

# Committee Report

**REGULAR CALENDAR**

**February 12, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Science, Technology and Energy to which was referred HB 396,**

**AN ACT relative to credits for certain energy production not issued renewable energy certificates.**

**Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Troy Merner**

**FOR THE MAJORITY OF THE COMMITTEE**

## **MAJORITY COMMITTEE REPORT**

Committee:	<b>Science, Technology and Energy</b>
Bill Number:	<b>HB 396</b>
Title:	<b>relative to credits for certain energy production not issued renewable energy certificates.</b>
Date:	<b>February 12, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### **STATEMENT OF INTENT**

This bill would require the Public Utilities Commission to report its estimate of total yearly production for customer cited sources that are not net-metered, but are not issued renewable energy certificates (REC) and removes the credit to the electrical provider. This practice is known as REC sweeping and eliminating it would increase electricity costs.

Vote 11-9.

Rep. Troy Merner  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Science, Technology and Energy

**HB 396**, relative to credits for certain energy production not issued renewable energy certificates.

**MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Troy Merner for the **Majority** of Science, Technology and Energy. This bill would require the Public Utilities Commission to report its estimate of total yearly production for customer cited sources that are not net-metered, but are not issued renewable energy certificates (REC) and removes the credit to the electrical provider. This practice is known as REC sweeping and eliminating it would increase electricity costs. **Vote 11-9.**

Original: House Clerk

Cc: Committee Bill File

**REGULAR CALENDAR**

**February 12, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Science, Technology and Energy to which was referred HB 396,**

**AN ACT relative to credits for certain energy production not issued renewable energy certificates.**

**Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.**

**Rep. Lee Oxenham**

**FOR THE MINORITY OF THE COMMITTEE**

## **MINORITY COMMITTEE REPORT**

Committee:	<b>Science, Technology and Energy</b>
Bill Number:	<b>HB 396</b>
Title:	<b>relative to credits for certain energy production not issued renewable energy certificates.</b>
Date:	<b>February 12, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### **STATEMENT OF INTENT**

This bill puts an end to what the minority considers to be an unconstitutional practice known as “REC sweeping,” that authorizes the monopoly electric utilities to seize - without any compensation - the private property of NH businesses and residents. “REC sweeping” allows the monopoly electric utilities to effectively take title to the renewable energy in which others invest and use it to meet their obligations under the Renewable Portfolio Standard (RPS). In the case of a business, this deprives the original investors of their right to market their businesses as powered by renewable energy, or even to claim they use the renewable energy they produce. Any firm doing so is vulnerable to Federal Trade Commission (FTC) enforcement action. The utilities’ un-compensated seizure of unregistered renewable energy attributes, i.e. their use of other people’s property to meet their RPS obligations, constitutes an unconstitutional “taking.” An un-compensated taking of private property without the owner’s consent is theft and constitutes a violation of the takings clauses in both the US and NH Constitutions. No other state permits this. To add insult to injury, this practice has helped “wreck” NH’s renewable energy certificate (REC) market, diminishing the utilities’ need to make alternative compliance payments – the only source of funding for the Renewable Energy Fund.

Rep. Lee Oxenham  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Science, Technology and Energy

**HB 396**, relative to credits for certain energy production not issued renewable energy certificates.  
**OUGHT TO PASS.**

Rep. Lee Oxenham for the **Minority** of Science, Technology and Energy. This bill puts an end to what the minority considers to be an unconstitutional practice known as “REC sweeping,” that authorizes the monopoly electric utilities to seize - without any compensation - the private property of NH businesses and residents. “REC sweeping” allows the monopoly electric utilities to effectively take title to the renewable energy in which others invest and use it to meet their obligations under the Renewable Portfolio Standard (RPS). In the case of a business, this deprives the original investors of their right to market their businesses as powered by renewable energy, or even to claim they use the renewable energy they produce. Any firm doing so is vulnerable to Federal Trade Commission (FTC) enforcement action. The utilities’ un-compensated seizure of unregistered renewable energy attributes, i.e. their use of other people’s property to meet their RPS obligations, constitutes an unconstitutional “taking.” An un-compensated taking of private property without the owner’s consent is theft and constitutes a violation of the takings clauses in both the US and NH Constitutions. No other state permits this. To add insult to injury, this practice has helped “wreck” NH’s renewable energy certificate (REC) market, diminishing the utilities’ need to make alternative compliance payments – the only source of funding for the Renewable Energy Fund.

