

REGULAR CALENDAR

March 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Science, Technology and Energy to which was referred HB 1645-FN,

AN ACT requiring notification to renewable energy customer-generators of issues related to renewable energy credits. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Lex Berezhny

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Science, Technology and Energy
Bill Number:	HB 1645-FN
Title:	requiring notification to renewable energy customer-generators of issues related to renewable energy credits.
Date:	March 3, 2022
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

"The bill before you is convoluted and difficult and is presented as a consumer notification bill," was the opening testimony for this bill by the prime sponsor. This bill would require the Department of Energy (DOE) to send notices to all electricity customer-generators whose unclaimed renewable energy production had been credited to electric providers to be swept and converted into renewable energy certificates. The DOE would further be empowered to delegate this task by requiring distribution companies to send these notices. It was not clear how much these notices would cost to generate and send. It was the prime sponsor's request that this bill be replaced with an amendment containing text substantively like HB 396 from 2021, which this committee judged Inexpedient to Legislate. This provision has been in statute for over 10 years, and has never been challenged in court. The majority finds that sending notices for unclaimed, or unclaimable, renewable energy certificates is unnecessary and that allowing electricity providers to claim these certificates reduces the electric rates for ratepayers.

Vote 12-10.

Rep. Lex Berezhny
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Science, Technology and Energy

HB 1645-FN, requiring notification to renewable energy customer-generators of issues related to renewable energy credits. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Lex Berezhny for the **Majority** of Science, Technology and Energy. "The bill before you is convoluted and difficult and is presented as a consumer notification bill," was the opening testimony for this bill by the prime sponsor. This bill would require the Department of Energy (DOE) to send notices to all electricity customer-generators whose unclaimed renewable energy production had been credited to electric providers to be swept and converted into renewable energy certificates. The DOE would further be empowered to delegate this task by requiring distribution companies to send these notices. It was not clear how much these notices would cost to generate and send. It was the prime sponsor's request that this bill be replaced with an amendment containing text substantively like HB 396 from 2021, which this committee judged Inexpedient to Legislate. This provision has been in statute for over 10 years, and has never been challenged in court. The majority finds that sending notices for unclaimed, or unclaimable, renewable energy certificates is unnecessary and that allowing electricity providers to claim these certificates reduces the electric rates for ratepayers. **Vote 12-10.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

March 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Science, Technology and Energy to which was referred HB 1645-FN,

AN ACT requiring notification to renewable energy customer-generators of issues related to renewable energy credits. 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:	Science, Technology and Energy
Bill Number:	HB 1645-FN
Title:	requiring notification to renewable energy customer-generators of issues related to renewable energy credits.
Date:	March 3, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

RSA 362-F:6, II-a authorizes the state of NH to seize the property rights of NH citizens and businesses who generate renewable energy (RE) – without their knowledge and without providing any compensation – via a practice known as renewable energy credit (REC) sweeping. REC sweeping constitutes a taking and violates the NH Constitution’s guarantees of property right protection (Part 1, Articles 2 and 12). This statutory provision enables both the regulated utilities and competitive electricity suppliers to meet some or all their Renewable Portfolio Standard (RPS) compliance obligations by means of this seized property. It also prohibits those NH citizens and businesses whose property was seized from claiming to use RE — even if they are powering their home or business with the physical electricity generated by their own solar array. REC sweeping denies NH citizens and businesses who generate RE for their own use the right to use their property; denies them the right to exclude others from using their property; and places them in jeopardy of possible criminal prosecution and either misdemeanor or felony conviction for claiming to use RE in any situation relating to commerce. This pernicious practice also transfers millions of dollars from NH citizens and businesses to private corporations for those corporation’s direct financial benefit. By recommending this bill as Inexpedient to Legislate, the Majority has eliminated a consumer protection notification bill and placed the state of NH in legal jeopardy by continuing to deprive its citizens of their constitutionally guaranteed property rights.

Rep. Lee Oxenham
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Science, Technology and Energy

HB 1645-FN, requiring notification to renewable energy customer-generators of issues related to renewable energy credits. **OUGHT TO PASS.**

Rep. Lee Oxenham for the **Minority** of Science, Technology and Energy. RSA 362-F:6, II-a authorizes the state of NH to seize the property rights of NH citizens and businesses who generate renewable energy (RE) – without their knowledge and without providing any compensation – via a practice known as renewable energy credit (REC) sweeping. REC sweeping constitutes a taking and violates the NH Constitution’s guarantees of property right protection (Part 1, Articles 2 and 12). This statutory provision enables both the regulated utilities and competitive electricity suppliers to meet some or all their Renewable Portfolio Standard (RPS) compliance obligations by means of this seized property. It also prohibits those NH citizens and businesses whose property was seized from claiming to use RE — even if they are powering their home or business with the physical electricity generated by their own solar array. REC sweeping denies NH citizens and businesses who generate RE for their own use the right to use their property; denies them the right to exclude others from using their property; and places them in jeopardy of possible criminal prosecution and either misdemeanor or felony conviction for claiming to use RE in any situation relating to commerce. This pernicious practice also transfers millions of dollars from NH citizens and businesses to private corporations for those corporation’s direct financial benefit. By recommending this bill as Inexpedient to Legislate, the Majority has eliminated a consumer protection notification bill and placed the state of NH in legal jeopardy by continuing to deprive its citizens of their constitutionally guaranteed property rights.

