

1 S.95

2 Introduced by Senator Cummings

3 Referred to Committee on Finance

4 Date: February 12, 2019

5 Subject: Utilities; electric companies; municipal; capital investments;  
6 financing

7 Statement of purpose of bill as introduced: This bill proposes to make  
8 amendments to the laws governing capital investments by municipal utilities.

9 An act relating to municipal utility capital investment

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

11 ~~Sec. 1. 24 V.S.A. § 1822 is amended to read:~~

12 § 1822. POWERS; APPROVAL OF VOTERS

13 (a) In addition to the powers it may now or hereafter have, a municipal  
14 corporation otherwise authorized to own, acquire, improve, control, operate, or  
15 manage a public utility or project and to issue bonds pursuant to this  
16 subchapter, may also, by action of its legislative branch, exercise any of the  
17 following powers:

18 (1) to borrow money and issue bonds for the purposes of acquiring,  
19 ~~improving, maintaining, financing, controlling, or operating the public utility~~

1 ~~or project, or for the purpose of selling, furnishing, or distributing the services,~~  
2 facilities, products, or commodities of such utility or project;

3 (2) to enter into contracts in connection with the issuance of bonds for  
4 any of the purposes enumerated in subdivision (1) of this subsection;

5 (3) to purchase, hold, and dispose of any of its bonds;

6 (4) to pledge or assign all or part of any net revenues of the public  
7 utility or project, to provide for or to secure the payment of the principal of  
8 and the interest on bonds issued in connection with such public utility or  
9 project;

10 (5) to do any and all things necessary or prudent to carry out the powers  
11 expressly granted or necessarily implied in this subchapter, including without  
12 limitation those powers enumerated in section 1824 of this title.

13 (b)(1) The bonds authorized under this section shall be in such form, shall  
14 contain such provisions, and shall be executed as may be determined by the  
15 legislative branch of the municipal corporation, but shall not be executed,  
16 issued, or made, and shall not be valid and binding, unless and until at least a  
17 majority of the legal voters of such municipal corporation present and voting  
18 at a duly warned annual or special meeting called for that purpose shall have  
19 first voted to authorize the same.

20 (2) The warning calling such a meeting shall state the purpose for which  
21 ~~it is proposed to issue bonds, the estimated cost of the project, the amount of~~

1 ~~bonds proposed to be issued under this subchapter therefor, that such bonds are~~  
2 to be payable solely from net revenues, and shall fix the place where and the  
3 date on which such meetings shall be held and the hours of opening and  
4 closing the polls.

5 (3) The notice of the meeting shall be published and posted as provided  
6 in section 1756 of this title.

7 (4) When a majority of all the voters voting on the question at such  
8 meeting vote to authorize the issuance of bonds under this subchapter to pay  
9 for such project, the legislative body shall be authorized to issue bonds or enter  
10 into contracts, pledges, and assignments as provided in this subchapter.

11 (5) Sections 1757 and 1758 of this title shall apply to the proceedings  
12 taken hereunder, except that the form of ballot to be used shall be substantially  
13 as follows:

14 Shall bonds of the (name of municipality) to the amount of \$ \_\_\_\_\_  
15 be issued under subchapter 2 of chapter 53 of Title 24, Vermont Statutes  
16 Annotated, payable only from net revenues derived from the (type) public  
17 utility system, for the purpose of paying for the following public utility  
18 project?

19 If in favor of the bond issue, make a cross (x) in this square .

20 ~~If opposed to the bond issue, make a cross (x) in this square .~~

1 ~~(c) The bonds authorized by this subchapter shall be sold at par, premium,~~  
2 or discount by negotiated sale, competitive bid, or to the Vermont Municipal  
3 Bond Bank.

4 (d) Notwithstanding the provisions of subsection (b) of this section, the  
5 legislative branch of a municipal corporation owning a municipal plant as  
6 defined in 30 V.S.A. § 2901 may authorize by resolution the issuance of bonds  
7 in an amount not to exceed 50 percent of the total assets of said municipal  
8 plant without the need for either voter approval or Public Utility Commission  
9 approval pursuant to 30 V.S.A. § 108.