Original: House Clerk

Cc: Committee Bill File

# Voting Sheets





2021 SESSION

Science, Technology and Energy

Bill #: 396 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2/19/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Vose, Michael Chairman	x		
Thomas, Douglas W. Vice Chairman	x		
Harrington, Michael D.	x		
Notter, Jeanine M.	x		
Merner, Troy E.	x		
Plett, Fred R. Clerk	x		
Berezhny, Lex	x		
Bernardy, JD	x		
Cambrils, Jose E.	x		
Ploszaj, Tom	x		
White, Nick D.	x		
Somssich, Peter F.		x	
Cali-Pitts, Jacqueline A.		x	
Mann, John E.		x	
Oxenham, Lee Walker		x	
Vincent, Kenneth S.			x
McGhee, Kat		x	
McWilliams, Rebecca J.		x	
Chretien, Jacqueline H.		x	
Pimentel, Roderick L.		x	
Parshall, Lucius		x	



1/22/2021 10:09:50 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Science, Technology and Energy

Bill #: 396 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 2/19/21

TOTAL VOTE:	11	9	1
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**HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY**

**EXECUTIVE SESSION on HB 396**

**BILL TITLE:** relative to credits for certain energy production not issued renewable energy certificates.

**DATE:** February 19, 2021

**LOB ROOM:** 206 Hybrid

**MOTIONS: INEXPEDIENT TO LEGISLATE**

Moved by Rep. Merner

Seconded by Rep. Notter

Vote: 11-9

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Fred Plett, Clerk

# Hearing Minutes

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

PUBLIC HEARING ON HB 396

**BILL TITLE:** relative to credits for certain energy production not issued renewable energy certificates.

**DATE:** February 12, 2021

**LOB ROOM:** 201-202 Hybrid      **Time Public Hearing Called to Order:** 11:00 a.m.

**Time Adjourned:** 1:16 p.m.

**Committee Members:** Reps. Vose, Thomas, Harrington, Notter, Merner, Berezhny, Bernardy, Cambrils, Ploszaj, White, Somssich, Cali-Pitts, Mann, Oxenham, Vincent, McGhee, McWilliams, Pimental and Parshall, Homola, Murry

**Bill Sponsors:**

Rep. Oxenham

Rep. McWilliams

Sen. Watters

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

- Rep Oxenham introduced the bill. Spoke on REC sweeping under RSA362-F:6 - Deprives NH residents
- \*Karen Crampton from PUC gave information on REC sweeping on annual basis on net meeting

At 12:05 the hearing was suspended for lunch. Restarted at 1:01 p.m.

- \*Rep Somssich explained how he sells his RECs
- \*John Gage spoke in favor of the bill