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 1645-FN

BILL TITLE: requiring notification to renewable energy customer-generators of issues related to renewable energy credits.

DATE: March 1, 2022

LOB ROOM: 306-308

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Berezhny

Seconded by Rep. Bernardy

Vote: 12-10

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Fred Plett, Clerk



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

2022 SESSION

Science, Technology and Energy

Bill #: HB1545-FN Motion: ITL AM #: _____ Exec Session Date: March 1, 2022

<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		
Lewicki, John	x		
Somssich, Peter F. Massimilla, Linda		x	
Cali-Pitts, Jacqueline A.		x	
Mann, John E.		x	
Oxenham, Lee Walker		x	
Vincent, Kenneth S. Horrigan, Tim		x	
McGhee, Kat		x	
McWilliams, Rebecca J.		x	
Chretien, Jacqueline H. Hakken-Phillips, Mary		x	
Pimentel, Roderick L.		x	



2022 SESSION

Science, Technology and Energy

Bill #: HB1545-FN Motion: ITL AM #: _____ Exec Session Date: March 1, 2022

Parshall, Lucius

TOTAL VOTE:

			x	
	12		10	

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

PUBLIC HEARING ON HB 1645-FN

BILL TITLE: requiring notification to renewable energy customer-generators of issues related to renewable energy credits.

DATE: January 25, 2022

LOB ROOM: 306-308

Time Public Hearing Called to Order:

Time Adjourned:

Committee Members: Reps. Vose, Thomas, Plett, Harrington, Notter, Berezny, Bernardy, Cambrils, Ploszaj, White, Somssich, Cali-Pitts, Mann, Oxenham, Lewicke, McGhee, McWilliams, Chretien, Pimentel and Parshall

Bill Sponsors:

Rep. Oxenham
Rep. Merner
Rep. McGhee

Rep. McWilliams
Sen. Prentiss

Rep. Pimentel
Sen. Watters

TESTIMONY

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

*Rep. Oxenham – filed a conflict of interest due to owner of a system. She has a special interest this, and could pursue legal action. Vose – Do you have to recuse yourself in executive session Not clear at this time, will resolve before.

Amendment introduced – cannot file legislation substantively similar to last session, but it never made it to the floor, so that doesn't apply. So HB1645 puts to an end unconstitutional taking. No compensation for the taking. REC sweeping is a taking of the renewable attributes of generation – can be separated from electricity, can be bought, sold or otherwise transacted. Renewable attributes are property attributes regardless of whether they are ever registered as RECs. The REC sweeping masks that which is going on. She went on to read an extensive statement that she will supply after the hearing.

Rep. Somssich – Recap, if I have solar array, don't want to get into complications of filing for RECs, utility can claim that energy, is that right? Yes. They take the property right. If someone else claims, you can't. Answer - They are taking excess energy, and property value of RECs. Thomas – Bill is here as introduced, amendment. If enacted, would it cost ratepayer any more money? Answer - Both bill and amendment is to stop process. Effect on ratepayers – Providers are outsider private corporations that get the benefit of this, as well as utilities. Utilities are required to pass on, so yes, but the independent providers simply get the profit. Cali-Pitts – most of energy net-metered, true? Not entirely true – all sorts of situations. Follow-up – difference between sweeping and aggregating RECs? Vose – customer generator sells a REC, utility buys, aggregators collect and sell to the utility. Did we as a committee authorize? It is authorized in statute and rules. Oxenham – Swept RECs never offered for sale. McGhee – could be a lawsuit against state. How do we protect against it? Answer – pass bill. Vose – can you cite supreme court case which makes sweeping of RECs unconstitutional? Property taking without notice =. No case needed. Vose – presumed or potential but not adjudicated? Answer – true. Berezny - this bill only applies to people who don't go through the steps to get credit? Yes. Bernardy – With respect to lawsuit, why wouldn't consider these are abandoned property? She quoted a case but the case involved was sold RECS that weren't indeed renewable. Abandoned – clear renewable attributes are bundled with electrons, but can't be separated or the electricity is null and cannot be called renewable. Somssich – If I have a home, and have this, wouldn't I need to be notified? Otherwise not abandoned? Answer – true. White –

intellectual property and not tangible? Yes. Chretien – taking away ability to sell RECs? Yes. Plett – some people don't bother, why is this a taking?

Griffin Roberge – DOE – Department is neutral – amendment – uncomfortable on amendment till reviews, but original language had DOE sending out mass mail, they would want to shift responsibility to utilities, which may have rate impacts. Amendment would repeal the sweeping, PUC regularly conducted reviews with stakeholders, make recommendations – no consensus on credits – some in favor, others thought should be eliminated to raise the requirement RECs. The PUC thought reasonable to continue as is. Under RPS some receive REC certification – without certification no way to capture. 2018 RPS review. Thomas - Amendment not yet introduced into committee.

