

1 S.231

2 Introduced by Senator Lyons

3 Referred to Committee on

4 Date:

5 Subject: Land use; energy; environment; Act 250; local bylaws; public
6 service; least-cost planning; electric purchase, investment, and facility
7 review

8 Statement of purpose: This bill proposes to provide, with respect to land use
9 activities that affect energy and electric use, for coordination and consistent
10 standards among entities engaging in state and local land use and energy
11 planning and regulation, including Act 250, local planning and zoning, and the
12 public service board. This bill also proposes to strengthen the role of utility
13 least-cost integrated planning, to require electric utilities to issue requests for
14 proposals to meet the public's need for energy services, and to enable utilities
15 to apply for and the public service board to conduct portfolio review of
16 proposed electric purchases, investments, and facilities.

17 An act relating to coordination and consistency in land use and energy
18 planning and regulation and to portfolio and siting review of electric
19 facilities

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

1 * * * Act 250 Provisions * * *

2 Sec. 1. 10 V.S.A. § 6001 is amended to read:

3 § 6001. DEFINITIONS

4 When used in this chapter:

5 * * *

6 (31) “Best available technology for the efficient use or recovery of
7 energy” means technology that can be obtained through normal or specialized
8 construction channels and supply channels and that will, to the maximum
9 degree possible, reduce the overall energy requirements of and use of power
10 from the electricity grid by a development or subdivision. Such technology
11 shall include insulation, whole building energy efficiency measures, building
12 and subdivision design elements, onsite energy sources that have high fuel
13 efficiency or do not require fuel, combined heat and power facilities, and other
14 measures.

15 (32) “Life cycle cost” has the same meaning as provided in 30 V.S.A.
16 § 201(c).

17 Sec. 2. 10 V.S.A. § 6086 is amended to read:

18 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

19 (a) Before granting a permit, the district commission shall find that the
20 subdivision or development:

21 * * *

1 (9) Is in conformance with a duly adopted capability and development
2 plan, and land use plan when adopted. However, the legislative findings of
3 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
4 in the consideration of applications by a district commission.

5 * * *

6 (F) Energy conservation. A permit will be granted when it has been
7 demonstrated by the applicant that, in addition to all other applicable criteria;

8 (i) the The planning and design of the subdivision or development
9 reflect the principles of energy conservation and incorporate the best available
10 technology for efficient use or recovery of energy; or

11 (ii) The energy conservation measures proposed by the applicant
12 have the lowest life cycle cost as determined and communicated to the district
13 commission by the efficiency entity appointed by the public service board
14 pursuant to 30 V.S.A. § 209(d)(2) or, if that entity does not communicate such
15 a determination to the district commission, the department of public service;
16 and

17 (iii) The proposed development or subdivision is consistent with
18 any energy efficiency or conservation standards in an applicable municipal or
19 regional plan;

20 (iv) In determining life cycle costs for the purpose of this
21 subdivision (9), an efficiency entity appointed under 30 V.S.A § 209(d)(2) or

1 the department of public service shall include the utility and publicly borne
2 costs of upgrading existing transmission or generation facilities and services
3 that would be necessary to serve a development or subdivision if a given
4 technological measure were not implemented, and costs shall be based on
5 reasonable forecasts of future energy costs and demand that do not rely solely
6 or primarily on historic data;

7 (v) An efficiency entity appointed under 30 V.S.A § 209(d)(2) or
8 the department of public service may recommend that an applicant consider for
9 commercial buildings specific energy conservation measures that meet or
10 exceed the most recently adopted commercial building energy standards under
11 21 V.S.A. § 268. The district commission may adopt any such
12 recommendation as a permit condition.