# House Remote Testify

## Science, Technology and Energy Committee Testify List for Bill HB396 on 2021-02-12

Support: 91 Oppose: 0 Neutral: 1 Total to Testify: 1

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Oxenham, Ian	ian.r.a.oxenham@gmail.com	111.111.1111	A Member of the Public	Myself	Support	Yes (5m)	2/11/2021 2:54 PM
Torpey, Jeanne	jtorp51@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 1:21 PM
Willing, Maura	Maura.Willing@Comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 4:16 PM
Perencevich, Ruth	rperence@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 4:19 PM
Covert, Susan	scovert@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 4:21 PM
Varney, Michele	maloof@metrocast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 3:48 PM
Jakubowski, Deborah	Dendeb146@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 3:51 PM
Nardino, Marie	mdnardino@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 4:57 PM
McCalley, Jennifer	jenniferamccalley@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 4:35 PM
Hackmann, Kent	hackmann@uidaho.edu	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 5:11 PM
Falk, Cheri	Falk.cj@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 6:49 PM
Vann, Ivy	ivy@vann.org	111.111.1111	An Elected Official	Myself	Support	No	2/11/2021 10:06 PM
Mernin, Patricia	trish323@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 4:40 AM
Goldwater, Catherine	cathy.goldwater@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 5:49 PM
Mooney, Bridget	bridget@moonchick.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 11:33 PM
Longman, Petra	petra.longman@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 3:27 AM
Rankin, Don	diggindawgsgw@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 5:32 AM
KUBIT, JOSEPH	jgkubit70@gmail.com	111.111.1111	An Elected Official	Myself	Support	No	2/11/2021 6:02 PM
Reed, Barbara	moragmcp83@outlook.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 6:04 PM
Ciatto, Susan	susan.ciatto@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 6:24 PM
Stinson, Ben	benrkstinson@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 1:24 AM
Raspiller, Cindy	raspicl@hotmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:38 PM
Smith, Sara	sara.rose.ssmith@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:42 PM
Brown, Howard	hobro39@hotmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:48 PM
Brown, Morgan	mmbrown1998@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:54 PM
Brown, William	brownwd95@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:58 PM
Arnold, Neil	krisarn@myfairpoint.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 7:33 PM
Shepardson, Marge	marge.shepardson@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 7:41 PM

McNamee, Brigid	brigidmcnamee@yahoo.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 7:53 PM
Zaenglein, Barbara	bzaenglein@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:10 PM
Zaenglein, Eric	henley11@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:11 PM
Bravo, Sandra	sandra.bravo@verizon.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:16 PM
Brennan, Nancy	burningnan14@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:25 PM
Howell, Elizabeth	elizhowell@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:28 PM
Solomon, Dina	dina.cigana@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:35 PM
Henrichon, Margaret	mhenrichon@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 9:22 PM
Donovan, Julie	julie.donovan@juno.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 9:26 PM
Chase, Susan	srfchase@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 9:39 PM
Spencer, Louise	kentstusa@aol.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 11:13 PM
Nastasi, Sue	ctcoastmetro@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 12:01 AM
Rathbun, Eric	ericrathbun@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 12:12 AM
Heslin, Mary	mlheslin@yahoo.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 1:30 AM
perez, maria	mariaeli63@gmail.com	111.111.1111	An Elected Official	Myself	Support	No	2/12/2021 1:39 AM
Filiault, Jacqueline	Jx243@aol.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 5:45 AM
Turnbull, Shauna	shaunaturnbull@yahoo.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 6:31 AM
Nesbitt, Kristen	Kristengnesbitt52@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 7:22 AM
Eberhardt, Ron	rceberhardt@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 7:27 AM
Freeman, Barbara	donavonfreeman@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 10:40 AM
Bushueff, Catherine	agawamdesigns@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 7:48 AM
jelleme, lisa	ljelleme@hotmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 7:54 AM
Waterman, Raymond	prwaterman@aol.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 8:03 AM
Waterman, Patricia	prwaterman@aol.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 8:04 AM
Baker-Hartwell, Donna	donnabh@tds.net	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 8:07 AM
Janeway, Elizabeth	Ecjway1@aol.com	111.111.1111	A Lobbyist	NH Audubon	Support	No	2/12/2021 10:34 AM
Gage, John	jhgage@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 12:00 PM
Dewey, Karen	pkdewey@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 8:59 AM
Shaw, Autumn	autumncshaw@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 9:02 AM
Mangipudi, Latha	Latha.mangipudi@leg.state.nh.us	111.111.1111	An Elected Official	Hills 35	Support	No	2/12/2021 9:36 AM
BERK, BRUCE	bruce.berk.nh@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 9:59 AM
Maynard, Richard	maynardrick@outlook.com	111.111.1111	A Member of the Public	Myself	Support	No	2/12/2021 10:00 AM
Cramton, Karen	karen.cramton@puc.nh.gov	111.111.1111	State Agency Staff	Public Utilities Commission	Neutral	No	2/12/2021 10:33 AM
Mineau, Madeleine	madeleine@cleanenergynh.org	111.111.1111	A Lobbyist	Clean Energy NH	Support	No	2/12/2021 10:49 AM
Watters, Senator David	david.watters@leg.state.nh.us	603.271.2104	An Elected Official	Myself (SD 4)	Support	No	2/3/2021 12:23 PM
Till, Mary	maryforderry@yahoo.com	603.203.1961	A Member of the Public	Myself	Support	No	2/6/2021 5:23 PM

