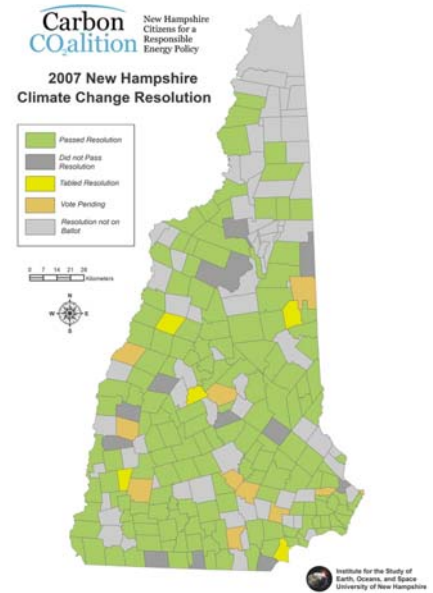


House Bill 189/RSA 38-D Local Energy Commissions

At Town Meeting 2007 communities across New Hampshire placed resolutions on their ballots calling for a strong federal response to climate change. Many of these cities and towns also took advantage of the opportunity to act locally on this global issue and began forming Local Energy Committees. These committees are often comprised of local citizens and municipal staff members and are charged with assessing and improving community action on global warming and energy use.

As Local Energy Committees began pursuing significant projects within their communities, local governments sought a means to formalize their roles and responsibilities. House Bill (HB) 189 was approved on July 29, 2009 to provide enabling legislation for municipalities to establish energy commissions and to define their purpose and duties. This fact sheet is designed to offer an overview of HB189 and is divided into two sections. "The Basics" covers general questions pertaining to the language of the bill and "Energy Commissions in Real Life" focuses on the bill's implications for energy committees and commissions.



This document does not constitute legal advice or opinion, it is offered for informational purposes only and our first piece of advice is to consult with your legal counsel on these matters.

The Basics

What is HB 189?

House Bill 189 is an act enabling municipalities to establish energy commissions. It amends RSA 38 by adding chapter 38-D entitled "Energy Commissions." HB 189 was approved on July 29, 2009 and took effect on September 27, 2009.

How are Energy Commissions adopted?

According to the statute, the governing or legislative body of a municipality may adopt or rescind an Energy Commission at any appropriately warned meeting. Governing bodies are city councils or boards of alderman in cities and boards of selectmen in towns, the school board in a school district, and the board of commissioners in a village district. The legislative body is the assembly of voters at the Town Meeting, School District Meeting, or Village District Meeting. Prior to selecting one of these methods, we strongly encourage you to contact your town counsel for input and guidance.

According to the RSA, what purpose do Energy Commissions serve and what are their duties?

Energy Commissions can be created for the purpose of study, planning, and utilization of energy resources for municipal buildings and built resources. The commission is charged with researching municipal energy use and costs and making this information available to the town on at least an annual basis. It is also responsible for making recommendations to local boards and committees pertaining to municipal energy plans and sustainable practices, such as energy conservation, energy efficiency, energy generation, and zoning practices.

Issue: Although not present in the statute, it would be wise to consider having the commission or the authorizing legislation include rules of procedure to guide the operations of the commission.

How many members can serve on an Energy Commission?

Energy Commissions can have anywhere from 3 to 10 members. It may be helpful to have an odd number of members to avoid tie votes. Alternates may also be appointed however the law does not provide how many.

How are Energy Commission members selected?

Energy Commission members are appointed to their positions. In cities, appointments are made by the city council and are subject to the provisions of the city charter. In towns, appointments are made by the board of selectmen. This initial appointment period is staggered to permit a cyclic turnover.

Can alternate members be appointed?

Yes, but the law does not indicate how many. Municipalities should consider setting a number of alternates in the motion or warrant article that creates the commission.

What is the term that Energy Commission members serve?

When an Energy Commission is first established, terms are staggered over 1, 2, and 3 year increments so that roughly 1/3 of the members' terms will expire each year. After that, terms are set for 3 years.

Who can serve on an Energy Commission?

Members must be residents of the city or town that they represent. Membership on another board or commission does not preclude membership on the Energy Commission.

How are finances handled by the Energy Commissions?

Once a municipality has formed an Energy Commission, it may appropriate money to the commission to support the purposes and duties outlined in the statute. Money appropriated to the commission may be placed in a fund and allowed to accumulate from year to year. The statute provides that the fund be held by the municipal treasurer and that the fund may be held year over year. The commission may make expenditures and receive gifts without review of the Town Meeting but is required to have the local governing body's approval and hold a public hearing for accepting gifts and making disbursements in excess of \$500.00.

Issue: Under RSA 38-D:5(II) disbursements are required to have the authorization of "a majority of the energy commission". Consultation with legal counsel may be necessary to address this concern for a commission that confronts this issue.



