

Senate Energy and Natural Resources Committee

Griffin Roberge 271-3042

HB 373, relative to state participation in low carbon fuel standards programs.

Hearing Date: April 26, 2021.

Time Opened: 3:20 p.m.

Time Closed: 3:57 p.m.

Members of the Committee Present: Senators Avar, Gray, Watters and Perkins Kwoka.

Members of the Committee Absent: Senator Giuda.

Bill Analysis: This bill prohibits the department of environmental services from participating in discussions of any state, regional, or national low carbon fuel standards program unless specifically directed by the governor.

Sponsors:

Rep. Notter
Rep. Aldrich

Rep. Vose
Rep. Osborne

Rep. Harrington

Who supports the bill: Gregory Moore, Americans for Prosperity - New Hampshire; Representative Doug Thomas, Rockingham - District 5; Dan McGuire; Alvin See; Representative Erica Layon, Rockingham - District 6; Representative Jason Osborne, Rockingham - District 4; Representative Michael Vose, Rockingham - District 9.

Who opposes the bill: Judith Ackerson; Kenneth Ackerman; Dan Adams; David Agans, Wilton, NH; Representative Susan Almy, Grafton - District 13; James Alphen; Ellen Anderson, New Boston, NH; Kathy Anderson, Hancock, NH; Jill Arabas; Luis Aranzabal; Herbert Archer, Mont Vernon, NH; Susan Arnold, Appalachian Mountain Club; Cathleen Arredondo; Emily Auger; Bill Baber, Dover, NH; Doreen Baker; Marian Baker, Hillsboro, NH; Miriam Ball; John Ballentine; Representative Christy Bartlett, Merrimack - District 19; David Bates; Tiffany Bates; Dorothy Bauer; Roberta Beeson; Patricia Beffa-Negrini; Bruce Berk, Pittsfield, NH; Brenda Berkal; Brian Bigelow; James Bingham, Hillsborough, NH; Representative Peter Bixby, Strafford - District 17; Sandra Blanchard; Kathleen Bollerud; Representative Efstathia Booras, Hillsborough - District 33; Joanne Bousquet; Sue Bracy; Nancy Brennan, Weare, NH; Troy Bressette; Ronald Briggs; Marilyn Brock, Bedford, NH; Paul Brock, Bedford, NH; Susan Bruce; Richard Bruno; Mary Burdett; Scott Burns; Catherine Bushueff; Paul Button; Samantha Cabral; Kathy Cahill; Leonard Campbell, Meredith, NH; Representative Tony Caplan, Merrimack - District 6; Barbara Carbonneau; Lilian Carter; Joanne Casino; John Cauble; Representative Wendy Chase, Strafford - District 18; Melinda Chen, Bedford, NH; Ronald Cheney, Frankestown, NH; Alberta Chirico; Susan Chollet, Peterborough, NH; Victor Chouinard; Denise Clark; Martha Clark; Representative John Cloutier, Sullivan - District 10; Douglas Cochrane, Hancock, NH; Eleanor Cochrane, Hancock, NH; Sarah Cohen; Beth Collea; Peter Colpitts; Peter Conti; Barbara Cook; Catherine Corkery, NH Sierra Club; Patricia Cornell; Bev Cotton; Cynthia Coughlin; Susan Covert; Jo Ellen Cuff; Christine Cunningham; Dorothy Currier; Catherine Cutshall, Bedford, NH; Claudia Damon; Gregory Davis, Salem, NH; Claudia Defuria; Katherine Delfino; Michael