Fordey, Nicole	nikkif610@gmail.com	516.318.2296	A Member of the Public	Myself	Support	No	2/7/2021 12:31 PM
Grossi, Anne	adgrossi7982@gmail.com	603.674.1181	A Member of the Public	Myself	Support	No	2/7/2021 3:47 PM
Larson, Ruth	ruthlarson@msn.com	603.364.4003	A Member of the Public	Myself	Support	No	2/8/2021 12:46 AM
Frost, Sherry	sherry.frost@leg.state.nh.us	978.255.3924	An Elected Official	Myself	Support	No	2/8/2021 10:42 AM
Oxenham, Evan	evan.oxenham@gmail.com	603.727.9368	A Member of the Public	Myself	Support	No	2/8/2021 12:00 PM
Richards, Matthew	mricha711@gmail.com	603.854.3953	A Member of the Public	Myself	Support	No	2/8/2021 12:14 PM
Wells, Ken	kenwells3@gmail.com	603.735.5756	A Member of the Public	Myself	Support	No	2/8/2021 2:13 PM
Lenz, James	jelenz@comcast.net	603.469.3402	A Member of the Public	Myself	Support	No	2/8/2021 4:57 PM
Umiker, Richard	rick.umiker@gmail.com	508.215.7798	A Member of the Public	Myself	Support	No	2/8/2021 5:14 PM
Storrs, Caroline	pcstorrs@gmail.com	603.675.9376	A Member of the Public	Myself	Support	No	2/8/2021 6:02 PM
Liebowitz, Susan	s.w.liebowitz@gmail.com	603.675.2414	A Member of the Public	Myself	Support	No	2/8/2021 6:30 PM
Steel, Sandy	selizabethsteel@gmail.com	603.469.3927	A Member of the Public	Myself	Support	No	2/9/2021 8:39 AM
Poor, Daniel	dpoor45@gmail.com	603.675.6805	A Member of the Public	Myself	Support	No	2/9/2021 9:41 AM
moe, carmelita	carmelitaymoe@outlook.com	603.977.0025	A Member of the Public	Myself	Support	No	2/9/2021 10:10 AM
Wolf, Daniel	dan@hodan.com	603.763.5176	An Elected Official	Myself	Support	No	2/9/2021 10:43 AM
Bruce, Susan	susanb.red@mac.com	603.730.7078	A Member of the Public	Myself	Support	No	2/9/2021 11:45 AM
Cote, Lois	lcote06@outlook.com	111.111.1111	A Member of the Public	Myself	Support	No	2/9/2021 5:17 PM
Richman, Susan	susan7richman@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/9/2021 5:24 PM
Sharf, Joanna	josharf@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/9/2021 7:48 PM
Beaudoin, Jennifer	jenniferbeaudoin@comcast.net	111.111.1111	A Member of the Public	Myself	Support	No	2/9/2021 11:49 PM
kwasnik, joseph	jkwasnik25@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 6:30 AM
Jakows, Linds	ljjakows@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/10/2021 11:30 AM
Smith, J. J.	jaycmd7699@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/10/2021 12:33 PM
demark, richard	demarknh114@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/10/2021 1:19 PM
Beaupre', Donna	stephenbeaupre@tds.net	111.111.1111	A Member of the Public	Myself	Support	No	2/10/2021 7:48 PM
Beaupre', Stephen	stephenbeaupre@tds.net	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 8:16 AM
freeman, lynn	lef285@gmail.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 9:43 AM
Martin, Patricia	pmartin2894@yahoo.com	111.111.1111	A Member of the Public	Myself	Support	No	2/11/2021 10:48 AM