13 (G) Private utility services. A permit will be granted for a
14 development or subdivision which relies on ~~privately owned~~ privately owned
15 utility services or facilities, including central sewage or water facilities and
16 roads, whenever it is demonstrated by the applicant that, in addition to all other
17 applicable criteria;

18 (i) the privately owned The privately owned utility services or
19 facilities are in conformity with a capital program or plan of the municipality
20 involved, or adequate surety is provided to the municipality and conditioned to

1 protect the municipality in the event that the municipality is required to assume
2 the responsibility for the services or facilities; and

3 (ii) in the case of a privately owned utility service that provides
4 electric services or facilities on the site of a proposed development or
5 subdivision and is not subject to the jurisdiction of the public service board, the
6 privately owned utility service conforms to the approved least-cost integrated
7 plan under 30 V.S.A. § 218c of the electric utility that serves the area in which
8 the development or subdivision is to be located. A privately owned utility
9 service that does not so conform must demonstrate that it will have the lowest
10 life cycle cost and be consistent with the energy and utility elements and
11 standards of the applicable municipal and regional plans.

12 (H) Costs of scattered development. The district commission will
13 grant a permit for a development or subdivision which is not physically
14 contiguous to an existing settlement whenever it is demonstrated that, in
15 addition to all other applicable criteria, the additional costs of public services
16 and facilities caused directly or indirectly by the proposed development or
17 subdivision do not outweigh the tax revenue and other public benefits of the
18 development or subdivision such as increased employment opportunities or the
19 provision of needed and balanced housing accessible to existing or planned
20 employment centers. Under this subdivision, an analysis of the additional
21 costs of electricity services and facilities shall include all additional direct and

1 indirect costs, including the cost of distribution lines to the proposed
2 development or subdivision, the cost of upgrading transmission lines or electric
3 generation, and any other such costs. The additional costs of upgrading
4 transmission lines or electric generation shall be independently verified and
5 communicated to the applicant and the district commission by the department
6 of public service or the retail electric utility that would provide service to the
7 proposed development or subdivision, and such cost shall be determined even
8 if the development or subdivision would not immediately create the need to
9 construct additional facilities. Such verified costs shall be included in the
10 applicant's cost calculation under this subdivision.

11 (J) Public utility services. A permit will be granted for a
12 development or subdivision whenever it is demonstrated that, in addition to all
13 other applicable criteria;

14 (i) ~~necessary~~ Necessary supportive governmental and public utility
15 facilities and services are available or will be available when the development
16 is completed under a duly adopted capital program or plan or in the case of
17 electric facilities and services, a duly approved least-cost integrated plan under
18 30 V.S.A. § 218c;

19 (ii) Using life cycle cost, an excessive or uneconomic demand will
20 not be placed on such facilities and services, ~~and the;~~

1 ~~(iii) provision~~ Provision of such facilities and services has been
2 planned on the basis of a projection of reasonable population increase and
3 economic growth;

4 (iv) All portions of the development or subdivision that are
5 nonresidential will minimize energy use during periods of peak energy demand
6 to the fullest practicable extent, including participation in available demand
7 response programs for electric consumers;

8 (v) Where applicable, the public service board and district
9 commission have given final approval for such facilities and services and any
10 necessary upgrades; and

11 (vi) The electric utility that is to serve the development or
12 subdivision can provide such service in a manner that is consistent with the
13 utility's approved least-cost integrated plan under 30 V.S.A. § 218c and does
14 not require any system upgrades or projects not specifically contemplated in
15 that plan.

16 * * *

17 * * * Municipal Land Use Planning and Regulation * * *

18 Sec. 3. 24 V.S.A. § 4302(c) is amended to read:

19 (c) In addition, this chapter shall be used to further the following specific
20 goals:

21 * * *

1 (7) To encourage the efficient use of energy and the development of
2 renewable energy resources and the consistency of local planning related to
3 energy with state energy policy as stated in 30 V.S.A. § 202a and the electric
4 energy plan and the comprehensive energy plan prepared by the department of
5 public service pursuant to 30 V.S.A. §§ 202 and 202b.

6 * * *

7 Sec. 4. 24 V.S.A. § 4306 is amended to read:

8 § 4306. MUNICIPAL AND REGIONAL PLANNING FUND

9 * * *

10 (b) Disbursement to regional planning commissions shall be according to a
11 ~~formula to be adopted by~~ competitive program administered under a rule
12 adopted under chapter 25 of Title 3 by the department for the assistance of the
13 regional planning commissions. The rules shall give due consideration to the
14 region's progress in adopting a regional plan and to the region's performance
15 in achieving the purposes and goals set out in section 4302 of this title.