Dell Orfano, Amherst, NH; Richard Demark; Lisa DeMio; Doreen Desmarais; Marie Desrosiers, Salem, NH; Karen Dewey; Robert Dewey, Bedford, NH; Honorable Jeanne Dietsch, Peterborough, NH; Larry Disenhof; Corinne Dodge; Daniel Dong; Anne Dontonville, Enfield, NH; Roger Dontonville, Grafton - District 10; Dori Drachman, Peterborough, NH; Chris Duerr; Bryan Dwyer; Patricia Edgerton; Maureen Ellermann; Karlene Embler, Hancock, NH; Connie Evans, Weare, NH; Louise Ewing, New Boston, NH; Lorraine Falcone; Cheri Falk, Wilton, NH; Melinda Fant; Debbie Farr, Weare, NH; Elizabeth Fenner-Lukaitis; Danielle Feole; Bryan Field, Peterborough, NH; Garth Fletcher; Eileen Flockhart; Richard Floreani; Loren Foxx; Marilyn Frederick; Jean Fullerton; John Gage, Windham, NH; Brett Gagnon; Paul Gagnon; Ann Garland; Deborah Gerson, Bedford, NH; Nancy Gillard; Andrew Gillis; Representative Julie Gilman, Rockingham - District 18; Johnson Glenda; Wayne Goldner; Catherine Goldwater; Martha Goodnow; Laurie Gordon; Margaret Gordon; William Gould, New Boston, NH; Nancy Graham; Representative Chuck Grassie, Strafford - District 11; Debra Green, Greenville, NH; Nancy Greenwood; Anne Grossi, Bedford, NH; Kent Hackmann; Vanessa Hale; George Hamblen; Joan Hamblet; Heidi Hamer; Lark Hammond, Kingston, NH; Doris Hampton; Robert Haring-Smith; Representative Mary Heath, Hillsborough - District 14; Robin Helrich; David Hickernell; Adelinda Higgs; Robert Hinkel; Lauren Hoffmann, Salem, NH; Mark Hoffmann; Anthony Holtz; Anne Huberman; Cynthia Hudson; Andrew Hughes; Richard Husband; Janell Hutchins; Katherine Inmam; Nicholas Jackson; Adam Jacobs; Dennis Jakubowski; Susan Jamback; Karen Johnson; Sara Johnson; Stephanie Jones; Robin Kaiser; Robert Kaplan; Claire Karibian; Julian Karibian; Honorable David Karrick, Warner, NH; Eleftheria Keans; Cheryl Keefe; Mary Kelley; Lorraine Kelly; Barbara Jo Kingsley, Peterborough, NH; Kimberly Kirkland; Helmut Koch; Laurie Koch; Catherine Koning; Carol Kraus, Peterborough, NH; Leslie Kruithof; Joy Kubit; Joseph Kwasnik, Concord, NH; Natalie LaBonte; Stacie LaBonte; Deborah Leavitt; Geoff Leitch; Carol Lenahan; Kathleen Letellier; Sheryl Liberman; Mary Lincoln; Lyn Lindpainter; Charlotte Lister; Nancy Lockhart; Camilla Lockwood, Temple, NH; Suzanne Loder; James Lonano; Janet Lucas; Ann Ludders; Dick Ludders; Laura Lynch; Joe Magruder; Katheen Malsbenden; Michelle Manseau, Bedford, NH; Daniel Mares; Ingrid Markman, Hollis, NH; Burdett Mary; Melissa Maurer; Julia Steed Mawson; Janelle Maynard; Kyle McAdam; Representative Rebecca McBeath, Rockingham - District 26; Representative Kat McGhee, Hillsborough - District 27; David McGraw; Dawn McGuire; Brigid McNamee; Peter McVay; Linda Megnin; Carol Meise; Keith Melaas; Katherine Messner, Hudson, NH; Madeleine Mineau, Clean Energy NH; Faith Minton; Karen Mitchell; Donna Mombourquette; Janet Moore; Robin Mower; Deborah Munson; Megan Murray; Marie Nardino; Lisa Nash; Brian Nolen, Bedford, NH; Faith Northrop; Nan O'Neill; Kevin O'Neill; Sam Osherson; Evan Oxenham; Colin Pape, Peterborough, NH; Caitlin Parikh; Sharon Parker; Christine Pattison; Richard Pendleton; Jill Pennington; Ruth Perencevich; Representative Maria Perez, Hillsborough - District 23; Daniel Pickering; Beverly Pietlicki; Rod Pimentel; Alexis Pittman, Wilton, NH; Elizabeth-Anne Platt; Ann Podlipny; Marie Portner; Erin Pospychala; Shana Potvin, Bedford, NH; Robert Powers, Lyndeborough, NH; Faith Priest; Dana Primiano; Karen Primiano; Sharon Provost; Barbara Pugh; Debra Putnam; Cora Quisumbing-King; Jacques Raby; Elissa Rasmussen, Brookline, NH; Mary Raven; Donna Reardon; John Reardon; Barbara Reed; Wendy Rega; Annie Rettew; Charles Rhoades; Matthew Richards; Susan Richman, Durham, NH; Carolyn Richmond; Moira Rivas; Nancy Roberts; John Russell, Bedford, NH; Honorable Rick Russman, Kingston, NH; Eric Ryherd, Hollis, NH; Rich Satagaj; Judith Saum; Honorable George Saunderson, Loudon, NH; Margaret Sauvain; Joe Schapiro; Lois Scribner; Dana Seeley; Roger Shamel, Hillsborough, NH; Susan Shamel, Hillsborough, NH; Veronica Shelley; Honorable Marge Shepardson, Marlborough, NH; David Simpkin; Representative Suzanne Smith, Grafton - District 8; Kristina Snyder; Eric Soederberg; Tamara Sorell, Brookline, NH; Louise Spencer; Kathy Spielman; Paul Spivack, Bedford, NH;

