2-15 on SB 74-FN.

**SPECIAL ORDER**

Without objection SB 150-FN is Special-Ordered to February 8, 2012. Adopted.

SB 175, regulating the commercial use of a person's identity. Ought to Pass with Amendment, Vote 4-0. Senator Houde for the committee.

Commerce  
January 10, 2012  
2012-0168s  
05/03

**Amendment to SB 175**

Amend the bill by replacing all after section 1 with the following:

2 New Chapter; Commercial Use of Individual Identity. Amend RSA by inserting after chapter 359-L the following new chapter:

**CHAPTER 359-M****COMMERCIAL USE OF INDIVIDUAL IDENTITY**

359-M:1 Definitions. In this chapter:

I. "Person" means any natural person.

II. "Identity" means a person's name, professional name, nickname, signature, photograph, image, likeness, voice, or any other attribute that serves to identify the person to an ordinary, reasonable viewer or listener.

359-M:2 Recognition of the Right to Control Commercial Use of Identity. Every person has the right to control the commercial use of his or her identity.

359-M:3 Transferability. The right to control the commercial use of one's identity is a property right that is freely transferable and descendable, in whole or in part, during and after a person's life by means of (1) a written contract, license, conveyance, or assignment or a will, trust, or other testamentary instrument, executed before or after the enactment of this chapter, and by the original holder or his or her successor-in-interest, or (2) intestate succession occurring before or after the enactment of this chapter. In the absence of an express transfer in a testamentary instrument of the right to control commercial use of a person's identity, a provision in a testamentary instrument that provides for the disposition of the residue of the deceased person's assets shall be effective to transfer that right in accordance with the terms of that provision.

359-M:4 Duration and Termination.

I. The right protected under this chapter endures for a term consisting of the life of the person plus 70 years after his or her death, regardless of whether the person commercially exploits the right during his or her lifetime.

II. A person's right under this chapter shall be deemed to have existed prior to the enactment of this chapter, and at the time of the death of the original holder or his or her successor-in-interest, whether that death occurs before or after the enactment of this chapter, for the purpose of determining entitlement to the right.

III. The right protected under this chapter terminates if its holder dies without having transferred or devised it, either during his or her



The House of Representatives is ready to meet with the Senate in Joint Convention for the purpose of hearing the State of the State Address by his Excellency, Governor John H. Lynch.

Sen. Bradley RESOLVED that the Senate is ready to meet in Joint Convention with the House of Representatives for the purpose of hearing the State of the State Address by his Excellency, Governor John H. Lynch. Adopted.

Recess to meet in Joint Convention. Out of Recess.

Recess. Out of recess. (Continued.)

Sen. Kelly is excused.

PRESIDENT BRAGDON: And, before we get too busy here, we might have some guests in the gallery that Senator Bradley may know something about.

SENATOR BRADLEY: Yes, thank you, President Bragdon. I'd like to recognize a lot of really great students from the Brett School in Tamworth. They tell me it's snowing up there today, which we like to see in the mountains. So, thanks for coming down folks, and welcome to the State House. The Chair rescinded ordering HB 648 to Third Reading.

#### RECONSIDERATION

Sen. Bradley, having voted on the prevailing side, moved to reconsider HB 648, the bill having been previously adopted. Adopted.

(The Chair recognized Sen. Bradley.)

SENATOR BRADLEY: Thank you very much, and I am going to yield to Senator Larsen to explain the new amendment. It was a totally inadvertent mistake that was made in bill drafting. Obviously there was a lot of discussion about House Bill 648. There were several different amendments; there were floor amendments. Even though I didn't support the so-called Bragdon-Forrester amendment, I want to make it clear that the effect of the Larsen-Bradley amendment restores the Bragdon-Forrester amendment, which was the intent of the majority of the body here. And, I credit Senator Larsen and—where's Mr. Kennedy?—for bringing this to our attention and trying to resolve this in as amicable a way as possible. So, thank you, Senator Larsen.

Sen. Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Bradley, Dist. 3

January 26, 2012

2012-0405s

01/09

#### Floor Amendment to HB 648

Amend the title of the bill by replacing it with the following:

AN ACT relative to eminent domain by public utilities and establishing a commission to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain, develop a framework for the state to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

with the Senate in Joint  
of the State Address by

eady to meet in Joint Con-  
the purpose of hearing the  
Governor John H. Lynch.

cess.

t too busy here, we might  
Bradley may know some-

ent Bragdon. I'd like to rec-  
Brett School in Tamworth.  
we like to see in the moun-  
welcome to the State House.  
rd Reading.