16 Disbursement to municipalities shall be through a competitive program
17 administered by the department providing the opportunity for any eligible
18 municipality or municipalities to compete regardless of size, provided that to
19 receive funds, a municipality:

20 (1) Shall be confirmed under section 4350 of this title; or

1 (2)(A) Shall use the funds for the purpose of developing a municipal
2 plan to be submitted for approval by the regional planning commission, as
3 required for municipal confirmation under section 4350 of this title; and

4 (B) Shall have voted at an annual or special meeting to provide local
5 funds for municipal and regional planning purposes; or

6 (3) Regardless of eligibility under subdivisions (1) and (2)(A) of this
7 subsection, may apply to use the funds exclusively to research and map town
8 highways, trails, and unidentified corridors under subdivisions 302(a)(6)
9 and (7) of Title 19;

10 (4) A municipality or regional planning commission may apply to use
11 the funds exclusively to research and implement greenhouse gas budgets for
12 municipal, residential, or commercial purposes.

13 (c) Funds allocated to municipalities shall be used for the purposes of:

14 (1) funding the regional planning commission in undertaking capacity
15 studies;

16 (2) carrying out the provisions of subchapters 5 through 10 of this
17 chapter or subdivision (b)(4) of this section; and

18 (3) acquiring development rights, conservation easements, or title to
19 those lands, areas and structures identified in either regional or municipal plans
20 as requiring special consideration for provision of needed housing, aquifer
21 protection, open space, farmland preservation, or other conservation purposes.

1 Sec. 5. 24 V.S.A. § 4345 is amended to read:

2 § 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING
3 COMMISSIONS

4 Any regional planning commission created under this chapter may:

5 * * *

6 (14) Request assistance from the department of public service in
7 developing the energy and utility elements of a regional plan, in evaluating the
8 same elements of a municipal plan, and with respect to any matter related to
9 energy, electric and gas utilities, telecommunications, and water utilities that is
10 within the duties and powers of a regional planning commission under this
11 section and section 4345a of this title.

12 Sec. 6. 24 V.S.A. § 4345a is amended to read:

13 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

14 A regional planning commission created under this chapter shall:

15 * * *

16 (6) Prepare and maintain implementation guidelines that will assist
17 municipalities and the regional commission in developing a planning process
18 that will attain, within a reasonable time, consistency with the goals established
19 in section 4302 of this title. Guidelines, which may be revised at any time,
20 shall be prepared initially by July 1, 1989.

21 * * *

1 (19) In preparing the energy and utility elements of the regional plan,
2 and evaluating the same elements of a municipal plan, consult with the
3 department of public service, any efficiency entity that serves any part of the
4 region and has been appointed by the public service board pursuant to
5 30 V.S.A. § 209(d)(2), the retail electric and gas utilities serving any part of
6 the region, and any electric company that does not have a designated retail
7 service territory and that owns or operates electric transmission facilities
8 within the state that serve any part of the region.

9 (20) In preparing the energy and utility elements of the regional plan,
10 include and discuss the regional planning commission's forecast of energy
11 demand for the region or reference, discuss, and rely on current, applicable
12 forecasts of energy demand prepared by one or more of the entities listed in
13 subdivision (19) of this section.

14 (21) Develop standards for the conservation and efficient use of energy
15 that a municipality may include in a local plan or bylaw.

16 Sec. 7. 24 V.S.A. § 4414 is amended to read:

17 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

18 Any of the following types of regulations may be adopted by a municipality
19 in its bylaws in conformance with the plan and for the purposes established in
20 section 4302 of this title.

21 * * *

1 (3) Conditional uses.

2 (A) In any district, certain uses may be allowed only by approval of
3 the appropriate municipal panel, if general and specific standards to which
4 each allowed use must conform are prescribed in the appropriate bylaws and if
5 the appropriate municipal panel, under the procedures in subchapter 10 of this
6 chapter, determines that the proposed use will conform to those standards.
7 These general standards shall require that the proposed conditional use shall
8 not result in an undue adverse effect on any of the following:

9 (i) The capacity of existing or planned community and public
10 utility facilities, including facilities providing electricity and gas.