Donna Gamache – Griffin spoke on matters I wanted to discuss. RECs are not being created, too small. Since customers required to pay, it would be used to offset costs otherwise would have to pay. Utility doesn't keep. Statewide \$2.5 million, Eversource \$1 million. That would raise consumer rates? Yes. Chretien – Some people don't certify, just too small. One MWH takes a REC. Some systems too small. If ratepayers put into fund, all ratepayers should get a credit.

Kelly Buchanan Clean Energy NH – Clean Energy NH supportive. They see REC sweeping as problematic. McGhee – question Class II RECs collapsing? Can you say more? Answer. Disincentivized with low prices - \$5 per MWh – sweeping makes this low in part.

Somssich – prices are different in different states. Yes.

Respectfully Submitted,

Rep Fred Plett

House Remote Testify

Science, Technology and Energy Committee Testify List for Bill HB1645 on 2022-01-25

Support: 54 Oppose: 0 Neutral: 0 Total to Testify: 0

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<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Watters, Senator David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/19/2022 12:14 PM
Lane, Connie	Concord, NH nhlanes@comcast.net	An Elected Official	Merrimack House District 12	Support	No	No	1/21/2022 5:28 PM
O'Neill, Nan	SALISBURY, NH raptorko@gmail.com	A Member of the Public	Myself	Support	No	No	1/22/2022 1:22 PM
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No	1/22/2022 2:12 PM
Nardino, Marie	Andover, NH mdnardino@gmail.com	A Member of the Public	Myself	Support	No	No	1/22/2022 4:20 PM
Hamer, Heidi	Manchester, NH heidi.hamer@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/22/2022 5:18 PM
Almy, Susan	Lebanon, NH Susan.almy@comcast.net	An Elected Official	Myself	Support	No	No	1/22/2022 9:20 PM
Glass, Jonathan	Cornish, NH jglass1063@gmail.com	A Member of the Public	Myself	Support	No	No	1/23/2022 9:26 AM
Crandell-Glass, Jane	Cornish, NH bostonjane@me.com	A Member of the Public	Myself	Support	No	No	1/23/2022 9:35 AM
Beffa-Negrini, Patricia	Nelson, NH pbeffa@me.com	A Member of the Public	Myself	Support	No	No	1/23/2022 2:42 PM
Gilman, Julie	Exeter, NH Julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Support	No	No	1/23/2022 4:04 PM
Oxenham, Lee	Plainfield, NH leeoxenham@comcast.net	An Elected Official	Myself	Support	No	No	1/23/2022 6:10 PM
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Support	No	No	1/23/2022 7:44 PM

Chase, Wendy	Rollinsford, NH wendy.chase@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/23/2022 7:48 PM
Doherty, David	Pembroke, NH ddoherty0845@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 8:33 AM
Spence, Richard	Dover, NH rtssds2@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 8:41 AM
Meuse, David	Portsmouth, NH David.Meuse@leg.state.nh.us	An Elected Official	Rockingham 29	Support	No	No	1/24/2022 8:46 AM
thompson, julia	durham, NH maple371@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 8:50 AM
Bouchard, Donald	MANCHESTER, NH donaldjbouchard@gmail.com	An Elected Official	Myself	Support	No	No	1/24/2022 9:24 AM
Hakken-Phillips, Mary	Hanover, NH mhp4nhrep@gmail.com	An Elected Official	Myself	Support	No	No	1/24/2022 9:36 AM
Chase, Susan	ANDOVER, NH SRFCHASE@GMAIL.COM	A Member of the Public	Myself	Support	No	No	1/24/2022 10:25 AM
Darling, Gisela	Andover, NH darlinggi@tds.net	A Member of the Public	Myself	Support	No	No	1/24/2022 10:51 AM
levesque, cassandra	Barrington, NH cassandra.levesque@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/24/2022 11:14 AM
kwasnik, joseph	concord, NH jkwasnik25@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 12:58 PM
Krakoff, Nicholas	Concord, NH nkrakoff@clf.org	A Lobbyist	Conservation Law Foundation	Support	No	No	1/24/2022 2:16 PM
Lewis, Elizabeth	Nashua, NH ecop.lewis@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 2:18 PM
Moulton, Caroline	Andover, NH carolinemoulton@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 2:42 PM
Verschueren, James	Dover, NH jd.verschueren@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 3:47 PM
Robinson, Ellis	Grantham, NH EllisMMRobinson@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 6:23 PM
Berk, Bruce	Pittsfield, NH bruce.berk.nh@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 7:50 PM
Torpey, Jeanne	Concord, NH jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No	1/24/2022 8:45 PM

Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 9:37 PM
Wells, Ken	Andover, NH kenwells3@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 9:44 PM
Dontonville, Roger	Enfield, NH rdontonville@gmail.com	An Elected Official	Myself	Support	No	No	1/24/2022 10:12 PM
Hamblet, Joan	Portsmouth, NH jhamblet4@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 10:17 PM
Findley, Sally	Grantham, NH findley.se@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 10:54 PM
Broshek, Mary Anne	Andover, NH mabandsadie@gmail.com	A Member of the Public	Myself	Support	No	No	1/24/2022 11:18 PM
Holt, David	Somersworth, NH dabholt@aol.com	A Member of the Public	Myself	Support	No	No	1/24/2022 11:32 PM
King, Walter	Dover, NH genedocwk@comcast.net	A Member of the Public	Myself	Support	No	No	1/24/2022 11:34 PM
Tucker, Katherine	Wilmot, NH katherine.s.tucker@valley.net	A Member of the Public	Myself	Support	No	No	1/25/2022 6:02 AM
Brennan, Nancy	Weare, NH burningnan14@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2022 7:32 AM
Baber, Kristine	Dover, NH kmbaber@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2022 7:47 AM
Reardon, Donna	Concord, NH bugs42953@aol.com	A Member of the Public	Myself	Support	No	No	1/25/2022 7:51 AM
Courtney, Jo-Ellen	Enfield, NH jecourtney820@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2022 8:01 AM
Smith, suzanne	Hebron, NH suzanne.smith@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/25/2022 9:24 AM
perez, maria	milford, NH mariaeli63@gmail.com	An Elected Official	Myself	Support	No	No	1/25/2022 9:33 AM
Douville, Linda	Grantham, NH Lmdanp@aol.com	A Member of the Public	Myself	Support	No	No	1/25/2022 10:17 AM
Corkery, Catherine	Concord, NH catherine.corkery@sierraclub.org	A Lobbyist	NH Sierra Club	Support	No	No	1/25/2022 10:29 AM
Stinson, Benjamin	CONCORD, NH benrkstinson@gmail.com	A Member of the Public	Myself	Support	No	No	1/25/2022 11:01 AM

Rich, Martha	Enfield, NH martha.rich@thet.net	A Member of the Public	Myself	Support	No	No	1/25/2022 11:09 AM
Ford, Debra	Enfield, NH DEBRA@FORDBK.COM	A Member of the Public	Myself	Support	No	No	1/25/2022 11:43 AM
Dolkart, Vivian	Grantham, NH viviandolkart@comcast.net	A Member of the Public	Myself	Support	No	No	1/25/2022 1:14 PM
Clendenning, Bruce	CONCORD, NH bruce.clendenning@tnc.org	A Lobbyist	The Nature Conservancy, NH	Support	No	No	1/25/2022 2:44 PM
Schuett, Dianne	Pembroke, NH dianne.schuett@leg.state.nh.us	An Elected Official	Merr. Dist. 20	Support	No	No	1/25/2022 11:23 PM



CLEAN ENERGY NH

Your Voice in All Energy Matters

14 Dixon Ave, Suite 202 | Concord, NH 03301 | 603.226.4732

January 25, 2022

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

Testimony on HB1645, requiring notification to renewable energy customer-generators of issues related to renewable energy credits

Dear Chair Vose and members of the Committee,

Clean Energy NH is the Granite State's leading clean energy advocate, dedicated to supporting policies and programs that strengthen our state's economy, protect public health, and conserve natural resources. We are a member-based non-profit representing over 300 individual, business, and municipal members. As we understand the sponsor's intent, HB1645 will be introduced today with a significant, but germane, amendment. **CENH strongly supports HB1645 as amended** and provides the following information regarding renewable energy credits for your consideration.

NEW HAMPSHIRE'S RENEWABLE PORTFOLIO STANDARD (RPS)

The RPS is NH's only existing policy that statutorily promotes renewable energy, making it a crucial policy for growing our clean tech economy, creating new high-paying jobs, increasing energy independence, and protecting the environment. This policy requires 25.2% of NH's electricity to come from renewable sources by the year 2025 and represents a very small fraction of a ratepayer's monthly bill (\$0.0053/kWh in 2020), yet provides tremendous economic and environmental benefits for NH.

Renewable generation types are split into classes, each with annual generation goals (maintained by the Public Utilities Commission):

- Class I: New renewable Energy
 - Class I: Thermal energy (solar thermal, biomass, geothermal)
- Class II: New solar
- Class III: Existing biomass/methane
- Class IV: Existing small hydropower



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Utilities and other electricity suppliers are required to procure electricity from the above sources annually by purchasing Renewable Energy Certificates (RECs) in an open market. One REC represents the renewable characteristics of one megawatt hour of renewable energy generated by the sources above, including solar, biomass, geothermal, wind, hydro, etc. This “REC market” provides a source of income for renewable energy projects, making it an important aspect of project economics for both existing and new projects.

The RPS also establishes the state’s Renewable Energy Fund (REF) which provides rebates for renewable energy projects. According to statute, electric suppliers are required to pay Alternative Compliance Payments (ACPs) if they do not purchase enough RECs on the market. ACPs fund the REF, managed by the Department of Energy, and annually distributes millions of dollars to solar, biomass, wind, and hydro projects that benefit businesses and communities across the state. These funds have leveraged vast sums of private investment with average grant/rebate to private investment ratio of 6:1.

