

**HB 1288-FN – AS INTRODUCED**

2012 SESSION

12-2420

01/10

**HOUSE BILL 1288-FN**

AN ACT relative to protection of private property from the use of eminent domain.

SPONSORS: Rep. Giuda, Merr 7; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Science, Technology and Energy

## ANALYSIS

This bill makes changes in statutes relating to eminent domain to conform to part 1, Article 12-a of the New Hampshire constitution.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

12-2420

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## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twelve*

AN ACT relative to protection of private property from the use of eminent domain.

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

1 Eminent Domain; Petition. Amend RSA 371:1 to read as follows:

371:1 Petition. Whenever it is necessary, in order to meet the reasonable requirements of service to the [public] ***citizens of New Hampshire***, that any public utility should construct a line, branch line, extension, or a pipeline, conduit, line of poles, towers or wires across the land of another, or should acquire land, land for an electric substation, or flowage, drainage, or other rights for the necessary construction, extension or improvement of any water power or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes. No public utility may petition

for permission to take private land or property rights for the construction or operation of an electric generating plant.

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

371:2-a Right to Enter. When ownership of land, upon or over which a public utility desires to erect facilities, cannot be ascertained without entry to do survey work, or, a public utility shall have filed a petition under RSA 371:1 with respect to a particular tract of land, in either case, ***after receiving written permission from the public utilities commission***, a public utility shall have the right to enter upon such land for the purpose of surveying and making such other investigation as is necessary to determine the locations of the boundaries of such land and of the facilities it desires to erect thereon or thereover, and to determine the title to, description of, or nature of such land. A public utility desiring to enter land in pursuance of this section shall make every reasonable effort to notify the owner or probable owner or owners thereof of its desire to enter for the purposes aforesaid prior to entry, ***including but not limited to sending certified mail, return receipt requested, to all probable or possible owners***. The public utility shall pay the owner or owners of any land it shall enter in pursuance of the provisions of this section for any actual damage done upon entry.

3 Eminent Domain; Evidence of Compensation to be Paid. Amend RSA 371:4-a to read as follows:

371:4-a Evidence of Compensation to be Paid. In determining the compensation to be paid hereunder, all relevant and probative evidence on the question of the value of the land or rights to be taken shall be considered. If the proceeding involves a partial taking, the "before and after test" shall be considered. Without limiting the foregoing, evidence of other sales to the condemning utility shall be admitted, providing that the party seeking to introduce such evidence establishes that such sales (1) occurred reasonably close in time to the date of the petition under RSA 371:1, (2) concern relatively similar land or rights, and (3) took place under such circumstances respecting freedom of contract as to be probative. ***In cases where a condemning utility seeks to introduce evidence of other sales, the owner shall have the right to conduct discovery regarding other relevant condemned properties, whether or not the properties have been sold to the condemning utility. The condemning utility shall make the files of other relevant condemned properties available to any such owner requesting discovery.***

4 Eminent Domain; Notice by Publication. Amend RSA 371:5 to read as follows:

371:5 Notice by Publication. Upon evidence satisfactory to the commission that any owner or his ***or her*** residence is unknown or uncertain, the notice may be by publication; and if no appearance is entered for such owner, the commission shall ~~upon application by the public utility,~~ appoint a guardian ad litem to represent such owner in the proceedings. ***The guardian ad litem shall be a disinterested party knowledgeable in real estate valuation.***

5 Eminent Domain; Costs. Amend RSA 371:12 to read as follows:

371:12 Costs. If the result of an appeal is to change the award of damages in favor of the appellant, the appellant shall recover costs; otherwise he ***or she*** shall pay costs. ***The appellant may also be awarded legal fees if it is found that the award of damages was unreasonable.***

6 Eminent Domain; Fees. Amend RSA 371:14 to read as follows:

371:14 Fees. In such proceedings the commission shall charge and collect fees as follows: For the entry of each petition, [~~\$25~~] **\$100**; for the making of each order of notice for service upon the owners of each parcel of land described in said petition in which rights are sought to be taken, [~~\$1~~] **\$25**; and for the entry of each order granting land, rights or easements in any such case, [~~\$10~~] **\$25** for each tract of land granted or affected.

7 Effective Date. This act shall take effect January 1, 2013.

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### **HB 1288-FN - FISCAL NOTE**

AN ACT relative to protection of private property from the use of eminent domain.

#### **FISCAL IMPACT:**

The Public Utilities Commission states they are unable to determine the fiscal impact on state revenue and expenditures for FY 2013 and each year thereafter. There is no fiscal impact on county and local revenue and expenditures.

#### **METHODOLOGY:**

The Public Utilities Commission states this bill makes changes in statutes relating to eminent domain. The Commission states that for each proceeding before the Commission concerning a utilities' petition to invoke the eminent domain statute, a fee is collected under RSA 371:14. The Commission is not able to determine how many orders of notice or other orders associated with meeting the provisions of RSA 371:14 will be issued to determine any costs or revenues associated with this bill. The Commission does state that it expects the level of fees collected to be insignificant.