

HB 700 - AS INTRODUCED

2019 SESSION

19-0195

10/05

HOUSE BILL **700**

AN ACT relative to valuation of utility company assets for local property taxation.

SPONSORS: Rep. Abrami, Rock. 19; Rep. Moffett, Merr. 9; Rep. Barry, Hills. 21

COMMITTEE: Ways and Means

ANALYSIS

This bill establishes a methodology for the valuation for property tax purposes of electric, gas, and water utility company distribution assets within each town or city. The methodology is phased in over a 5-year period. This bill is a request of the commission to study utility property valuation and recommend legislation to reform the current system of taxing utility property in New Hampshire, 2018, 234 (HB 324).

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to valuation of utility company assets for local property taxation.

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

1 1 Purpose and Intent.

2 I. For at least 40 years, New Hampshire has struggled to define and/or provide with a
3 unified approach how municipalities should assess properties owned by regulated utilities which
4 include electricity, gas, and water. During these years New Hampshire municipalities and utility
5 companies have been engaged in expensive and time-consuming litigation over different methods of
6 valuing utility company assets for purposes of local property taxation. The courts have allowed up to
7 5 different methodologies for appraising utility company assets, and our statutes allow appeals by
8 the taxpayers either to the board of tax and land appeals or to the superior court. The result has
9 been that similar utility company assets are valued for local property taxing purposes at
10 significantly different and inconsistent values, even in adjoining municipalities. This litigation has
11 been a financial burden on the respective sides ultimately borne by the utility ratepayers and the
12 municipal taxpayers, who are often the same people in any given town.

13 II. Some states have legislated a uniform methodology or approach to this issue. However,
14 the New Hampshire legislature has been mired in parochial politics over this issue for decades. The
15 New Hampshire court system has suggested through its opinions that a legislative fix is required.
16 For decades, the New Hampshire supreme court has noted that the process of determining the fair
17 market value of utility company assets is a difficult and inexact process, as in one case colorfully
18 written in an opinion that the process is “akin to a snipe hunt carried on at midnight on a moonless
19 landscape,” Appeal of Pennichuck Water Works, 160 N.H. 18, 37 (2010); see Public Service Company
20 of N.H. v. Bow, 170 N.H. 539, 542 (2018). Moreover, the Court has long noted that this is a problem
21 for the legislature to fix: “the decision to adopt such a uniform methodology belongs to the
22 legislature, not this court,” Appeal of Public Service Company of N.H., 170 N.H., 87, 105 (2017);
23 Southern N.H. Water Co. v. Town of Hudson, 139 N.H. 139, 142-143 (1994).

24 III. The recommendations of the commission to study utility property valuation and
25 recommend legislation to reform the current system of assessing utility property in New Hampshire,
26 established in RSA 72:12-e, published its final report on November 1, 2018 and are the basis for the
27 language in this act. The focus of the commission and of this act was and is on regulated public
28 utilities regulated by the public utilities commission and deregulated electric cooperatives and
29 excludes all generation and Federal Energy Regulatory Commission (FERC) regulated transmission
30 properties.

31 2 New Section; Valuation of Electric, Gas, and Water Utility Company Distribution Assets.

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1 Amend RSA 72 by inserting after section 8-c the following new section:

2 72:8-d Valuation of Electric, Gas, and Water Utility Company Distribution Assets.

3 I. In this section:

4 (a) "FERC" means the Federal Energy Regulatory Commission.

5 (b) "Utility company assets" means the following property not exempt under RSA 72:23:

6 (1) For an electric company providing electricity service to retail customers: the
7 distribution poles, wires, conductors, attachments, meters, transformers, and substations accounted
8 for by the utility in accordance with FERC Form 1, buildings, contributions in aid of construction
9 (CIAC), construction works in progress (CWIP), and land rights, including use of the public rights of
10 way, easements on private land owned by third parties, and land owned in fee by the electric
11 company, so long as such easements and fee land are associated solely with distribution power lines
12 classified as distribution according to FERC standards.

13 (2) For a gas company providing gas service to retail customers: distribution pipes,
14 fittings, meters, pressure reducing stations, buildings, contributions in aid of construction (CIAC),
15 construction works in progress (CWIP), and land rights including use of the public rights of way,
16 easements on private land owned by third parties, and land owned in fee by the gas company.