10 Sec. 2. 30 V.S.A. § 108 is amended to read:

11 § 108. ISSUE OF BONDS OR OTHER SECURITIES

12 \* \* \*

13 (b) The provisions of this section shall not apply to the Vermont Public  
14 Power Supply Authority or to a public utility which that meets each and all of  
15 the following four conditions:

16 (1) is incorporated in some state other than Vermont;

17 (2) is conducting an interstate and intrastate telephone business ~~which~~  
18 that is subject to regulation by the Federal Communications Commission in  
19 some respects;

20 (3) is conducting telephone operations in four or more states; and

21 (4) has less than 10 percent of its total investment in property used or  
22 ~~useful in rendering service located within this State to the extent that such~~

1 ~~ic utility may issue stock, bonds, notes, debentures, or other evidences of~~  
2 ~~indebtedness not directly or indirectly constituting or creating a lien on any~~  
3 ~~property used or useful in rendering service which that is located within this~~  
4 ~~State.~~

5 (c)(1) A municipality shall not issue bonds or notes or pledge its net  
6 revenues under 24 V.S.A. chapter 53, respecting the ownership or operation of  
7 a gas or electric utility, unless the Public Utility Commission first finds, upon  
8 petition of the municipality and after notice and an opportunity for hearing,  
9 that the proposed action will be consistent with the general good of the State.

10 (2) If the Public Utility Commission does not issue its ruling within  
11 90 days of the filing of the petition, as may be extended by consent of the  
12 municipality, the issuance of the proposed bonds or notes or pledge of net  
13 revenues shall be deemed to be consistent with the general good of the State.

14 (3) If the Public Utility Commission issues a ruling in accordance with  
15 subdivision (1) of this subsection, or does not rule within the period specified  
16 in subdivision (2) of this subsection, a municipality must ~~subsequently obtain~~  
17 also have obtained voter approval in accordance with 24 V.S.A. chapter 53  
18 prior to issuing bonds or notes or pledging its net revenues.

19 \* \* \*

20 ~~Sec. 2. 20 V.S.A. § 5021(a)(4) is amended to read:~~

1 ~~(4) Bonds and notes may be issued in accordance with this chapter,~~  
2 subject to ~~without~~ the need to obtain the consent and approval of the Public  
3 Utility Commission as provided in this title.

4 Sec. 4. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2019.~~

~~Sec. 1. 24 K.S.A. § 1822 is amended to read:~~

~~§ 1822. POWERS; APPROVAL OF VOTERS~~

~~(a) In addition to the powers it may now or hereafter have, a municipal corporation otherwise authorized to own, acquire, improve, control, operate, or manage a public utility or project and to issue bonds pursuant to this subchapter, may also, by action of its legislative branch, exercise any of the following powers:~~

~~(1) to borrow money and issue bonds for the purposes of acquiring, improving, maintaining, financing, controlling, or operating the public utility or project, or for the purpose of selling, furnishing, or distributing the services, facilities, products, or commodities of such utility or project;~~

~~(2) to enter into contracts in connection with the issuance of bonds for any of the purposes enumerated in subdivision (1) of this subsection;~~

~~(3) to purchase, hold, and dispose of any of its bonds;~~

~~(4) to pledge or assign all or part of any net revenues of the public utility or project, to provide for or to secure the payment of the principal of and the interest on bonds issued in connection with such public utility or project;~~

~~(5) to do any and all things necessary or prudent to carry out the powers expressly granted or necessarily implied in this subchapter, including without limitation those powers enumerated in section 1824 of this title.~~

~~(b)(1) The bonds authorized under this section shall be in such form, shall contain such provisions, and shall be executed as may be determined by the legislative branch of the municipal corporation, but shall not be executed, issued, or made, and shall not be valid and binding, unless and until at least a majority of the legal voters of such municipal corporation present and voting at a duly warned annual or special meeting called for that purpose shall have first voted to authorize the same.~~

~~(2) The warning calling such a meeting shall state the purpose for which it is proposed to issue bonds, the estimated cost of the project, the amount of bonds proposed to be issued under this subchapter therefor, that such bonds are to be payable solely from net revenues, and shall fix the place where and the date on which such meetings shall be held and the hours of opening and closing the polls.~~

~~(3) The notice of the meeting shall be published and posted as provided in section 1756 of this title.~~

~~(4) When a majority of all the voters voting on the question at such meeting vote to authorize the issuance of bonds under this subchapter to pay for such project, the legislative body shall be authorized to issue bonds or enter into contracts, pledges, and assignments as provided in this subchapter.~~

~~(5) Sections 1757 and 1758 of this title shall apply to the proceedings taken hereunder, except that the form of ballot to be used shall be substantially as follows:~~

~~Shall bonds of the (name of municipality) to the amount of \$ \_\_\_\_\_ be issued under subchapter 2 of chapter 53 of Title 24, Vermont Statutes Annotated, payable only from net revenues derived from the (type) public utility system, for the purpose of paying for the following public utility project?~~