Energy Commissions in Real Life

What support is available for Energy Commissions?

A variety of agencies and organizations are available to support Energy Commissions, including the NH Office of Energy and Planning, the Regional Planning Commissions, and non-profits such as Clean Air-Cool Planet. Many of these groups and agencies are part of the Local Energy Committee Working Group, whose mission is to provide support and resources to local energy committees and commissions. To find out more, visit www.carboncoalition.org or nhenergy.org.

Is there a way to ensure that interested members from an Energy Committee are appointed to a newly formed Energy Commission?

Members of an Energy Committee who would like to serve on an Energy Commission should send a letter of interest to their City Council or Board of Selectmen.

What are municipalities doing to encourage their City Councils and Boards of Selectmen to form Energy Commissions?

The NH Community Energy Project website, nhenergy.org, is an excellent resource for energy commissions and committees to learn from one another and find out what is going on across the state.

Communities such as Rindge, New Boston or Tamworth have simply formed commissions by Board of Selectmen vote at a regular public meeting.

The following is an example from Plymouth, which took a different approach.

“The Town of Plymouth is working with members of our selectboard and planning board to introduce ourselves as volunteers. We started by sending two representatives from the Plymouth Energy Committee to a town planning board

meeting (after requesting ahead of time to be on the agenda for 10 minutes). Those two representatives introduced themselves to the planning board and basically said “We are interested in volunteering our time to save energy and money in the Town of Plymouth. We would like to work with you to come up with some ways that we can help accomplish that.” We intend to slowly but surely establish a positive working relationship with the planning board and selectboard by introducing some simple projects that the energy committee can help with. We have been working with the town planner and have also had a member of the selectboard attend a few of our PEC meetings. Our next step is a presentation to the selectboard at the end of September. We will introduce HB189 to our selectboard. Rep Mary Cooney has volunteered to attend this meeting and help to explain the legislative intent behind HB189. A member of our energy committee is also working on drafting an energy chapter for the town master plan. This is a capstone project as part of a Masters degree in Environmental Science and Policy at Plymouth State.” *The Plymouth Energy Committee*



Photo: Grafton County Economic Development Council

The RSA only lists two specific duties that the Energy Commissions shall perform. Can the commissions pursue additional activities or are they restricted to those listed in the RSA?

The duties listed in the statute are the required duties of the commission. Additional, roles and responsibilities can be part of the commissions activities provided they are related to the ultimate discharge of these required duties. The key in determining these additional roles and responsibilities is the purpose of the commission, which is to provide for the “study,

planning, and utilization of energy resources for municipal buildings and build resources” of the municipality. If you have further questions about the roles and responsibilities, we recommend that you consult your town’s legal counsel for assistance with this matter and discuss it with your local governing body. Keep in mind that there are limits, in that NH is not a home rule state. This means that municipalities only have authority to do what is specifically granted to them by the legislature and cannot exercise authority beyond that grant.

Are Energy Committees equally as eligible for grants and other types of funding as Energy Commissions?

Eligibility varies by grant opportunity. While some funding sources may be willing to accept applications from energy committees, committees do not have non-profit status or the authority to accept funds on behalf of the town. Energy Commissions, on the other hand, are official commissions of the town and therefore have the legal authority to accept funding (with certain limitations discussed above) and the governing structure in place to demonstrate accountability for the funding. We recommend that you consult your town’s legal counsel for additional assistance with this matter and discuss it with your local governing body.

The statute states that Energy Commissions “shall” perform the listed duties. What legal obligations are volunteer commission members under to ensure the duties are performed?

In general, when a statute uses mandatory language, the Court will interpret this language to be a required function of the body in question. Although there is no “penalty” for not performing these duties, the failure to complete the bare requirements may affect the commission’s other activities if it is seeking to complete other tasks related to these duties. For further questions, we recommend you consult your town’s legal counsel for assistance with this matter and discuss it with your local governing body.

What are the benefits to converting from an Energy Committee to an Energy Commission? Are there circumstances in which a municipality would not benefit from establishing an Energy Commission?

This question requires very specific information about how municipalities function. Since each municipality is so different, we recommend that you consult your town’s citizens, the leaders, and your legal counsel for assistance with this matter. As municipalities increasingly address their energy issues, close cooperation between the municipal government and the Local Energy Committee or Commission will be integral to sustained progress on reducing consumption.

Learn More

This fact sheet was produced by the New Hampshire Local Energy Committee Working Group. It was formed by the Carbon Coalition Steering Committee following the 2007 Town Meetings. The Local Energy Committee Working Group’s mission is to provide collaborative guidance and technical support to New Hampshire Local Energy Committees and Commissions seeking to reduce energy use and greenhouse gas emissions within their communities. Please visit our website to learn more: www.carboncoalition.org or nhenergy.org.