ON  
side, moved to reconsider  
pted. Adopted.

, and I am going to yield to  
nt. It was a totally inadver-  
Obviously there was a lot  
re several different amend-  
though I didn't support the  
ant to make it clear that the  
ores the Bragdon-Forrester  
ority of the body here. And,  
nnedy?—for bringing this to  
amicable a way as possible.

#### HB 648

with the following:

public utilities and establish-  
the procedural rights of the  
sented to the public utilities  
eminent domain, develop a  
le use rights to transmission  
s-of-way, develop policies to  
ere practicable, and establish

Amend the bill by replacing all after the enacting clause with the fol-  
lowing:

1 New Section; Proceedings to Acquire Property or Rights. Amend RSA  
371 by inserting after section 1-a the following new section:

371:1-b Acquisition Negotiations; Reference to Eminent Domain Prohib-  
ited. No public utility, predecessor development entity, or agent of either,  
shall refer to the use of eminent domain in any landowner negotiations,  
unless the commission has first specifically authorized its use under this  
chapter with respect to the affected landowner. Any landowner may file a  
complaint with the commission under RSA 365:1 alleging violation of this  
section. Upon a finding of violation, after notice and hearing, the public  
utility or project-sponsoring affiliate shall be fined up to \$25,000 which  
shall be deposited in the general fund. If a landowner makes an inquiry  
concerning eminent domain, the public utility, predecessor development  
entity, or agent of either, may provide the landowner with the commis-  
sion's contact information without violating this section.

2 Right to Enter. Amend RSA 371:2-a to read as follows:

371:2-a Right to Enter. When ownership of land, upon or over which  
a public utility desires to erect facilities, cannot be ascertained without  
entry to do survey work, or, a public utility shall have filed a petition  
under RSA 371:1 with respect to a particular tract of land, in either case  
a public utility shall have the right to enter upon such land for the pur-  
pose of surveying and making such other investigation as is necessary to  
determine the locations of the boundaries of such land and of the facili-  
ties it desires to erect thereon or thereover, and to determine the title to,  
description of, or nature of such land. A public utility desiring to enter  
land in pursuance of this section shall ~~make every reasonable effort to~~  
notify **by certified mail** the owner or probable owner or owners thereof  
of its desire to enter for the purposes aforesaid **at least 30 days** prior to  
entry. **Notification shall include identification of the utility seek-**  
**ing to enter the land, the time and date of the proposed entry, and**  
**the portion or section of land to be surveyed or investigated. Upon**  
**the date specified for entry, the persons conducting the survey or**  
**investigation shall present themselves to the property owner and**  
**show identification.** The public utility shall pay the owner or owners  
of any land it shall enter in pursuance of the provisions of this section for  
any actual damage done upon entry.

3 New Section; Appraisal Required. Amend RSA 371 by inserting after  
section 2-a the following new section:

371:2-b Appraisal Required. A public utility shall have an impartial, quali-  
fied appraiser make at least one appraisal of any property proposed to be  
acquired by eminent domain. The owner shall have a reasonable opportunity  
to have the property appraised by an independent, qualified appraiser, se-  
lected by the owner. The public utility shall reimburse the owner the usual  
and customary cost of the appraisal up to \$1,500 for each property.

4 New Paragraph; Residential Owner Option. Amend RSA 371:5-a by  
inserting after paragraph II the following new paragraph:

III. In all cases where residential property is taken pursuant to the  
provisions of this section, a resident owner shall also be awarded reason-  
able relocation and housing replacement expenses not to exceed 10 percent  
of the compensation ordered for the taking. If a residential tenant is also  
displaced as the result of any taking under this section, the tenant shall  
be awarded up to 6 months of the actual monthly rent being paid by the  
tenant prior to the notice given under section RSA 371:4, and reasonable  
relocation and housing replacement expenses not to exceed an additional  
6 months of such monthly rent.

5 New Section; Project Delay; Option to Purchase. Amend RSA 371 by inserting after section 16 the following new section:

371:16-a Project Delay; Option to Purchase. If, after a period of 5 years, the project for which land or property rights were taken has not commenced, the utility shall offer the person from whom such land or rights were taken the first option to buy such land or rights at the current market value.