11 (ii) The character of the area affected, as defined by the purpose or
12 purposes of the zoning district within which the project is located, and
13 specifically stated policies and standards of the municipal plan.

14 (iii) Traffic on roads and highways in the vicinity.

15 (iv) Bylaws and ordinances then in effect.

16 (v) Utilization of renewable energy resources.

17 (vi) The efficient use and conservation of energy. In applying this
18 subdivision (vi), the appropriate municipal panel shall presume that an undue
19 adverse effect is created if the use will not conform with applicable standards
20 of or utilize programs available from the state, region, or municipality with

1 respect to energy conservation or efficiency or from an efficiency entity
2 appointed by the public service board pursuant to 30 V.S.A. § 209(d)(2).

3 * * *

4 (6) ~~Aeeess~~ Energy conservation; energy efficiency; access to renewable
5 energy resources. Any municipality may adopt zoning and subdivision bylaws
6 to encourage energy conservation and energy efficiency in land development
7 and to protect and provide access to, among others, the collection or
8 conversion of direct sunlight, wind, running water, organically derived fuels,
9 including wood and agricultural sources, waste heat, and geothermal sources,
10 including those recommendations contained in the adopted municipal plan,
11 regional plan, or both. The bylaw shall establish a standard of review in
12 conformance with the municipal plan provisions required pursuant to
13 subdivision 4382(a)(9) of this title.

14 * * *

15 Sec. 8. 24 V.S.A. § 4418 is amended to read:

16 § 4418. SUBDIVISION BYLAWS

17 * * *

18 (1) Subdivision bylaws shall be administered in accordance with the
19 requirements of subchapter 10 of this chapter, and shall contain:

20 * * *

1 (C) Standards for the design and configuration of parcel boundaries
2 and location of associated improvements necessary to implement the municipal
3 plan and achieve the desired settlement pattern for the neighborhood, area, or
4 district in which the subdivision is located and to promote the conservation and
5 efficient use of energy.

6 * * *

7 (E) Specific development standards to promote the conservation and
8 efficient use of energy or to permit the utilization of renewable energy
9 resources, or both.

10 (2) Subdivision bylaws may include:

11 * * *

12 ~~(C) Specific development standards to promote the conservation of~~
13 ~~energy or to permit the utilization of renewable energy resources, or both.~~

14 ~~(D) State standards and criteria under 10 V.S.A. § 6086(a).~~

15 * * * Title 30 Provisions (Public Service) * * *

16 Sec. 9. 30 V.S.A. § 2 is amended to read:

17 § 2. DEPARTMENT OF PUBLIC SERVICE; POWERS

18 * * *

19 (e) On receipt of a request for assistance from a regional planning
20 commission under subdivision 4345(14) of Title 24, the department shall
21 respond and provide appropriate assistance.

1 Sec. 10. 30 V.S.A. § 201 is amended to read:

2 § 201. DEFINITIONS

3 * * *

4 (c) As used in this chapter, “life cycle cost” means the present value
5 purchase of an item, plus the replacement cost, plus or minus the salvage
6 value, plus the present value of operation and maintenance costs, plus the
7 energy and environmental externalities’ costs and benefits.

8 Sec. 11. 30 V.S.A. § 218 is amended to read:

9 § 218. JURISDICTION OVER CHARGES AND RATES

10 * * *

11 (g) With respect to a company that is required to have a least-cost
12 integrated plan, when an expenditure by that company is challenged in any rate
13 proceeding under this title, there shall be a rebuttable presumption that the
14 expenditure is imprudent and not appropriate for recovery in rates if the
15 company does not have such a plan that is approved by the board or if the
16 expenditure is demonstrated to be inconsistent with the company’s approved
17 plan. Such a presumption may be rebutted only by a showing, based on clear
18 and convincing evidence, that the expenditure was needed and met its asserted
19 need at the lowest life cycle cost.