# Testimony

**Archived:** Wednesday, April 21, 2021 10:06:05 AM

**From:** [denise kwasnik](#)

**Sent:** Thursday, February 11, 2021 6:37:13 AM

**To:** ~[House Science Technology and Energy](#)

**Subject:** NH House Remote Testify: 11:00 am - HB396 in House Science, Technology and Energy

**Importance:** Normal

**Attachments:**

[kwasniktestimonyHB39602092021.pdf](#) 

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To House STE Committee Members:

Please find attached my written testimony in support of HB 396. I do not plan to provide oral testimony on this bill.

Regards,

Joseph Kwasnik

54 Pleasant Street, Unit 8

Concord, NH 03301

6037307148

February 9, 2021

Chairman Michael Vose  
Science, Technology and Energy Committee  
New Hampshire House of Representatives

RE: HB396-AN ACT relative to credits for certain energy production not issued  
renewable energy certificates-Citizen Testimony

Dear Chairman Vose:

I am today submitting written testimony *in support* of HB396. My reasons for support of the bill are as follows:

1. RSA 362-F:6, II-a currently requires the Public Utilities Commission (PUC) to utilize a methodology to estimate the total yearly production of electric utility customer-sited generation sources that are net metered under RSA 362-A:9 and for which Class I or II renewable energy certificates (RECs) are not issued. Providers of electricity required to obtain and retire RECs under law receive an annual credit from the electricity production referenced above. Each year the PUC calculates and makes public the REC percentages for each provider of electricity and each provider then calculates and claims its share of RECs for compliance purposes under the Renewable Portfolio Standard (RPS).
2. HB396 eliminates this methodology of electricity providers claiming and utilizing RECs attributable to these net metered generation sources .
3. This bill is correct in determining that this process of "REC sweeping" is inappropriate and that the providers of electricity have no legal right to utilize the renewable energy attributes of these customer-sited generation sources for compliance with their RPS obligations. Under this bill, the PUCs sole role is to calculate the electricity production from these sources.

This bill should pass.

Regards,

Joseph Kwasnik  
54 Pleasant Street, Unit 8  
Concord, NH 03301  
6037307148

February 11, 2021

The Honorable Chair, Representative Michael Vose  
House Science, Technology and Energy Committee  
Legislative Office Building Room, 304  
Concord, NH 03301

**Re: HB 396, The Renewable Energy Property Restoration Act of 2021**

Dear Chairman Vose and Members of the Committee:

As a practicing New Hampshire attorney with a degree in energy regulation and law, I appreciate this opportunity to testify on HB 396, also known as the Renewable Energy Property Restoration Act of 2021. I support HB 396 because it abolishes the practice known as “REC sweeping,” which allows New Hampshire electric providers to seize without payment the renewable energy attributes produced by other New Hampshire businesses and residents and use them to meet their own Renewable Portfolio Standard (“RPS”) obligations. As New Hampshire electric providers are granted this authority by state law, this practice constitutes a government seizure and transfer of private property without just compensation and therefore violates the Fifth Amendment of the U.S. Constitution and part I, article 12 of the New Hampshire Constitution. The General Court should therefore pass HB 396, which abolishes the REC sweeping provisions of RSA 362-F:6, II-a, in order to end this serious infringement of New Hampshire citizens’ constitutional rights.