~~If in favor of the bond issue, make a cross (x) in this square .~~

~~If opposed to the bond issue, make a cross (x) in this square .~~

~~(c) The bonds authorized by this subchapter shall be sold at par, premium, or discount by negotiated sale, competitive bid, or to the Vermont Municipal Bond Bank.~~

~~(d) Notwithstanding the provisions of subsection (b) of this section, the legislative branch of a municipal corporation owning a municipal plant as defined in 30 V.S.A. § 2901 may authorize by resolution the issuance of bonds in an amount not to exceed 50 percent of the total assets of said municipal plant without the need for voter approval. Nothing in this subsection shall be interpreted as eliminating the requirement for approval from the Public Utility Commission pursuant to 30 V.S.A. § 108, where applicable.~~

~~Sec. 2. 30 V.S.A. § 108 is amended to read:~~

~~§ 108. ISSUE OF BONDS OR OTHER SECURITIES~~

~~\* \* \*~~

~~(b) The provisions of this section shall not apply to the Vermont Public Power Supply Authority or to a public utility which that meets each and all of the following four conditions:~~

~~(1) is incorporated in some state other than Vermont;~~

~~(2) is conducting an interstate and intrastate telephone business which that is subject to regulation by the Federal Communications Commission in some respects;~~

~~(3) is conducting telephone operations in four or more states; and~~

~~(4) has less than 10 percent of its total investment in property used or useful in rendering service located within this State to the extent that such public utility may issue stock, bonds, notes, debentures, or other evidences of indebtedness not directly or indirectly constituting or creating a lien on any property used or useful in rendering service which that is located within this State.~~

~~(c)(1) A municipality shall not issue bonds or notes or pledge its net revenues under 24 V.S.A. chapter 53, respecting the ownership or operation of a gas or electric utility, unless the Public Utility Commission first finds, upon petition of the municipality and after notice and an opportunity for hearing, that the proposed action will be consistent with the general good of the State.~~

~~(2) If the Public Utility Commission does not issue its ruling within 90 days of the filing of the petition, as may be extended by consent of the municipality, the issuance of the proposed bonds or notes or pledge of net revenues shall be deemed to be consistent with the general good of the State.~~

~~(3) If the Public Utility Commission issues a ruling in accordance with subdivision (1) of this subsection, or does not rule within the period specified in subdivision (2) of this subsection, a municipality must subsequently obtain also have obtained voter approval in accordance with 24 V.S.A. chapter 53, if required, prior to issuing bonds or notes or pledging its net revenues.~~

~~(d) Notwithstanding the provisions of subsection (c) of this section, a municipality may:~~

~~(1) issue bonds or notes or pledge its net revenues payable within three years from the date of issue without such consent, provided such borrowing is necessary in an emergency to restore service immediately after damage by disaster; ~~or~~~~

~~(2) issue bonds or notes or pledge its net revenues payable within one year of the date of issuance without the consent otherwise required by this subdivision, provided its total bonds, notes, or evidences of indebtedness so payable within one year do not exceed 20 percent of its total assets; or~~

~~(3) issue bonds or notes without the consent otherwise required by this subdivision, provided:~~

~~(1) the amount of the issuance plus the amount of any bond or note issuances during the previous 12 calendar months does not exceed 20 percent of the municipality's total assets; and~~

~~(B) after the proposed issuance, the total amount of the municipality's outstanding bonds, notes, or evidences of indebtedness would not exceed 50 percent of its total assets.~~

~~Sec. 3. 30 V.S.A. § 5031(a)(4) is amended to read:~~

~~(4) Bonds and notes may be issued in accordance with this chapter, subject to without the need to obtain the consent and approval of the Public Utility Commission as provided in this title.~~

~~Sec. 4. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2019.~~

~~Sec. 1. 24 V.S.A. § 1822 is amended to read:~~

~~§ 1822. POWERS; APPROVAL OF VOTERS~~

~~(a) In addition to the powers it may now or hereafter have, a municipal corporation otherwise authorized to own, acquire, improve, control, operate, or manage a public utility or project and to issue bonds pursuant to this subchapter, may also, by action of its legislative branch, exercise any of the following powers:~~

~~(1) to borrow money and issue bonds for the purposes of acquiring, improving, maintaining, financing, controlling, or operating the public utility or project, or for the purpose of selling, furnishing, or distributing the services, facilities, products, or commodities of such utility or project;~~

~~(2) to enter into contracts in connection with the issuance of bonds for any of the purposes enumerated in subdivision (1) of this subsection;~~