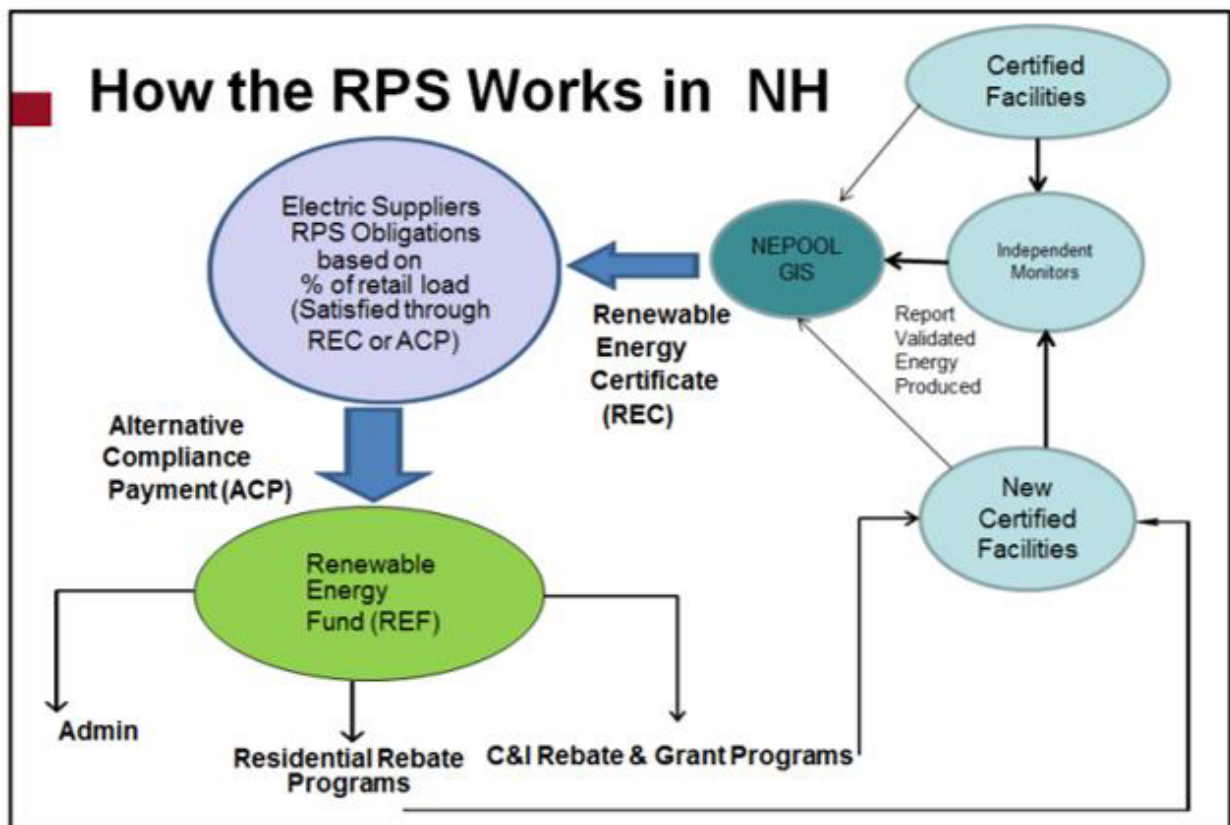


Figure 1: The Renewable Portfolio Standard and how the REC market operates with the



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Renewable Energy Fund¹

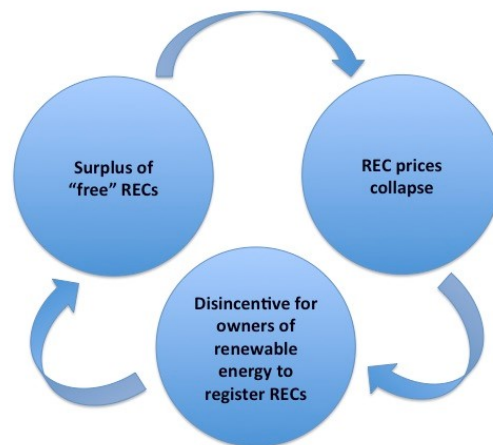
Two things are required for a healthy, robust REC market and ACP revenues to the REF:

1. Strong annual percentage goals for each class, to insure adequate demand for REC purchase on the open market
2. Elimination of “REC sweeping” by which utilities get free credit for unregistered RECs to satisfy their obligation, which HB1645 would achieve.

RENEWABLE ENERGY CERTIFICATES (RECS) & REC SWEEPING

For diverse reasons, not all customer-generators register their REC production. Some customers opt to not produce and sell RECs because they believe doing so will help increase the speed of renewable energy adoption in New Hampshire. Regardless of their motivation, these individuals have made a choice to withhold their RECs from the New Hampshire market.

“REC Sweeping”: A Vicious Cycle



In defiance of this consumer choice, RSA 362-F:6, II-a allows utilities to count unregistered RECs against their compliance obligations at zero cost. As a result, historically, utilities have been able to meet their compliance obligation with these “free” RECs (known as “REC sweeping”). Therefore, they are not purchasing RECs in the market, which has caused a drastic reduction in REC values in the past, as low as \$5.00/MWh in class II.