RSA 362-F:6, II-a currently allows electricity providers to claim REC credits for the renewable energy self-generation of private New Hampshire residents and businesses who choose not to register as REC producers without any compensation to these residents or businesses. Electricity providers are able to apply these REC credits towards their obligation to “obtain and retire” sufficient RECs to satisfy their minimum RPS requirements. *Id.*; RSA 362-F:3. However, the RPS statute’s anti-double counting provisions only allow electricity providers to use renewable energy to satisfy their RPS requirements if the underlying renewable energy attributes have *not* “been or will be . . . claimed[] or represented as part of any other electrical energy output.” RSA 362-F:7. As RSA 362-F:6, II-a expressly allows electricity providers to use the renewable energy attributes of New Hampshire residents’ renewable self-generation to meet their RPS requirements, this means that New Hampshire residents cannot claim or represent that their self-produced electrical energy output subject to “REC sweeping” is renewable—not even the portion they physically consume for their own use behind the meter.

RSA 362-F:6, II-a severs the renewable energy attributes from the physical electricity New Hampshire residents self-generate, and reassigns those attributes to the general pool of electricity New Hampshire electricity providers deliver to their customers. In other words, RSA 362-F:6, II-a transfers ownership of the renewable energy attributes of energy New Hampshire residents

produce and consume themselves to electricity providers without their knowledge or any compensation.

Renewable energy attributes constitute a property interest that has financial value independent of their use for RPS compliance. Under federal law the right to claim the use of renewable energy follows the ownership of the renewable energy attribute, usually represented by a REC, and not the ownership of the physical electricity. Many businesses and individuals purchase renewable energy attributes in voluntary REC markets, or spend money to self-generate their own renewable energy, in order to have the legal right to say the energy they consume is renewable. However, if a business or individual wants to claim they are consuming their own self-generated renewable energy, they must retain ownership of the renewable energy attributes they create. Depriving private entities of ownership of the renewable energy attributes of their own renewable generation thus deprives them of a property right with real world financial value.

Indeed, Federal Trade Commission (FTC) regulations make it illegal for businesses to market themselves as using renewable energy if they do not own the renewable energy attributes associated with the energy in question. *See* 16 C.F.R. § 260.15(d). This is true even when a business uses the physical electricity from renewable self-generation to power its own operations. If that business sells—or otherwise loses ownership of—the renewable energy attributes of its self-generation, it loses the right to claim that it is using renewable energy. *See id.* § 260.15, ex. 5 (explaining that if a business installs a rooftop solar array and transfers the renewable energy attributes of the resulting solar electricity to another entity, then it has “transferred the right to characterize that electricity as renewable” even if it “uses the electricity generated by the solar panels” itself). FTC regulations also prohibit that business from even mentioning that it owns or hosts a renewable energy generator, unless it expressly notes that it does not use the renewable energy it generates. *See id.* (“It also would be deceptive for [such a business] to advertise that it ‘hosts’ a renewable power facility because reasonable consumers likely interpret this claim to mean that the manufacturer uses renewable energy.”).

RSA 362-F:6, II-a’s “REC sweeping” provisions thus place innocent New Hampshire business owners in the position of unknowingly violating FTC regulations, thereby leaving them vulnerable to FTC enforcement actions. Most New Hampshire businesses would likely (and understandably) assume that installing a solar array on their business premises entitles them to market their businesses as solar-powered—or at the very least entitles them to advertise the fact that they *have* a solar array. Some small New Hampshire business owners with solar arrays have undoubtedly made such claims in their advertising, unaware that electricity providers’ state-sanctioned seizure of their renewable energy attributes renders such marketing claims illegal under FTC regulations. Thus, “REC sweeping” exposes New Hampshire business owners to legal jeopardy in addition to depriving them of their property without compensation.

In summary, by seizing the renewable energy attributes of New Hampshire residents’ and businesses’ own renewable self-generation, the current version of RSA 362-F:6, II-a deprives

them of their property rights to use their own renewable energy and legally market themselves as renewable energy users. Even worse, it deprives them of these financially valuable property rights without their knowledge or any compensation whatsoever. Such an uncompensated seizure of private property, effected by state power, is a blatant violation of both the State Constitution and the Federal Constitution. *See* U.S. CONST. amend. V (“No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken . . . without just compensation.”); *Opinion of the Justices*, 131 N.H. 504, 510, 555 A.2d 1095, 1099 (1989) (quoting *State v. Garceau*, 118 N.H. 321, 323, 387 A.2d 330, 331 (1978)) (“State law under part I, article 12 of the Constitution of New Hampshire is comparable to its federal counterpart . . . . Although article 12 does not in terms guarantee compensation for taking by eminent domain . . . this court has ‘inferred a right to just compensation.’”).