Lou Springer; Diane St. Germain, Bedford, NH; Joseph Stehno, Weare, NH; Janet Stone; Caroline Storrs; Frances Straccia; Katherine Stratemeyer; Frances Taylor; Matthew Termini; Julia Thompson; Laura Thompson; Katherine Thorndike; Jeanne Torpey; Ted Toscano; Bruce Tucker; Kathy Tucker; Naomi Tucker, Peterborough, NH; Thomas Tullio; Representative Suzanne Vali, Hillsborough - District 30; Pamela Van Arsdale; Jim Verschuere; Laura Vincent; Mauricio Vivado, Bedford, NH; April Walker, Greenville, NH; Janet Ward; Garvin Warner; Laurie Warnock, Hampstead, NH; Patricia Waterman; Raymond Waterman; Margaret Watkins, NH Audubon; Nick Watson; Stephanie Watson; Jill Weber; Honorable Ken Wells, Andover, NH; Lee Wells; Rob Werner, League of Conservation Voters; Representative Joyce Weston, Grafton - District 8; Sage Wheeler; Gwen Whitbeck; Gretchen Whitcomb, Temple, NH; Mary Wilke; Candace Williams; Maura Willing; Dale Wisler, Atkinson, NH; Elizabeth Wisler; Peter Wotowiec; Susan Wyatt; Timothy Wyatt; William Yacopucci; Jamie Young; Barbara Zaenglein; Eric Zaenglein; Julie Zimmer; Mary Zweighaft, Greenfield, NH.

Who is neutral on the bill: Bill Bardsley; Michael Fitzgerald, NH Department of Environmental Services.

Summary of testimony presented in support:

Representative Jeanine Notter
Hillsborough – District 21

- HB 1487 (2012) created RSA 21-O:23, which prohibited the state from joining, implementing, or participating in any state, regional, or national low carbon fuel standards program that required quotas, caps, or mandates on fuels used for transportation, industrial purposes, or home heating without prior legislative approval. The bill also permitted the NH Department of Environmental Services (NHDES) to engage in regional and national discussions of such programs and required NHDES to report all expenses resulting from such discussions to the Joint Legislative Fiscal Committee on a semi-annual basis.
- HB 373 would amend RSA 21-O:23 to prohibit NHDES from participating in discussions or planning of such low carbon fuel standards programs unless specifically directed by the Governor or designed representative on a case by case basis. This bill would prevent the NH Department of Environmental Services (NHDES) from spending staff time and resources on taking part in Transportation and Climate Initiative (TCI) discussions.
- The TCI is a cap and trade program that would impose a cap on the release of carbon emissions from gasoline vehicles, which would force gas distributors to pay for allowances to sell gasoline above the carbon emissions cap. Revenues collected from the allowances would be sent back to TCI participating states in which the gasoline was purchased.
- The TCI program amounts to a regressive tax, meaning the program imposes a tax that places a higher burden on lower income households. TCI could be harmful to NH's seniors, those living on fixed incomes, and the working poor. NH's workers should not have to pay more to commute to work.
- Nearly every good that NH's citizens purchase at stores is transported to that store by trucks. TCI would drive up the cost of goods as it would cost more to run the trucks that deliver those goods to the store. This increase would be passed along to consumers.
- Unlike the NH General Court that is accountable to the voters for any taxes it imposes, TCI shifts the responsibility of raising TCI costs to an unelected and unaccountable board. The public deserves the right to know who is taking money out of their pocket.
- Governor Sununu made clear in December 2019 that NH would not take part in TCI. However, the TCI website says that NH is a participant because RSA 21-O:23 allows NHDES to spend time and money reviewing TCI proposals that NH is not going to enter. To date, NHDES has spent nearly 800 hours of staff time at a cost of nearly \$50,000 on these TCI discussions.
- Those opposed to HB 373 may contend that electric vehicles are the way of the future. If this is true, then the free market will get NH there without TCI.
- Senator Watters noted that Senator Jeb Bradley helped craft the final language in HB 1487 (2012), which made clear that NH would not join any state, regional, or national low carbon fuel standards program

without receiving legislative approval. He asked if Representative Notter had contacted Senator Bradley about HB 373.

- Representative Notter said she had not contacted Senator Bradley. She first heard of TCI from the American Legislative Exchange Council (ALEC). While NH is not joining TCI, NH continues to spend money and resources on going to TCI meetings. NH should look to save money where it can and spend tax dollars wisely.
- Senator Watters admitted he was agnostic toward TCI. Senator Watters said some states will join TCI while others will not. There could be an impact on NH's citizens if other states participate in TCI. He asked if it made sense to have NH's representatives involved in TCI meetings to know what is being discussed.
 - Representative Notter said residents in other states should get their gasoline in NH, which would save them money. Other states should look to NH on how to form their public policies.
- Senator Watters said TCI allows states to determine how they will spend the revenues they receive under the program. MA will direct those funds to low income households and efficiency for truckers. He asked if it was true that states could determine how to spend those funds.
 - Representative Notter said she could not speak to how other states are planning on using their TCI revenues. Representative Notter is only concerned how NH spends its tax dollars. NH has plenty of taxes and does not need anymore. Every dollar NH citizens make counts. Spending more on gas to get to work is not a good idea and represents a hardship for everyone. As a member of the House Science, Technology, and Energy Committee, Representative Notter has heard testimony in support of measures to increase the cost of gasoline and force consumers to purchase cleaner, electric vehicles. Electric vehicles are expensive as well. Electric vehicles also need batteries made of cobalt and lithium to work. Natural gas is used to get those two resources.

Representative Doug Thomas

Rockingham – District 5

- HB 373 as introduced was overly restrictive. The bill sought to prohibit NHDES from taking part in any low carbon fuel standards program discussions. Representative Thomas introduced amendment 2021-0455h to amend the bill to prohibit NHDES from participating in discussions or planning of low carbon fuel standards programs unless specifically directed by the governor or designated representative on a case by case basis. This amendment gives the governor the latitude to allow state agency representatives to participate in program discussions.