17 (3) For a water company providing water service to retail customers: pipes, fittings,
18 meters, wells, pressure/pump stations, buildings, contributions in aid of construction (CIAC),
19 construction works in progress (CWIP), and land rights including use of the public rights of way,
20 easements on private land owned by third parties, and land owned in fee by the water company. No
21 electric power fixtures employed solely as an emergency source of electric power in a public water
22 distribution system shall be taxable.

23 (c) "Utility company assets" shall not include:

24 (1) Electric company transmission poles, wires, conductors, attachments, meters,
25 transformers, and substations, classified as transmission according to FERC standards, buildings
26 associated with transmission, and land rights, including easements on private land owned by third
27 parties, and land owned in fee by the electric company, so long as such easements and fee land are
28 associated with transmission power lines classified as transmission according to FERC standards.

29 (2) Electric generation facilities and associated land rights, whether in fee or by
30 easement.

31 (3) Gas transmission pipeline facilities regulated by FERC and associated land
32 rights, whether in fee or easement.

33 (4) Wholly owned telephone, cable, or Internet service providers, and large scale
34 natural gas and propane gas liquid storage and processing facility assets.

35 (5) Fee-owned office buildings, garages and warehouses.

36 (d) "Retention dam" means a dam constructed for the purpose of impounding drinking
37 water supply(ies).

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1 II.(a) The selectmen or assessors shall appraise utility company assets lying within the
2 limits of the town or city using a unified method of valuing the utility company assets, excluding
3 land rights, according to the following formula:

4 (1) For electric and gas utility company assets: a weighted average of 70 percent of
5 each asset's original cost and 30 percent of each asset's net book cost as reported in compliance with
6 paragraphs IV and V.

7 (2) For water utility company assets: a weighted average of 25 percent of each
8 asset's original cost and 75 percent of each asset's net book cost as reported in compliance with
9 paragraphs IV and V.

10 (b) To the appraisal under subparagraph (a), for the use of public rights of way and
11 private distribution system easements, the selectmen or assessors shall add 3 percent of the
12 valuation determined under subparagraph (a).

13 (c) The total of subparagraphs (a) and (b), as implemented under paragraph VI, shall be
14 the valuation of the utility company's assets for purposes of local property taxation, plus the
15 municipality's assessed value of the utility company's fee-owned land, office buildings, garages, and
16 warehouses.

17 III. Any water utility company land parcel owned in fee for sanitary radii, retention dams
18 and/or watershed protection purposes which is subject to regulation by the department of
19 environmental services to protect water quality shall be entitled to be assessed under RSA 79-C at
20 the value such land would have been assigned under the current use values established pursuant to
21 RSA 79-A if the land had met the criteria for open space land under that chapter, even if said parcel
22 is less than 10 acres in size and/or has a well structure and related piping on the parcel.

23 IV. Each utility company shall report by May 1 of each year to the selectmen or assessors of
24 each town or city in which its utility company assets are located and to the department of revenue
25 administration, the original cost and net book value as of December 31 of the preceding year of each
26 account code category of distribution, transmission, and generation assets, if any, located within
27 such town or city in accordance with FERC Form 1 and/or Form 2 Federal Account Code items.

28 V. The commissioner of the department of revenue administration shall adopt rules under
29 RSA 541-A for the forms and requirements for the reporting under paragraph IV. Such reporting
30 requirements shall also include an obligation on the utility company with utility company assets to
31 utilize an accounting system to report and track with the best information available, in an efficient,
32 equitable and transparent manner using the best information then available from the utility
33 company's accounting records, contributions in aid of construction (CIAC), construction works in
34 progress (CWIP), and undistributed plant assets in each town or city and the original cost of each
35 such asset as reported by the contributing entity.

36 VI. The assessed value of all utility company assets existing and assessed as of April 1, 2018
37 determined in subparagraph II(c) shall be implemented over a 5-year period as follows:

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1 (a) The value for assessment of property taxes for the tax year effective April 1, 2020
2 shall be a weighted average of 80 percent of the final locally assessed value effective April 1, 2018
3 and 20 percent of the apportioned value determined under subparagraph II(c) effective April 1, 2020.

4 (b) The value for assessment of property taxes for the tax year effective April 1, 2021
5 shall be a weighted average of 60 percent of the final locally assessed value effective April 1, 2018
6 and 40 percent of the apportioned value determined under subparagraph II(c) effective April 1, 2021.