1 Sec. 12. 30 V.S.A. § 218c is amended to read:

2 § 218c. ~~LEAST COST~~ LEAST-COST INTEGRATED PLANNING

3 (a)(1) A “~~least cost~~ least-cost integrated plan” for a regulated electric or gas
4 utility is a plan for meeting the public’s need for energy services, after safety
5 concerns are addressed, at the lowest present value life cycle cost, including
6 environmental and economic costs, through a strategy combining investments
7 and expenditures on energy supply, transmission and distribution capacity,
8 transmission and distribution efficiency, and comprehensive energy efficiency
9 programs. Economic costs shall be determined with due regard to:

10 (A) the greenhouse gas inventory developed under the provisions of
11 10 V.S.A. § 582;

12 (B) the state’s progress in meeting its greenhouse gas reduction
13 goals; and

14 (C) the value of the financial risks associated with greenhouse gas
15 emissions from various power sources.

16 (2) “Comprehensive energy efficiency programs” shall mean a
17 coordinated set of investments or program expenditures made by a regulated
18 electric or gas utility or other entity as approved by the board pursuant to
19 subsection 209(d) of this title to meet the public’s need for energy services
20 through efficiency, conservation or load management in all customer classes

1 and areas of opportunity which is designed to acquire the full amount of cost
2 effective savings from such investments or programs.

3 (3) A plan under this section shall include calculations establishing the
4 public's need for energy services. These calculations shall include any
5 applicable economic and population growth projections available from each
6 municipal and regional planning commission within the service area of the
7 utility preparing the plan.

8 (4) A plan under this section shall include electric energy demand
9 projections that are based on reasonable forecasts of future demand that do not
10 rely solely on historic data. Such projections shall be included at least for the
11 ten-year period immediately following the completion of the plan. A plan
12 under this section also shall set forth long-term sustainable strategies for
13 meeting electric energy demand over a 20-year planning horizon.

14 (b)(1) Each regulated electric or gas company shall prepare and implement
15 a least cost integrated plan for the provision of energy services to its Vermont
16 customers no less than once in each three-year period. Proposed plans shall be
17 submitted to the department of public service and the public service board and
18 each planning commission for a municipality or region any part of which is
19 within the service area of the company. Within the first billing cycle following
20 such submission, the company shall notify all customers, in accordance with
21 the board's direction, of the submission of the plan and the physical and

1 electronic locations at which the plan may be viewed and any other
2 information required by the board.

3 (2) The board, after notice and opportunity for hearing, ~~may~~ shall
4 approve a company's least cost integrated plan if it determines that the
5 company's plan complies with the requirements of subdivision (a)(1) of this
6 section. In determining whether the plan meets those requirements, the board
7 shall give due consideration to the argument, comments, and evidence
8 submitted by a municipal or regional planning commission. The board shall
9 render a decision on whether to approve a company's plan within nine months
10 of the submission of the plan by the company to the board.

11 (3) The board shall reject a company's plan if the board determines that
12 the plan does not comply with the requirements of subdivision (a)(1) of this
13 section. Any such rejection shall set forth each specific reason for the
14 determination.

15 (4) For a purchase, investment, or facility that is specifically analyzed
16 and shown in an approved plan to meet the asserted need at the lowest life
17 cycle cost, approval of a least-cost integrated plan shall create a rebuttable
18 presumption in a proceeding under subchapter 2 of this chapter that the facility
19 meets the criteria set forth in subdivisions 248(b)(2) and (6) of this title. Such
20 presumption may be rebutted only by a showing, based on clear and

1 convincing evidence, that the facility is not needed or will not meet the
2 asserted need for the facility at the lowest life cycle cost.

3 (5) In a proceeding under subchapter 2 of this chapter concerning a
4 purchase, investment, or facility that is not eligible for the presumption
5 provided under subdivision (4) of this subsection and that is proposed by a
6 company required to have an approved least-cost integrated plan, there shall be
7 a rebuttable presumption that the facility does not meet the criteria set forth at
8 subdivisions 248(b)(2) and (6) of this title. Such presumption may be rebutted
9 only by a showing, based on clear and convincing evidence, that the facility is
10 needed and will meet the asserted need for the facility at the lowest life cycle
11 cost.