~~(3) to purchase, hold, and dispose of any of its bonds;~~

~~(4) to pledge or assign all or part of any net revenues of the public utility or project, to provide for or to secure the payment of the principal of and the interest on bonds issued in connection with such public utility or project;~~

~~(5) to do any and all things necessary or prudent to carry out the powers expressly granted or necessarily implied in this subchapter, including without limitation those powers enumerated in section 1824 of this title.~~

~~(b)(1) The bonds authorized under this section shall be in such form, shall contain such provisions, and shall be executed as may be determined by the legislative branch of the municipal corporation, but shall not be executed,~~

*issued, or made, and shall not be valid and binding, unless and until at least a majority of the legal voters of such municipal corporation present and voting at a duly warned annual or special meeting called for that purpose shall have first voted to authorize the same.*

*(2) The warning calling such a meeting shall state the purpose for which it is proposed to issue bonds, the estimated cost of the project, the amount of bonds proposed to be issued under this subchapter therefor, that such bonds are to be payable solely from net revenues, and shall fix the place where and the date on which such meetings shall be held and the hours of opening and closing the polls.*

*(3) The notice of the meeting shall be published and posted as provided in section 1756 of this title.*

*(4) When a majority of all the voters voting on the question at such meeting vote to authorize the issuance of bonds under this subchapter to pay for such project, the legislative body shall be authorized to issue bonds or enter into contracts, pledges, and assignments as provided in this subchapter.*

*(5) Sections 1757 and 1758 of this title shall apply to the proceedings taken hereunder, except that the form of ballot to be used shall be substantially as follows:*

*Shall bonds of the (name of municipality) to the amount of \$ \_\_\_\_\_ be issued under subchapter 2 of chapter 53 of Title 24, Vermont Statutes Annotated, payable only from net revenues derived from the (type) public utility system, for the purpose of paying for the following public utility project?*

*If in favor of the bond issue, make a cross (x) in this square .*

*If opposed to the bond issue, make a cross (x) in this square .*

*(c) The bonds authorized by this subchapter shall be sold at par, premium, or discount by negotiated sale, competitive bid, or to the Vermont Municipal Bond Bank.*

*(d) Notwithstanding the provisions of subsection (b) of this section, the legislative branch of a municipal corporation owning a municipal plant as defined in 30 V.S.A. § 2901 may authorize by resolution the issuance of bonds in an amount not to exceed 50 percent of the total assets of said municipal plant without the need for voter approval. Nothing in this subsection shall be interpreted as eliminating the requirement for approval from the Public Utility Commission pursuant to 30 V.S.A. § 108, where applicable.*

*Sec. 2. 30 V.S.A. § 108 is amended to read:*

*§ 108. ISSUE OF BONDS OR OTHER SECURITIES*

*\* \* \**

*(b) The provisions of this section shall not apply to the Vermont Public Power Supply Authority or to a public utility which that meets each and all of the following four conditions:*

*(1) is incorporated in some state other than Vermont;*

*(2) is conducting an interstate and intrastate telephone business ~~which~~ that is subject to regulation by the Federal Communications Commission in some respects;*

*(3) is conducting telephone operations in four or more states; and*

*(4) has less than 10 percent of its total investment in property used or useful in rendering service located within this State to the extent that such public utility may issue stock, bonds, notes, debentures, or other evidences of indebtedness not directly or indirectly constituting or creating a lien on any property used or useful in rendering service ~~which that~~ is located within this State.*

*(c)(1) A municipality shall not issue bonds or notes or pledge its net revenues under 24 V.S.A. chapter 53, respecting the ownership or operation of a gas or electric utility, unless the Public Utility Commission first finds, upon petition of the municipality and after notice and an opportunity for hearing, that the proposed action will be consistent with the general good of the State.*

*(2) If the Public Utility Commission does not issue its ruling within 90 days of the filing of the petition, as may be extended by consent of the municipality, the issuance of the proposed bonds or notes or pledge of net revenues shall be deemed to be consistent with the general good of the State.*

*(3) If the Public Utility Commission issues a ruling in accordance with subdivision (1) of this subsection, or does not rule within the period specified in subdivision (2) of this subsection, a municipality must ~~subsequently obtain~~ also have obtained voter approval in accordance with 24 V.S.A. chapter 53, if required, prior to issuing bonds or notes or pledging its net revenues.*

*(d) Notwithstanding the provisions of subsection (c) of this section, a municipality may:*

*(1) issue bonds or notes or pledge its net revenues payable within three years from the date of issue without such consent, provided such borrowing is necessary in an emergency to restore service immediately after damage by disaster; ~~or~~*