Gregory Moore

NH State Director, Americans for Prosperity – New Hampshire

- In response to Representative McGhee's testimony, Mr. Moore clarified that Americans for Prosperity – New Hampshire did not write HB 373. Mr. Moore spoke with HB 373's prime sponsor Representative Notter about the legislation, but Mr. Moore did not write HB 373's language.
- Mr. Moore was the Chief of Staff in the NH House of Representatives when HB 1487 was signed into law. There was a feeling to at least keep NHDES involved in regional discussions on low carbon fuel standards programs.
- The TCI launched in 2010 with a Declaration of Intent signed by 11 states and the District of Columbia. To date, only three states – MA, CT, RI – and the District of Columbia have signed onto a draft memorandum of understanding (MOU). TCI's goal is to make gasoline unaffordable to transition away from fossil fuels.
- A November 2020 report from the Center for State Policy Analysis at Tufts University suggested that TCI could raise gasoline prices by 25 cents per gallon. This is effectively a gas tax increase.
- While Governor Sununu made clear that NH will not participate in TCI, HB 373 is an effort to redirect NHDES' limited resources. NHDES should not spend its time and resources on programs that NH will not participate in. NHDES can better spend its time and resources on other issues.
- Senator Watters referenced Mr. Moore's testimony that TCI seeks to make gasoline unaffordable. He asked if Mr. Moore could show where in TCI's MOU that TCI seeks to make gasoline unaffordable.
 - Mr. Moore said the language does not exist in TCI's MOU, but exists on the TCI's websites and within the framework of TCI's discussions, as well as on one of TCI's briefing documents. Mr. Moore has followed the TCI discussions closely. TCI has been facilitated by the Georgetown Climate Center. TCI has been a transparent and public initiative.
- Senator Avard asked if Mr. Moore felt HB 373 imposed a gag rule on NHDES.
 - Mr. Moore said he did not feel HB 373 imposed a gag rule on NHDES. The NH General Court sets the policy tone for the state. Through HB 1487, NH made it a public policy to be skeptical of low fuel

carbon standards programs and to have legislative approval. HB 373 sends the message that NH is not interested in TCI. That is an important message for state agencies to hear.

- Senator Watters noted that Governor Sununu's statement about NH not participating in TCI was very clear. He wondered if Governor Sununu and state agencies really needed the NH General Court to provide additional clarification.
 - Mr. Moore said he agreed with Senator Watters about Governor Sununu's statement on TCI. Passing HB 373 forces a conversation in which direction the state should go on low carbon fuel standards programs.
- Senator Watters noted that HB 373 as amended by the House does not require the governor to seek legislative approval from the NH General Court to allow NHDES take part in any TCI regional discussions. Any future governor could permit NHDES to take part in those discussions.
 - Mr. Moore said that even after Governor Sununu refused to have NH participate in TCI, NHDES continued to monitor those discussions. Based on reports submitted to the Joint Legislative Fiscal Committee, NHDES spent a total of 9 hours at a cost of \$455.93 from January 1, 2020 to June 30, 2020 and 12 hours at a cost of \$683.60 from July 1, 2020 to December 31, 2020 for participation in regional discussions.
- Senator Watters said it sounded like Mr. Moore was criticizing Governor Sununu for not having NHDES do what he told them to do.
 - Mr. Moore said agency and department heads are sometimes not appointed by the current governor. Agencies can sometimes move in different directions of a current governor and there is little that a governor can do within his authority. Every governor will inherit the agency and department heads of the previous governor. It is important to put in checks to ensure a governor and state agencies are on the same page.

Summary of testimony presented in opposition:

*Representative Kat McGhee – provided written testimony
Hillsborough – District 27*

- HB 373 was written at the request of fossil fuel lobbyists as a gag rule on NHDES' ability to engage in discussions with other states, regional energy organizations, and even the federal government on low carbon fuel standards programs. During HB 373's public hearing in the House Science, Technology, and Energy Committee, Representative McGhee asked Mr. Moore of Americans for Prosperity – New Hampshire if he had written the bill and he said he had.
- HB 373 is an unnecessary bill. Governor Sununu has already decided that NH will not be a signatory to TCI. NH is a casual observer and is simply taking part in TCI discussions and meetings to provide information to the NH General Court about the program. NH is not losing any money by taking part in these TCI discussions. NHDES' staff is paid the same amount of money regardless of what it is they are researching or doing on behalf of the state.
- Senator Watters said RSA 21-O:23 currently states that NHDES may engage in regional and national discussions of low carbon fuel standards programs. The statute does not require NHDES to engage in those discussions. Therefore, Governor Sununu currently had the authority to prohibit NHDES from taking part in TCI discussions. He asked if HB 373 sent the message that the NH General Court does not trust Governor Sununu to keep NH out of the TCI.
 - Representative McGhee said Senator Watters was correct that RSA 21-O:23 currently gives the governor the ability to keep NHDES out of any low carbon fuel standards program discussions. Representative McGhee was concerned that HB 373 came at the request of a lobbyist who is trying to get in the middle of the governor and a state agency. HB 373 interferes with the coordination of a state agency and the governor that presides over that agency. Governor Sununu has made it clear that NH will not be a TCI participant.
- Senator Perkins Kwoka asked if it was fair to say that it was the state staff's responsibility to know what policies or programs are taking place at the regional or federal levels in order to better inform the governor and the NH General Court.
 - Representative McGhee said she agreed with Senator Perkins Kwoka. Much has been done in the past decade to reduce carbon emissions in the electric generation sector. There is a growing emphasis to lower carbon emissions in the transportation sector. NHDES staff is paid to provide NH information about air pollution, air quality, and what discussions are taking place on the regional

