

1 S.27

2 Introduced by Senator Hartwell

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; energy; land use; public service;

6 Act 250; certificate of public good; electric generation facilities

7 Statement of purpose: This bill proposes amendments to the review process

8 for electric generation and transmission and natural gas facilities, including:

9 increasing the weight given to the determinations of an affected municipality

10 by the public service board in proceedings on the siting of such facilities;

11 directing the board in all such proceedings to use the comments of the public

12 as a guide to formulate areas of inquiry and to address those comments in its

13 decision; and requiring that, when an electric generation facility is integrated

14 with an industrial facility subject to 10 V.S.A. chapter 151 (Act 250), the

15 integrated project shall obtain a land use permit under that chapter rather than

16 approval of the public service board.

17 An act relating to the role of municipalities and the public in the siting of
18 electric generation and transmission and natural gas facilities

19 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 30 V.S.A. § 248 is amended to read:

2 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND
3 FACILITIES; CERTIFICATE OF PUBLIC GOOD

4 (a)(1) No company, as defined in section 201 of this title, may:

5 (A) in any way purchase electric capacity or energy from outside the
6 state, for a period exceeding five years, that represents more than one percent
7 of its historic peak demand; or

8 (B) invest in an electric generation or transmission facility located
9 outside this state unless the public service board first finds that the same will
10 promote the general good of the state and issues a certificate to that effect.

11 (2) Except for the replacement of existing facilities with equivalent
12 facilities in the usual course of business, and except for electric generation
13 facilities that are operated solely for on-site electricity consumption by the
14 owner of those facilities or are integrated with an industrial process or facility
15 that meets the definition of development under 10 V.S.A. § 6001(3)(A)(i) or
16 (ii):

17 (A) no company, as defined in section 201 of this title, and no person,
18 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or
19 construction of an electric generation facility or electric transmission facility
20 within the state which is designed for immediate or eventual operation at any
21 voltage; and

1 (B) The public service board shall hold technical hearings at
2 locations which it selects. However, on request of a municipality in which a
3 facility is located or any 25 of its residents, or of an adjacent municipality or
4 any 25 of its residents, the board shall hold technical hearings in the
5 municipality in which a facility is located. If a petition under this section
6 applies to a facility or facilities in more than one municipality, the board shall
7 apportion the technical hearings among each of the municipalities in which the
8 facility or facilities are located and for which a request is filed under this
9 subdivision.

10 (C) At the time of filing its application with the board, copies shall be
11 given by the petitioner to the attorney general and the department of public
12 service, and, with respect to facilities within the state, the department of health,
13 agency of natural resources, historic preservation division, scenery
14 preservation council, state planning office, agency of transportation, the
15 agency of agriculture, food and markets, and to the chairperson or director of
16 the municipal and regional planning commissions and the municipal legislative
17 body for each town and city in which the proposed facility will be located.

18 (D) Notice of the public hearing shall be published and maintained
19 on the board's website for at least 12 days before the day appointed for the
20 hearing. Notice of the public hearing shall be published once in a newspaper
21 of general circulation in the county or counties in which the proposed facility

1 will be located, and the notice shall include an Internet address where more
2 information regarding the proposed facility may be viewed.

3 * * *

4 (5) With respect to an in-state facility, the board shall make its findings
5 and conclusions following review in accordance with the procedures of this
6 section of an entire facility or, if the facility is part of a larger undertaking, the
7 entire undertaking, and shall not issue a certificate of public good under this
8 section only for site preparation, a portion of the facility, or, if the facility is
9 part of a larger undertaking, a portion of the undertaking. This subdivision
10 shall not prohibit a waiver for an emergency situation, in accordance with the
11 provisions of subsection (k) of this section, that applies to site preparation for
12 or construction of a portion of a facility or larger undertaking that is subject to
13 this section.

14 (b) Before the public service board issues a certificate of public good as
15 required under subsection (a) of this section, it shall find that the purchase,
16 investment or construction:

17 (1) with respect to an in-state facility, will not unduly interfere with the
18 orderly development of the region with ~~due consideration~~ substantial deference
19 having been given to the recommendations of the ~~municipal and~~ regional
20 planning commissions, ~~the recommendations of the municipal legislative~~
21 ~~bodies, and the land conservation measures contained in~~ and the effect required

1 by subsection (g) of this section having been given to the written
2 determinations of the municipal legislative bodies or delegated municipal
3 planning commissions under subsection (f) of this section and to the provisions
4 of the plan of any affected municipality. However, with respect to a natural
5 gas transmission line subject to board review, the line shall be in conformance
6 with any applicable provisions concerning such lines contained in the duly
7 adopted regional plan; and, in addition, upon application of any party, the
8 board shall condition any certificate of public good for a natural gas
9 transmission line issued under this section so as to prohibit service connections
10 that would not be in conformance with the adopted municipal plan in any
11 municipality in which the line is located;

12 * * *

13 (f) ~~However, plans~~ (1) A copy of the petition under this section, along with
14 the supporting plans and documents, for the construction of such a facility
15 within the state of a facility for which a certificate of public good is required
16 under this section must be submitted by the petitioner to the ~~municipal and~~
17 ~~regional~~ planning commissions and municipal legislative body for each town
18 and region in which the facility will be located no less than 45 days prior to
19 application for a ~~the certificate of public good under this section~~, unless the
20 municipal and regional planning commissions and municipal legislative body

1 shall waive such requirement. However, the period for a facility described in
2 subdivision (6) of this subsection shall be governed by that subdivision.