*(2) issue bonds or notes or pledge its net revenues payable within one year of the date of issuance without the consent otherwise required by this subdivision, provided its total bonds, notes, or evidences of indebtedness so payable within one year do not exceed 20 percent of its total assets; or*

*(3) issue bonds or notes without the consent otherwise required by this subdivision, provided:*

*(A) the amount of the issuance plus the amount of any bond or note issuances during the previous 12 calendar months does not exceed 20 percent of the municipality's total assets; and*

*(B) after the proposed issuance, the total amount of the municipality's outstanding bonds, notes, or evidences of indebtedness would not exceed 50 percent of its total assets.*

*Sec. 3. 30 V.S.A. § 5031(a)(4) is amended to read:*

*(4) Bonds and notes may be issued in accordance with this chapter, ~~subject to~~ without the need to obtain the consent and approval of the Public Utility Commission as provided in this title.*

*Sec. 4. 30 V.S.A. § 8002 is amended to read:*

*§ 8002. DEFINITIONS*

*As used in this chapter:*

*\* \* \**

*(10) "Group net metering system" means a net metering system serving more than one customer, or a single customer with multiple electric meters, located within the service area of the same retail electricity provider. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility ~~shall~~ may be considered in the same group net metering system with buildings of its member ~~municipalities~~ schools that are located within the service area of the same retail electricity provider ~~that serves the facility.~~*

*\* \* \**

*Sec. 5. 30 V.S.A. § 8010 is amended to read:*

*§ 8010. SELF-GENERATION AND NET METERING*

*\* \* \**

(f) Except for net metering systems for which the Commission has established a registration process, the Commission shall issue a final determination as to an uncontested application within 90 days of the date of the last substantive filing by a party.

*Sec. 6. NET METERING; CUMULATIVE CUSTOMER CAPACITY;  
SCHOOLS AND SCHOOL DISTRICTS*

(a) Legislative intent. Public Utility Commission Rule 5.129(D) establishes a 500 kW single customer limit and states that the cumulative capacity of net metering systems allocated to a single customer may not exceed 500 kW. It is the intent of the General Assembly that schools and school districts shall not be included in this 500 kW customer limit or cap. Specifically, it is the intent of the General Assembly that:

(1) Customers that are a school or school district shall have a cumulative capacity limit of 1 MW. This means that a school or school district may have multiple accounts as long as the allocated share of those multiple accounts does not exceed 1 MW in total.

(2) School districts that have been or may be created as a result of consolidation should not be penalized by the fact that the consolidation resulted in a cumulative capacity that exceeds the 1 MW limit. As a result, customers that are school districts that have been or may be created as a result of school district consolidation or merger shall have a cumulative capacity of the larger of 1 MW, or the cumulative capacity of the net metering systems the schools or school districts were participating in, or had agreed to participate in, prior to the consolidation that created the new district.

(b) Cumulative capacity of school net metering systems. Notwithstanding any provision of law to the contrary, the cumulative capacity of net metering systems allocated to a single customer:

(1) That is a public school, as defined in 16 V.S.A. § 11(7); an independent school, as defined in 16 V.S.A. § 11(8); a supervisory union, as defined in 16 V.S.A. § 11(23); or a school district, as defined in 16 V.S.A. § 11(10) shall not exceed 1 MW.

(2) That is a school district, as defined in 16 V.S.A. § 11(10), or a supervisory union, as defined in 16 V.S.A. § 11(23), created as a result of school district consolidation under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46, each as amended, shall not exceed the greater of:

(A) the cumulative capacity of the net metering systems that the school districts were participating in, or had agreed to participate in, prior to consolidation; or

(B) 1 MW.

(c) Public Utility Commission rules. The Public Utility Commission shall amend Rule 5.129(D), or adopt a new rule, as necessary to implement this section. The amended, or new, rule shall clearly state that the 500 kW customer limit is no longer applicable to schools and school districts, that customers that are schools or school districts shall have a customer limit of 1 MW, unless, pursuant to subsection (b)(2)(A) of this section, the customer limit is greater than 1 MW.

*Sec. 7. PUBLIC UTILITY COMMISSION; RULES*

(a) The Public Utility Commission shall update its applicable rules for consistency with this act.

(b) The provisions of this act shall supersede any provisions to the contrary contained in the Public Utility Commission's rules as they existed immediately prior to the effective date of this act.

*Sec. 8. EFFECTIVE DATE*

This act shall take effect on July 1, 2019.