12 * * *

13 Sec. 13. 30 V.S.A. § 248 is amended to read:

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

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

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

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

4 (2) Except for the replacement of existing facilities with equivalent
5 facilities in the usual course of business, and except for electric generation
6 facilities that are operated solely for on-site electricity consumption by the
7 owner of those facilities:

8 (A) no company, as defined in section 201 of this title, and no person,
9 as defined in subdivision 6001(14) of Title 10, may begin site preparation for
10 or construction of an electric generation facility or electric transmission facility
11 within the state which is designed for immediate or eventual operation at any
12 voltage; and

13 (B) no such company may exercise the right of eminent domain in
14 connection with site preparation for or construction of any such transmission or
15 generation facility, unless the public service board first finds that the same will
16 promote the general good of the state and issues a certificate to that effect.

17 Prior to obtaining a certificate of public good under this section, compliance
18 with section 248b of this title shall be required with respect to a purchase,
19 investment, or facility that is by or for a company that is an electric
20 transmission or a rate-regulated electric utility over which the board has
21 jurisdiction pursuant to subdivision 203(1) or (2) of this title, except for a

1 facility that the board determines, in accordance with the procedure and criteria
2 of subsection (j) of this section, is appropriately reviewed under subsection (j).

3 * * *

4 Sec. 14. 30 V.S.A. § 248b is added to read:

5 § 248b. PUBLIC UTILITIES; REQUESTS FOR PROPOSALS; REVIEW OF
6 PORTFOLIOS AND PROJECTS THAT ARE NOT LIMITED IN
7 SIZE AND SCOPE

8 (a) Application. This section applies to a company that is an electric
9 transmission or a rate-regulated electric utility over which the board has
10 jurisdiction pursuant to subdivision 203(1) or (2) of this title. This section also
11 applies to a proposed electric purchase, investment, or facility that is by or for
12 such a company and is subject to section 248 of this title. However, this
13 section shall not apply to such a facility if the board determines, in accordance
14 with the procedure and criteria of subsection 248(j) of this title, that the facility
15 is appropriately reviewed under subsection 248(j).

16 (b) The purposes of this section are:

17 (1) To encourage the state's electric transmission and distribution
18 utilities and the board to consider electric purchases, investments, and facilities
19 in relation to each other rather than in isolation and, therefore, board review of
20 portfolios of resources to meet the electric needs of the state or the service
21 territory of one or more electric utilities.

1 (2) To encourage the diversification of the electric energy portfolio of
2 the state as a whole and of individual electric utility companies.

3 (3) To promote transparency and public involvement in the process
4 of electric utility and board decision-making regarding electric energy choices
5 for the state and individual electric utility companies.

6 (4) To promote the use of competitive and market-based processes to
7 develop options that are designed to address expected energy, capacity,
8 reliability, and other electric system deficiencies.

9 (5) To encourage the exploration and development of all potential
10 avenues to address such deficiencies, including supply- and demand-side
11 options.

12 (6) To support the development of in-state energy services,
13 businesses, and capability, both inside and outside utility companies, and the
14 jobs and economic benefits associated with such services and businesses.

15 (c) Requirement of requests for proposals. A company subject to this
16 section shall issue a request for proposals to meet the needs of its customers for
17 future electric service in response to any one of the following, and in any event
18 no less frequently than once every five years:

19 (1) The company anticipates, expects, or projects a capacity, energy,
20 reliability, or other system deficiency, including any deficiencies identified in a
21 least-cost integrated plan under subsection 218c(b) of this title or pursuant to

1 the transmission planning process described in subsection 218c(d) of this title
2 and implementing board rules and orders.

3 (2) The company determines that its facilities or load cause, contribute
4 to, or would experience an impact from a reliability or other system deficiency,
5 including any deficiencies identified in a least-cost integrated plan under
6 subsection 218c(b) of this title or pursuant to the transmission planning process
7 described in subsection 218c(d) of this title and implementing board rules and
8 orders.

9 (3) The company proposes or will be served by an electric purchase,
10 investment, or facility that is subject to section 248 of this title.

11 (4) The board directs the company to issue a request for proposals.