3 (2) ~~Such~~ The municipal or regional planning commission may hold a
4 public hearing on the proposed ~~plans~~ facility.

5 (3) Absent waiver by the municipal legislative body under
6 subdivision (1) of this subsection, the legislative body shall hold a public
7 hearing on the proposed facility.

8 (A) The legislative body shall give public notice of the hearing in
9 accordance with 24 V.S.A. § 4464(a)(1), except that the notice shall be given
10 not less than seven days prior to the hearing. The notice also shall include a
11 deadline for submission of written comment to the legislative body which shall
12 be not less than five days after the hearing. The petitioner shall be responsible
13 to provide the body with sufficient information to provide notice in accordance
14 with 24 V.S.A. § 4464(a)(1)(C) (notice to applicant and adjoining property
15 owners). On giving public notice, the body shall provide a copy of the notice
16 to the municipal and regional planning commissions.

17 (B) The municipal planning commission shall participate in the
18 legislative body's public hearing and shall make its recommendations to the
19 body. The regional planning commission may participate in the public
20 hearing.

1 (C) The legislative body shall record the public hearing by tape,
2 video, or digital means. The public hearing shall be subject to the
3 requirements of 1 V.S.A. § 316(b) pertaining to minutes, which may be
4 included in the legislative body's written determination pursuant to subdivision
5 (3)(D) of this subsection. During the public hearing, the petitioner shall
6 present its petition and the public shall be given a reasonable opportunity to
7 express its opinion on the petition as long as order is maintained. The
8 petitioner's presentation and any public comment shall be subject to reasonable
9 rules established by the chair.

10 (D) Following the public hearing and the deadline for submission of
11 written comments, the legislative body shall issue its written determinations on
12 whether the proposed facility:

13 (i) Will not unduly interfere with the orderly development of the
14 municipality.

15 (ii) Will not cause an unreasonable burden on the ability of the
16 municipality to provide educational services.

17 (iii) Will not cause an unreasonable burden on the ability of the
18 municipality to provide municipal or governmental services.

19 (iv) Is in conformance with the plan of the municipality adopted in
20 accordance with 24 V.S.A. chapter 117.

1 (v) Will not have an undue adverse effect on the character of the
2 municipality or an area within the municipality, including the facility's effect
3 on aesthetics or scenic or natural beauty.

4 (E) A finding by the legislative body that the petitioner has supplied
5 insufficient information to make one or more of the determinations described
6 in subdivision (3)(D) of this subsection shall constitute a negative
7 determination.

8 (4) A municipal legislative body may, in a particular instance or in a
9 bylaw adopted pursuant to 24 V.S.A. chapter 117, delegate to the municipal
10 planning commission the conduct of the hearing process and issuance of
11 written determinations described in subdivision (3) of this subsection, in which
12 case the planning commission shall perform the functions of the legislative
13 body described in subdivision (3) and shall be the decision-making body rather
14 than a participant.

15 ~~Such commissions shall make recommendations, if any,~~

16 (5) Determinations issued pursuant to subdivision (3) of this subsection
17 and any recommendations of the regional planning commission shall be
18 submitted to the public service board and to the petitioner at least seven days
19 prior to filing of the date on which the petitioner represents in writing to the
20 municipal and regional planning commissions and the municipal legislative
21 body that it will file the petition with the public service board.

1 ~~(g) However, notwithstanding the above, plans~~

2 (6) A petition and supporting plans and documents involving the
3 relocation of an existing transmission line within the state must be submitted to
4 the municipal and regional planning commissions and municipal legislative
5 body no less than ~~24~~ 28 days prior to application for a certificate of public
6 good under this section. With respect to such a relocation, the periods for
7 notice of hearing and comment after hearing under subdivision (3)(A) of this
8 subsection shall be, respectively, no less than five days prior to hearing and
9 three days after the hearing.