The General Court should pass HB 396 and abolish the unconstitutional practice of “REC sweeping” in order to ensure New Hampshire law respects the property and constitutional rights of its residents.

Sincerely,

Ian R. A. Oxenham, Esq.  
Attorney at Law

Bill as  
Introduced

HB 396 - AS INTRODUCED

2021 SESSION

21-0202

10/08

HOUSE BILL           **396**

AN ACT               relative to credits for certain energy production not issued renewable energy certificates.

SPONSORS:          Rep. Oxenham, Sull. 1; Rep. McWilliams, Merr. 27; Sen. Watters, Dist 4

COMMITTEE:        Science, Technology and Energy

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ANALYSIS

This bill requires the public utilities commission to report its estimates of total yearly production for customer-sited sources that are net metered but which are not issued renewable energy certificates and removes the credit to electric providers.

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



STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to credits for certain energy production not issued renewable energy certificates.

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

1 1 Short Title. This act shall be known as the “Renewable Energy Property Restoration Act of  
2 2021.”

3 2 Findings. Recognizing that the renewable energy attributes of renewable energy generation  
4 constitute property interests, whether or not they are tracked in the form of renewable energy  
5 certificates, the general court finds that New Hampshire residents have a right to keep the  
6 renewable energy attributes of their own self-generated renewable energy. The practice known as  
7 “REC sweeping” under RSA 362-F:6, II-a unconstitutionally deprives New Hampshire residents of  
8 their private property by seizing and transferring ownership of the renewable energy attributes of  
9 their self-generated renewable energy without notice or compensation. The general court recognizes  
10 that under Federal Trade Commission regulations New Hampshire small businesses can only legally  
11 claim to be using their own self-generated renewable energy if they maintain ownership of such  
12 renewable energy attributes. Therefore, by seizing such renewable energy attributes without notice,  
13 REC sweeping unjustifiably exposes innocent small business owners who mistakenly but honestly  
14 believe they are using their self-generated renewable energy to the threat of a Federal Trade  
15 Commission enforcement action. The general court therefore intends that this act protects small  
16 businesses and ensures that New Hampshire law complies with constitutional requirements and  
17 removes the REC sweeping provisions of RSA 362-F:6, II-a.

18 3 Renewable Energy Certificates; Credit Removed; Reports. Amend RSA 362-F:6, II-a to read as  
19 follows:

20 II-a. The commission shall establish a methodology to estimate the total yearly production  
21 for customer-sited sources that are net metered under RSA 362-A:9 and for which class I or II  
22 certificates are not issued. For purposes of estimation, the commission shall use a capacity factor  
23 rating of 20 percent for each installation and shall keep class II production separate from class I  
24 production. ~~[Providers of electricity required to obtain and retire certificates under RSA 362-F:3  
25 shall receive an annual credit for such production.]~~ By February 28 of each year, the commission  
26 shall compute and make public ~~[credit percentages that are equal to the estimated production for the  
27 prior calendar year in each class divided by the total amount of electricity supplied by providers of  
28 electricity to end use customers in the prior calendar year, with the result converted to a percentage.  
29 Each provider may then, at the time of its annual report filing under RSA 362-F:8, claim a class I  
30 and a class II certificate credit equal to the credit percentage times the total megawatt hours of~~

HB 396 - AS INTRODUCED

- Page 2 -

- 1 ~~electricity supplied by the provider to its end-use customers the prior calendar year]~~ *estimates of*
- 2 *the total yearly production for such customer-sited sources.*
- 3       4 Effective Date. This act shall take effect 60 days after its passage.