HB1645 is necessary in order to fulfill the purpose of NH’s Renewable Portfolio Standards and protect consumer confidence. This bill will help address consumer confusion over Renewable Energy Credits. “REC Sweeping” is a loophole in the RPS that allows electricity suppliers to

¹ 2021 PUC Renewable Energy Fund Report

<https://www.puc.nh.gov/sustainable%20energy/Renewable%20Energy%20Fund/2021-ref-report-to-legislature-20211001.pdf>



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“sweep up” unregistered RECs, without paying the owners of the systems that generated them. This surplus of “free” RECs distorts the market by causing REC prices to collapse.

When owners of REC generating systems register and receive REC revenue, it helps to increase the total amount of renewable energy in our energy system because utilities will have to buy RECs instead of getting them for free. In fact, without notification or consent, many RECs are being taken and credited towards required obligations while subverting the statutory purpose of the RPS to encourage renewable energy development. The amended HB1645 closes the REC sweeping loophole that allows utilities to take unregistered RECs from renewable energy system owners at no cost.

When RECs can be used reliably to obtain financing for renewable energy projects, it lowers the overall financing costs of projects for residents and businesses, which brings more projects online. These renewable energy projects can help lower the overall cost of electricity for all ratepayers by increasing distributed generation and fuel diversity, reducing peak demand, and decreasing transmission costs.

For the reasons described above, CENH asks you to find that HB1645, requiring notification to renewable energy customer-generators of issues related to renewable energy credits, ought to pass with an amendment eliminating REC sweeping.

Sincerely,

Kelly Buchanan
Director of Legislative & Regulatory Affairs
Clean Energy NH
Kelly@cleanenergynh.org
303-956-1246

Archived: Tuesday, May 24, 2022 10:40:44 AM
From: [Kelly Buchanan](#)
Sent: Monday, January 24, 2022 10:05:42 PM
To: ~House Science Technology and Energy
Cc: [Sam Evans-Brown](#)
Subject: CENH Testimony HB1459-FN & HB1645
Importance: Normal

Good evening members of the House Science, Technology, and Energy Committee,

Please find attached Clean Energy NH's testimony regarding HB1459-FN and HB1645 attached below.

Thank you,
Kelly Buchanan

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Kelly Buchanan | Director of Legislative & Regulatory Affairs

Clean Energy NH

kelly@cleanenergynh.org

www.cleanenergynh.org | 303.956.1246



Archived: Tuesday, May 24, 2022 10:40:44 AM
From: [Roberge, Griffin](#)
Sent: Monday, January 31, 2022 10:04:37 AM
To: ~House Science Technology and Energy
Cc: [Kristin Grant](#); [Roberge, Griffin](#); [Carrie Morris](#)
Subject: NHDOE Follow-Up to HB 1645-FN
Importance: Normal

Dear Chairman Vose and members of the committee:

Thank you for giving the N.H. Department of Energy (NHDOE) the opportunity to testify on [HB 1645-FN](#). NHDOE is neutral on the bill, but wanted to note a few observations:

- HB 1645-FN as introduced tasks NHDOE with sending a notice to customer-generators and persons who apply to interconnect a customer-sited source that will be net metered that their production will be credited to electricity providers under [RSA 362-F:6, II-a](#), unless they obtain certification to produce Renewable Energy Certificates under the Renewable Portfolio Standard. Page 1, line 28 to page 2, line 36 specifies the language that must be listed in that notice. Page 2, lines 18-28 state that individuals claiming to use renewable energy may be subject to regulatory action by the Federal Trade Commission (FTC). Individuals are being notified that they may be penalized for engaging in certain actions; however, there is no specific reference to the “rule” or “FTC order” that may subject an individual to such regulatory action including civil penalties of up to \$10,000 for every day the violation continues. Should this bill move forward, the committee may wish to specifically reference any such FTC rule or order so as to better inform individuals and businesses how and under what circumstances they may be penalized.
- Page 3, lines 1-7 permits NHDOE to fulfill its notice obligations under HB 1645-FN by requiring electric distribution companies to notice customer-generators or requiring installers of renewable energy systems to do so. NHDOE would very likely impose that requirement on distribution utilities as NHDOE does not have a mechanism to undertake mass mailings to individuals and businesses. That utility notice requirement would likely result in increased costs the utilities would seek to recover through rates charged to their customers.

Representative Oxenham introduced Amendment 2022-2225h (see attached), which is a replacement amendment to HB 1645-FN as introduced. The amendment would repeal the credit mechanism under [RSA 362-F:6, II-a](#). NHDOE is neutral on Amendment 2022-2225h. For informational purposes, NHDOE wanted to note that [HB 309](#) was signed into law during the last legislative session and that legislation reduced the capacity factor used to calculate the net metering credit from 20% to one that tracks an ISO New England forecast methodology using a 13-14% capacity factor.