7 (c) The value for assessment of property taxes for the tax year effective April 1, 2022
8 shall be a weighted average of 40 percent of the final locally assessed value effective April 1, 2018
9 and 60 percent of the apportioned value determined under subparagraph II(c) effective April 1, 2022.

10 (d) The value for assessment of property taxes for the tax year effective April 1, 2023
11 shall be a weighted average of 20 percent of the final locally assessed value effective April 1, 2018
12 and 80 percent of the apportioned value determined under subparagraph II(c) effective April 1, 2023.

13 (e) For each of the years in (a) through (d) above, all utility company assets installed
14 after April 1, 2018, and not included in assessment as of April 1, 2018, shall be assessed at the
15 apportioned value determined under subparagraph II(c) effective as of April 1 of the property tax
16 year. For each of the years in (a) through (d) above, all utility company assets retired after April 1,
17 2018, and included in assessment as of April 1, 2018, shall not be assessed.

18 (f) Beginning with the tax year effective April 1, 2024 and every tax year thereafter the
19 locally assessed value shall be the apportioned value determined under subparagraph II(c) effective
20 as of April 1 of the property tax year.

21 The term "final locally assessed value effective April 1, 2018" shall mean the municipality's value of
22 the utility company's assets as taken from the 2018 DRA MS-1.

23 VII. All determinations or decisions under this section shall be appealable by the electric,
24 gas, or water utility company or the town or city by petition to the board of tax and land appeals
25 under RSA 71-B.

26 3 Appraisal of Property; Exception from Market Value. Amend RSA 75:1 to read as follows:

27 75:1 How Appraised. The selectmen shall appraise open space land pursuant to RSA 79-A:5,
28 open space land with conservation restrictions pursuant to RSA 79-B:3, land with discretionary
29 easements pursuant to RSA 79-C:7, residences on commercial or industrial zoned land pursuant to
30 RSA 75:11, earth and excavations pursuant to RSA 72-B, land classified as land under qualifying
31 farm structures pursuant to RSA 79-F, buildings and land appraised under RSA 79-G as qualifying
32 historic buildings, qualifying chartered public school property appraised under RSA 79-H, residential
33 rental property subject to a housing covenant under the low-income housing tax credit program
34 pursuant to RSA 75:1-a, renewable generation facility property subject to a voluntary payment in
35 lieu of taxes agreement under RSA 72:74 as determined under said agreement, telecommunications
36 poles and conduits pursuant to RSA 72:8-c, *electric, gas, and water utility company*
37 *distribution assets pursuant to RSA 72:8-d*, and all other taxable property at its market value.

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1 Market value means the property's full and true value as the same would be appraised in payment of
2 a just debt due from a solvent debtor. The selectmen shall receive and consider all evidence that
3 may be submitted to them relative to the value of property, the value of which cannot be determined
4 by personal examination.

5 4 Land Qualified as Discretionary Easement Amend RSA 79-C:3 by adding RSA 79-C:3, II
6 (g):

7 (g) The preservation of potable water where:

8 (1) The land is owned in fee by a water utility company, and

9 (2) The land is used for sanitary radii, retention dam sites and/or watershed protection
10 purposes which is subject to regulation by the department of environmental services to protect water
11 quality, which land may have a well, booster station/pump house, or retention dam structure and/or
12 related piping.

13 5. No Application to Pending Litigation. The methodology for the evaluation of electric, gas,
14 and water company distribution assets established in RSA 72:8-d as inserted by section 2 of this act
15 shall not be construed by any court or the board of tax and land appeals as applicable to the
16 resolution of any pending litigation on the effective date of this act.

17 6. Tracker Language. Amend RSA 72 by inserting after Section 8-d, the following new section:
18 72:8-e Recovery of Taxes by Electric, Gas and Water Utility Companies. The public utility
19 commission shall by order establish a rate recovery mechanism for any public utility owning
20 property that meets the definition of RSA 72:8-d(I)(b). Such rate recovery mechanism shall either:
21 (a) adjust annually to recover all property taxes paid by each such utility on utility company assets
22 as defined in of RSA 72:8-d(I)(b) based upon the methodology set forth in of RSA 72:8-d; or (b) be
23 established in an alternative manner acceptable to both the utility and the public utility commission.
24 This provision shall sunset with the Tax Year effective April 1, 2024.

25 7. Effective Date. This act shall take effect 60 days after its passage.