12 (d) Issuance of request for proposals.

13 (1) If the need to be met affects only one company subject to this
14 section, that company shall issue the request for proposals.

15 (2) If the need to be met affects more than one company subject to this
16 section, the request for proposals shall be issued by all affected companies
17 jointly. If all affected companies cannot agree to issue a request for proposals,
18 they shall bring their dispute promptly to the board for resolution. This
19 subdivision shall not be interpreted to require a transmission-only utility to act
20 in contradiction of federal law pertaining to separation of transmission and
21 generation and, if needed to avoid such a contradiction, a request for proposals

1 that pertains to a deficiency on that utility's system and otherwise conforms to
2 the requirements of this subsection may be made by the affected distribution
3 companies.

4 (3) A company or group of affected companies may issue a request for
5 proposals through a system planning committee approved by the board, or a
6 subcommittee of such a system planning committee, and may integrate the
7 activities of issuing and acting on a request for proposals with the activities of
8 such a system planning committee.

9 (4) A copy of each request for proposals shall be delivered to each
10 efficiency entity appointed by the board pursuant to subdivision 209(d)(2) of
11 this title that serves the area or areas affected by the needs that are the subject
12 of the request.

13 (e) Content of a request for proposals. A request for proposals under this
14 section at a minimum shall meet each of the following:

15 (1) The request shall cover the unmet energy, capacity, reliability, and
16 other needs of the affected company or companies. To meet those needs, the
17 request shall seek proposals for all of the following:

18 (A) The development of or investment in new generation,
19 transmission, or distribution facilities within or without the state.

20 (B) Purchases of energy or capacity produced by facilities outside the
21 state.

1 (C) The development and implementation of demand-side
2 management programs, including energy efficiency and conservation and
3 demand response measures.

4 (D) Any other measures that reasonably may address the asserted
5 needs in whole or part.

6 (E) Combinations of the actions, purchases, programs, and measures
7 described in subdivisions (A) through (D) of this subdivision (1).

8 (2) A request for proposals shall be consistent with the approved
9 least-cost integrated plan under section 218c of this title of each company
10 issuing the request, if the company is required to have such an approved plan.

11 (3) A request for proposals shall require that each respondent to the
12 request provide a life cycle cost analysis of the proposal that conforms to
13 sections 201(c) and 218c of this title.

14 (f) Company decision on request for proposals. Within a reasonable time
15 as fixed by the board, a company or group of companies issuing a request for
16 proposals shall file each of the following with the board and all persons and
17 entities identified in subdivision 248(a)(4)(C) of this title. In the event that the
18 proposed disposition includes the construction of facilities subject to section
19 248 of this title, the company or group of companies shall comply with
20 subsection 248(f) or (g) of this title, as applicable, prior to making this filing
21 with the board:

1 (1) All responses to the request for proposals.

2 (2) The company's or companies' proposed disposition of the proposals.

3 Such proposed disposition may and is encouraged to include a portfolio of
4 actions, purchases, facilities, programs, and measures to meet the needs that
5 are the subject of the request for proposals.

6 (3) The reasons for the proposed disposition of the proposals, including
7 analysis applying each criterion of subdivisions (g)(1) and (2) of this section to
8 that proposed disposition.

9 (4) A petition for board review of the proposed disposition.

10 (g) Board review. The board shall approve or disapprove the proposed
11 disposition of the proposals after notice and opportunity for hearing. The
12 provisions of subdivision 248(a)(4) of this title shall apply to such a
13 proceeding. Any person or entity identified in subdivision 248(a)(4)(C) of this
14 title shall be a party on entry of a notice of appearance.

15 (1) The board's review under this subsection shall consider each of the
16 following:

17 (A) The extent to which the proposed disposition is consistent with
18 the most recently approved least-cost integrated plan under section 218c of this
19 title of each company the needs of which are to be met by the proposed
20 disposition.

1 (B) The extent to which the proposed disposition will meet the
2 public's need for energy services at the lowest life cycle cost in accordance
3 with sections 201(c) and 218c of this title.

4 (C) The extent to which the benefits of the proposed disposition and
5 the actions that would be undertaken exceed their costs.