Given the robust discussion of the [Renewable Portfolio Standard \(RPS\)](#), I thought I would send along a few RPS resources for the committee’s reference. Please click the previous hyperlink as it will take you to the agency webpage that provides more insight on how the NH RPS functions. Per statute, the NHDOE (previously the PUC) is required to complete an annual Renewable Energy Fund (REF) report. This report gives a brief overview of the RPS, as well as program results for the given year. You can find the October 1, 2021 REF report [here](#). Reports from previous years can be found [here](#). The PUC’s [2018 RPS Review](#) provides detail on Class II trends. Please see pages 27-30.

Please let me know if you have any questions.

Very best,

Griffin Roberge
State Energy Program Manager
NH Department of Energy
Phone: (603) 271-8341
E-mail: griffin.j.roberge@energy.nh.gov

Archived: Tuesday, May 24, 2022 10:40:42 AM
From: [Roberge, Griffin](#)
Sent: Wednesday, February 2, 2022 4:39:57 PM
To: [Kat McGhee](#)
Cc: [~House Science Technology and Energy](#); [Kristin Grant](#); [Carrie Morris](#); [Roberge, Griffin](#)
Subject: RE: NHDOE Follow-Up to HB 1645-FN
Importance: Normal

Representative McGhee:

Thanks for the e-mail. Please let me know if you have any questions on any of the RPS materials.

NHDOE is expecting the State's Ten-Year Energy Strategy to be issued in the first quarter of 2022.

Have a good afternoon,

Griffin Roberge
State Energy Program Manager
NH Department of Energy
Phone: (603) 271-8341
E-mail: griffin.j.roberge@energy.nh.gov

From: Kat McGhee <Kat.McGhee@leg.state.nh.us>
Sent: Wednesday, February 2, 2022 11:49 AM
To: Roberge, Griffin <Griffin.J.Roberge@energy.nh.gov>
Cc: [Kat McGhee <Kat.McGhee@leg.state.nh.us>](mailto:Kat.McGhee@leg.state.nh.us); [~House Science Technology and Energy <HouseScienceTechnologyandEnergy@leg.state.nh.us>](#); [Kristin Grant <kristin.grant@leg.state.nh.us>](mailto:kristin.grant@leg.state.nh.us); [Carrie Morris <carrie.morris@leg.state.nh.us>](mailto:carrie.morris@leg.state.nh.us)
Subject: Re: NHDOE Follow-Up to HB 1645-FN

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Mr. Roberge,

Thanks for this follow up and appropriate reference links. It does appear we can all benefit from a better understanding of the complexities of and motivation for, the RPS.

Your update prompts me to ask for the status of the 10 Year Energy Strategy Report (promised December 2021).

I wonder if you have an ETA.

Thanks again for your summary.

regards,
Representative Kat McGhee, M.Ed, PMP
Hillsborough 27, Hollis
House Science, Technology & Energy

[FB@McGhee4StateRep](#)
[Twitter@Kat4NH](#)



On Jan 31, 2022, at 10:02 AM, Roberge, Griffin <Griffin.J.Roberge@energy.nh.gov> wrote:

Dear Chairman Vose and members of the committee:

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Representative Oxenham introduced Amendment 2022-2225h (see attached), which is a replace-all amendment to HB 1645-FN as introduced. The amendment would repeal the credit mechanism under [RSA 362-F:6, II-a](#). NHDOE is neutral on Amendment 2022-2225h. For informational purposes, NHDOE wanted to note that [HB 309](#) was signed into law during the last legislative session and that legislation reduced the capacity factor used to calculate the net metering credit from 20% to one that tracks an ISO New England forecast methodology using a 13-14% capacity factor.

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Please let me know if you have any questions.

Very best,

Griffin Roberge
State Energy Program Manager
NH Department of Energy
Phone: (603) 271-8341
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<Amendment 2022-0225h.pdf>

HB 1645-FN - AS INTRODUCED

2022 SESSION

22-2094
12/08

HOUSE BILL ***1645-FN***

AN ACT requiring notification to renewable energy customer-generators of issues related to renewable energy credits.

SPONSORS: Rep. Oxenham, Sull. 1; Rep. McWilliams, Merr. 27; Rep. Pimentel, Merr. 6; Rep. Merner, Coos 7; Sen. Prentiss, Dist 5; Sen. Watters, Dist 4; Rep. McGhee, Hills. 27

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill requires the department of energy to provide an annual written notice to customer-generators whose production has been credited to providers of electricity, unless those customer-generators obtained certification to be issued class I or class II certificates.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
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 Two

AN ACT requiring notification to renewable energy customer-generators of issues related to renewable energy credits.

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

1 1 New Paragraph; Electric Renewable Portfolio Standard; Definitions. Amend RSA 362-F:2 by
2 inserting after paragraph III the following new paragraph:

3 IV-a. "Customer-generator" shall mean "eligible customer-generator" as defined in RSA 362-
4 A:1-a, II-b.

5 2 New Paragraph; Electric Renewable Portfolio Standard; Renewable Energy Certificates.
6 Amend RSA 362-F:6 by inserting after paragraph II-a the following new paragraph:

7 II-b.(a) Within 30 days of the effective date of this paragraph, and by August 31 of every
8 year thereafter, the department of energy shall provide an annual written notice to customer-
9 generators whose production has been credited to providers of electricity pursuant to paragraph II-a,
10 except for customer-generators who subsequently obtained certification to be issued class I or class II
11 certificates. This notice shall inform the customer-generators that their production has been
12 credited to providers of electricity, and will continue to be credited to providers of electricity unless
13 they obtain certification to be issued class I or class II certificates. This notice shall also inform
14 customer-generators of the options available to them and the consequences of their production being
15 credited to providers of electricity. Finally, this notice shall provide instructions on how customer-
16 generators may obtain certification to be issued class I or class II certificates.