10 (g)(1) A written determination under subdivision (f)(3) of this section,
11 whether positive or negative, shall be binding on the public service board, and
12 shall be applied by the board to each criterion of subsection (b) of this section
13 to which the determination is relevant and to the board's finding on whether
14 the facility will promote the general good of the state, unless it is shown by
15 clear and convincing evidence that:

16 (A) there is a compelling indication that the determination is in error
17 and that correction of the error will result in a determination that changes the
18 outcome on the criterion to which it is relevant; or

19 (B) the petitioner has revised the plans for the facility since the
20 determination was made specifically to correct the defect or defects that were

1 the basis of the determination and that such revision will result in a
2 determination that changes the outcome on the criterion to which it is relevant.

3 (2) The public service board shall require that a facility subject to this
4 section conform with the provisions of a municipal plan adopted under
5 24 V.S.A. chapter 117 unless it is shown, by clear and convincing evidence,
6 that conformance with a particular provision of a municipal plan is
7 significantly outweighed by the need for the facility, determined in accordance
8 with subdivision (b)(2) of this section.

9 * * *

10 (j)(1) The board may, subject to such conditions as it may otherwise
11 lawfully impose, issue a certificate of public good in accordance with the
12 provisions of this subsection and without the notice and hearings otherwise
13 required by this ~~chapter~~ section, or the procedures and determinations
14 otherwise required by subsection (f) of this section, if the board finds that:

15 (A) approval is sought for construction of facilities described in
16 subdivision (a)(2) or (3) of this section;

17 (B) such facilities will be of limited size and scope;

18 (C) the petition does not raise a significant issue with respect to the
19 substantive criteria of this section; and

20 (D) the public interest is satisfied by the procedures authorized by
21 this subsection.

1 (2) Any party seeking to proceed under the procedures authorized by
2 this subsection shall file a proposed certificate of public good and proposed
3 findings of fact with its petition. The board shall give written notice of the
4 proposed certificate to the parties specified in subdivision (a)(4)(C) of this
5 section, to any public interest organization that has in writing requested notice
6 of applications to proceed under this subsection and to any other person found
7 by the board to have a substantial interest in the matter. Such notice shall be
8 published on the board's website and shall request comment within the board's
9 website and shall request comment within 28 days of the initial publication on
10 the question of whether the petition raises a significant issue with respect to the
11 substantive criteria of this section. If the board finds that the petition raises a
12 significant issue with respect to the substantive criteria of this section, or is
13 requested to hold a hearing on an issue by a municipality or any 25 residents of
14 a municipality in which a facility is located, the board shall hear evidence on
15 any such issue.

16 * * *

17 Sec. 2. 30 V.S.A. §§ 11 and 12 are amended to read:

18 § 11. PLEADINGS; RULES OF PRACTICE; FINDINGS OF FACT

19 * * *

20 (b) The board shall hear all matters within its jurisdiction, and make its
21 findings of fact. It shall state its rulings of law when they are excepted to.

1 Upon appeal to the supreme court its findings of fact shall be accepted unless
2 clearly erroneous. However, in the case of a finding of fact pertaining to a
3 decision by the board that is contrary to a written determination of a municipal
4 legislative body or delegated planning commission under subdivision 248(f)(3)
5 of this title, the supreme court shall not accept the finding if it determines that
6 the finding is in error when the evidence is viewed in the light most favorable
7 to the municipality.

8 § 12. REVIEW BY SUPREME COURT

9 A party to a cause who feels aggrieved by the final order, judgment, or
10 decree of the board may appeal to the supreme court. However, the board, in
11 its discretion and before final judgment, may permit an appeal to be taken by
12 any party to the supreme court for determination of questions of law in such
13 manner as the supreme court may by rule provide for appeals before final
14 judgment from a superior court. Notwithstanding the provisions of the
15 Vermont Rules of Civil Procedure or the Vermont Rules of Appellate
16 Procedure, neither the time for filing a notice of appeal nor the filing of a
17 notice of appeal, as provided herein, shall operate as a stay of enforcement of
18 an order of the board unless the board or the supreme court grants a stay under
19 the provisions of section 14 of this title. In reviewing a question on appeal that
20 pertains to a decision by the board that is contrary to a written determination of
21 a municipal legislative body or delegated municipal planning commission

1 under subdivision 248(f)(3) of this title, the court shall not defer to the board's
2 expertise, and shall defer to a municipality's interpretation of its plan adopted
3 under 24 V.S.A. chapter 117 unless there is a compelling indication of error.

4 Sec. 3. 10 V.S.A. § 6001(3)(D) is amended to read:

5 (D) The word "development" does not include:

6 * * *

7 (ii) The construction of improvements for an electric generation or
8 transmission facility that requires a certificate of public good under 30 V.S.A.
9 § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a
10 telecommunications facility issued a certificate of public good under 30 V.S.A.
11 § 248a. However, this exclusion shall not apply to improvements for an
12 electric generation facility that are integrated with improvements for an
13 industrial process or facility that constitute development under subdivision
14 6001(3)(A)(i) or (ii) of this title.

15 * * *

16 Sec. 4. EFFECTIVE DATE

17 This act shall take effect on July 1, 2011.