6 (D) The extent to which the actions that would be undertaken are
7 financially viable.

8 (E) The extent to which the actions that would be undertaken are
9 consistent with the purposes and goals stated in 24 V.S.A. § 4302.

10 (F) The extent to which the proposed disposition would result in a
11 diverse portfolio for the company or companies and for the state as a whole.

12 (G) The extent to which the actions that would be undertaken are
13 required to meet the need for present and future demand for service which
14 could not otherwise be provided in a more cost-effective manner through
15 energy conservation programs and measures and energy-efficiency and load
16 management measures, including those developed pursuant to the provisions of
17 subsection 209(d), section 218c, and subsection 218(b) of this title.

18 (H) The extent to which the actions that would be undertaken will not
19 unduly interfere with the orderly development of the region with due
20 consideration having been given to the recommendations of the municipal and
21 regional planning commissions, the recommendations of the municipal

1 legislative bodies, and the land conservation measures contained in the plan of
2 any affected municipality.

3 (1) The extent to which the proposed disposition gives priority
4 consideration to proposals by in-state firms and providers.

5 (2) With respect to a proposed disposition of a request for proposals, the
6 board shall reject any action that would be undertaken as a result of such
7 disposition if the action does not meet one or more of the requirements of
8 subdivision 248(b)(3), (5), (7), (8), (9), or (10) of this title.

9 (h) Board decision; provisional approval. In its decision on a proposed
10 disposition of a request for proposals under subsection (g) of this section, the
11 board shall state which if any of the actions that would be undertaken do not
12 satisfy the standards for approval according to the criteria of subdivisions
13 (g)(1) and (2) of this section and shall provisionally approve the remaining
14 actions if it determines that they meet those standards and are reasonably
15 necessary to meet the public's need for energy services.

16 (i) Final approval.

17 (1) If an action provisionally approved by the board under subsection (h)
18 of this section is a purchase, investment, or facility subject to section 248 of
19 this title, the company or group of companies shall proceed to submit all
20 additional evidence, including site-specific evidence, necessary for the board to
21 complete a proceeding and make affirmative findings under subsection 248(b)

1 of this title. Following such submission, and after notice and opportunity for
2 hearing, the board shall issue a certificate of public good for the proposed
3 action under section 248 of this title upon making those affirmative findings
4 unless it is demonstrated by clear and convincing evidence that one or more of
5 those findings cannot be made. The provisions of subdivision 248(a)(4)(C)
6 and subsections 248(f) and (g) of this title shall not apply to a submission for
7 final approval under this subdivision (i)(1). The provisions of subdivisions
8 248(a)(4)(A) and (D) of this title shall apply to such a submission if the design
9 or siting of the facility is substantially changed from the provisional approval
10 or the board determines that the public would have had insufficient incentive to
11 attend a nontechnical hearing on the provisional approval because the facility's
12 design was conceptual or because the facility was proposed as one of a
13 portfolio of multiple measures.

14 (2) If an action provisionally approved by the board under subsection (g)
15 of this title is a demand-side measure described in section 209(d)(1) or 218(b)
16 of this title, the company or group of companies may submit all additional
17 evidence necessary for the board to issue an approval under one or both of
18 those sections. Upon such submission, and after notice and opportunity for
19 hearing, the board shall grant final approval for such an action under section
20 209(d)(1) or 218(b) of this title unless it is demonstrated by clear and
21 convincing evidence that such approval should not be issued.

1 (j) The board shall adopt such rules as are necessary to effect an orderly
2 and efficient process for issuing requests for proposals and reviewing and
3 issuing decisions on requests for proposals and provisional and final approvals
4 under this section.

5 (k) The requirements of subsections (c) through (i) of this section shall be
6 subject to the waiver authority of the board and the emergency authority of the
7 governor under, respectively, subsections 248(k) and (l) of this title; provided,
8 however, that upon expiration of a waiver under either of those subsections,
9 the board shall require such compliance with this section as it finds to be
10 practicable and best promotes the general good of the state.

11 Sec. 15. EFFECTIVE DATE

12 This act shall take effect from passage.