17 (b) Beginning 30 days after the effective date of this paragraph, the department of
18 energy shall ensure that all persons who apply to interconnect a customer-sited source that will be
19 net metered pursuant to RSA 362-A:9 receive, prior to the time their customer-sited source is
20 interconnected, written notice that their production will be credited to providers of electricity unless
21 they obtain certification to be issued class I or class II certificates. This notice shall inform such
22 applicants of the options available to them and the consequences of their production being credited
23 to providers of electricity. This notice shall also provide instructions on how such applicants may
24 obtain certification to be issued class I or class II certificates.

25 (c) The department of energy shall prescribe the form of the notices required by
26 subparagraphs (a) and (b), both of which shall prominently include the following language in
27 substantially the following form:

28 This notice is to inform you that if you do not take affirmative action to have your system
29 certified to create renewable energy certificates (RECs), your generation will automatically be
30 credited to utilities and other retail sellers of electricity (electricity providers). These electricity

HB 1645-FN - AS INTRODUCED
- Page 2 -

1 providers can then use your generation to help meet their renewable portfolio standard (RPS)
2 obligations. This means that the renewable energy you generate will not add any renewable energy
3 to the grid beyond the minimum amount that electricity providers must procure under state law.

4 You should know that your generation may reduce overall renewable energy generation unless
5 your system is certified to create RECs. This is a consequence of the fact that by generating your
6 own energy you reduce the total amount of energy electricity providers sell, which then reduces the
7 total amount of renewable energy that electricity providers are required to procure under the RPS.
8 If you do not certify your renewable energy production via REC certification all of your generation
9 will also be credited towards that reduced total. As a result, unless your system is certified to create
10 RECs, you will reduce the total amount of renewable energy that electricity providers are required to
11 add to the grid by more than the amount of renewable energy that your system will generate. In
12 other words, unless your system is certified to create RECs, you may cause a net reduction in overall
13 renewable energy generation.

14 If you have not certified your system to create RECs, any renewable energy that your net-
15 metered system generated since 2012 has automatically been credited to electricity providers. Thus,
16 renewable energy that you generated in the past may not have provided any increase in renewable
17 energy production and may have indirectly served to reduce overall renewable energy generation.

18 You should know that, according to the federal government, you cannot claim to use the
19 renewable energy that you generate if electricity providers are using it for RPS compliance. This
20 remains true even if you consume some or all of the physical electricity that you generate yourself.
21 This rule is meant to prevent renewable energy double-counting, which could occur if a person
22 claimed to generate and use the same unit of renewable energy that is credited to an electricity
23 provider. Therefore, you may lose the right to claim that you are using renewable energy unless you
24 both: (1) have your system certified to create RECs; and (2) you retain the RECs that you create. If
25 you do not create and retain RECs, the Federal Trade Commission (FTC) may take regulatory action
26 against you for false advertising if you market your home or business as running on the renewable
27 energy that you generate. Failure to comply with any resulting FTC orders may subject you or your
28 business to civil penalties of up to \$10,000 for every day the violation continues.

29 Having your system certified to create RECs, and retaining those RECs will ensure that the
30 renewable energy you generate will be additional to minimum RPS requirements, and ensure that
31 you can legally claim to use your own renewable energy. Having your system certified to create
32 RECs will also allow you to sell RECs for additional income. However, you should know that you
33 will lose the right to claim that you are using renewable energy if you sell your RECs. Electricity
34 providers may use any RECs that you sell for RPS compliance, which means that the renewable
35 energy you generate will not be additional to minimum RPS requirements. You can find instructions
36 on how to have your system certified to create RECs below.

HB 1645-FN - AS INTRODUCED

- Page 3 -

1 (d) The department of energy may fulfill its obligation to provide customer-generators
2 with the written notice required by subparagraph (a), and ensure that applicants seeking to
3 interconnect customer-sited sources that will be net metered under RSA 362-A:9 receive the notice
4 required by subparagraph (b), by requiring distribution companies to provide such written notices to
5 customer-generators and applicants in their service territory and by requiring installers of
6 renewable energy systems that are eligible for net metering to provide such written notice to their
7 customers.

8 3 Effective Date. This act shall take effect 60 days after its passage.

**HB 1645-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT requiring notification to renewable energy customer-generators of issues related to renewable energy credits.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. The Department of Energy was contacted for a fiscal note worksheet initially on 11/10/2021 and again on 12/14/2021. When completed, the fiscal note will be forwarded to the House Clerk's Office.

AGENCIES CONTACTED:

Department of Energy