levels to reduce carbon emissions. It does not make sense ask a state agency to cover their ears and close their eyes on TCI discussions.

- Senator Avard referenced Representative McGhee's testimony that HB 373 was written by a lobbyist. He asked if Representative McGhee was suggesting that lobbyists should not be allowed to craft any legislative language for legislators.
 - Representative McGhee said the NH General Court relies on those who regularly interact with legislators, such as lobbyists, for information on different subject matters. Working to prevent the state from taking part in TCI discussions is a step beyond that. Americans for Prosperity – New Hampshire may have an interest in preventing those discussions through HB 373, but HB 373 is not beneficial to NH citizens.
- Senator Avard asked how Representative McGhee would feel if HB 373 was signed into law.
 - Representative McGhee said that Governor Sununu has already made it clear to NHDES that the TCI is something that they can be tangentially aware of, but that NH will not participate in TCI. NHDES is simply taking part in TCI discussions to know how the program is developing. Preventing NHDES from taking part in these discussions is overkill and does not benefit NH.

*Susan Richman
Durham, NH*

- There is no point prohibiting NH's state experts from talking with other states taking part in regional programs.

Neutral Information Presented:

Michael Fitzgerald – provided written testimony

Assistant Director, Air Resources Division, NH Department of Environmental Services (NHDES)

- NHDES takes no position on HB 373.
- NHDES has previously participated in TCI discussions in order to ensure the state's economic and environmental interests were appropriately represented, and to determine any potential impacts or benefits to the state (whether or not NH is a participant) in order to properly advise the governor of the nature of these discussions.
- Transportation fuels are a regional commodity and fuel prices at the terminal reflect the regional market. Due to its relatively small fuel usage in comparison to other states in the region, NH does not set, or even heavily influence, regional prices or supply. If a regional standard is implemented by other Northeast states, there may be an impact on the regional cost of transportation fuels that could affect NH.
- No state agency, including NHDES, is authorized to implement a regional program in NH without specific authorization from the NH General Court. NHDES took part in discussions regarding the implementation of a regional low carbon fuel standard between 2008 and 2015 as well as subsequent regional discussions regarding the development of a regional "cap and invest" policy to reduce greenhouse gas emissions from the transportation sector. Since 2012, the cost of any participation in such discussions has been reported to the NH General Court as required by RSA 21-O:23 and totals \$47,478 over the nine-year period.
- In December 2019, the participating TCI jurisdictions (not including NH) released a draft "Memorandum of Understanding" as well as modeling results that evaluated the economic and health benefits that could result from such a program. Due to NHDES' involvement in the regional discussions, NHDES was able to fully inform Governor Sununu of the regional program plan prior to any public announcement by other TCI states. Governor Sununu subsequently announced that NH would not be participating in any further development of a regional cap and invest program. NH continues to participate in a very limited fashion to hear periodic updates regarding the progress of the cap and invest policy, but only to fully inform state leadership of these developments and any potential impacts on the state.
- HB 373 prohibits NHDES from participating in discussions or planning of low carbon fuel standards programs unless specifically directed by the governor or designated representative on a case by case basis. The bill is not clear on how that direction is given. NHDES assumes that NHDES would have some communication with the governor's office or the governor may memorialize his or her direction in writing.

GJR

Date Hearing Report completed: April 26, 2021.