6 Proceedings to Acquire Property or Rights; Petition. Amend RSA 371:1 to read as follows:

371:1 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, ~~for a~~ pipeline, conduit, line of poles, towers, or wires across the land of another, or should acquire land, land for an electric substation, or flowage, drainage, or other rights for the necessary construction, extension, or improvement of any water power or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes. No public utility may petition for permission to take private land or property rights for the construction or operation of an electric generating plant *or an electric transmission project not eligible for regional cost allocation, for either local or regional transmission tariffs, by ISO - New England or its successor regional system operator.*

7 New Section; Commission Established. Amend RSA 371 by inserting after section 16 the following new section:

371:16-a Commission Established.

I. There is established a commission to investigate the procedural rights of the landowner when a petition is presented to the public utilities commission by a utility seeking eminent domain, develop a framework for the state to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

II. The members of the commission shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of transportation, or designee.

(d) One commissioner of the public utilities commission, or designee, appointed by the chairperson of the commission.

(e) One member of the office of energy and planning, appointed by the governor.

III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

IV. The commission shall investigate the procedures available and potentially available to landowners for obtaining a hearing when their land is the subject of a petition filed with the public utilities commission by a utility seeking to take such property. The commission shall also develop a framework for the state to provide use rights to transmission developers, formulate policies which, in so far as practicable, encourage the burying of transmission lines along state rights-of-way and base payments on a percent of profitability.

urchase. Amend RSA 371 by section:

If, after a period of 5 years, s were taken has not com- n whom such land or rights rights at the current market

Petition. Amend RSA 371:1

n order to meet the reason- at any public utility should al pipeline, conduit, line of her, or should acquire land, drainage, or other rights for ovement of any water power public utility, and it cannot s as to the necessity or the ay petition the public utili- its or for permission to take d purposes. No public utility and or property rights for the rating plant *or an electric regional cost allocation, for iff, by ISO - New England*

Amend RSA 371 by inserting

o investigate the procedural esented to the public utilities main, develop a framework mission developers on state ourage burying such lines e for payment.

ll be as follows:

ointed by the president of the

representatives, appointed by

ent of transportation, or des-

ilities commission, or desig- mission.

y and planning, appointed by

asion shall receive mileage at duties of the commission.

the procedures available and using a hearing when their land

public utilities commission by a mission shall also develop a

its to transmission developers, utable, encourage the burying

way and base payments on a

V. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

VI. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2012.

8 Repeal. RSA 371:16-a, relative to the commission to develop a framework for the state to formulate policies relative to transmission developers, is repealed.

9 Effective Date.

I. Sections 1 through 5 of this act shall take effect 60 days after its passage.

II. Section 8 of this act shall take effect November 1, 2012.

III. The remainder of this act shall take effect upon its passage.

2012-0405s

### AMENDED ANALYSIS

This bill:

I. Modifies certain requirements pertaining to the taking of land or property rights by a utility.

II. Prohibits public utilities from petitioning for permission to take private land or property rights for the construction or operation of an electric generating plant or an electric transmission project that is not eligible for regional cost allocation by ISO - New England or its successor regional system operator.

III. Establishes a commission to investigate procedures for obtaining a hearing for landowners whose property is being considered for eminent domain, develop a framework to provide use rights to transmission developers on state owned rights-of-way, develop policies to encourage burying such lines where practicable, and establish a structure for payment.

(The Chair recognized Sen. Larsen.)

SENATOR LARSEN: I rise to endorse and reaffirm the interest of correcting, through the legislative process, the passage of House Bill 648 in the manner that we intended to pass it. Through some of the amendments that were coming during the process, the numbering was wrong, and it was suggested that we could perhaps correct this issue in enrolled bills. But, it's always a challenge to discern what should properly be in enrolled bills and what should be out in the open - a correction of numbering - so that it's very clear what legislative intent was. So, by tasking this correction we are reaffirming our vote of last week and making sure that each section is properly numbered and doesn't cancel out a former section that we intended to be there. So, I urge our support for House Bill 648 Floor Amendment 0405s.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. Bradley moved to remove SB 201 from the table. Adopted.

### INTERNAL AFFAIRS

SB 201, apportioning state senate districts.