

1 S.260

2 Introduced by Committee on Natural Resources and Energy

3 Date: June 9, 2016

4 Subject: Energy; public service; natural resources; land use; siting; renewable
5 generation; net metering

6 Statement of purpose of bill as introduced: This bill proposes various
7 improvements to the siting of energy projects and the process for siting them.

8 An act relating to improving the siting of energy projects

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

10 * * * Designation * * *

11 Sec. 1. DESIGNATION OF ACT

12 This act shall be referred to as the Energy Development Improvement Act.

13 * * * Integration of Energy and Land Use Planning * * *

14 Sec. 2. 24 V.S.A. § 4302(c)(7) is amended to read:

15 (7) To ~~encourage the~~ make efficient use of energy and, provide for the
16 development of renewable energy resources, and reduce emissions of
17 greenhouse gases.

18 (A) General strategies for achieving these goals include increasing
19 the energy efficiency of new and existing buildings; identifying areas suitable
20 for renewable energy generation; encouraging the use and development of

1 renewable or lower emission energy sources for electricity, heat, and
2 transportation; and reducing transportation energy demand and single
3 occupancy vehicle use.

4 (B) Specific strategies and recommendations for achieving these
5 goals are identified in the State energy plans prepared under 30 V.S.A. §§ 202
6 and 202b.

7 Sec. 3. 24 V.S.A. § 4345 is amended to read:

8 § 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING
9 COMMISSIONS

10 Any regional planning commission created under this chapter may:

11 * * *

12 (6) Undertake studies and make recommendations on land development,
13 urban renewal, transportation, economic, industrial, commercial, and social
14 development, urban beautification and design improvements, historic and
15 scenic preservation, ~~the conservation of energy and the development of~~
16 ~~renewable energy resources~~, State capital investment plans, and wetland
17 protection.

18 * * *

19 Sec. 4. 24 V.S.A. § 4345a is amended to read:

20 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

21 A regional planning commission created under this chapter shall:

1 * * *

2 (14) With respect to proceedings under 30 V.S.A. § 248:

3 (A) have the right to appear and participate; and

4 (B) ~~Appear~~ appear before the Public Service Board to aid ~~the Board~~
5 in making determinations under ~~30 V.S.A. § 248~~ that statute when requested
6 by the Board.

7 * * *

8 (19) Undertake studies and make recommendations on the conservation
9 of energy and the development of renewable energy resources.

10 Sec. 5. 24 V.S.A. § 4348a(a)(3) is amended to read:

11 (3) An energy element, which may include an analysis of ~~energy~~
12 resources, needs, scarcities, costs, and problems within the region; across all
13 energy sectors, including electric, thermal, and transportation; a statement of
14 policy on the conservation and efficient use of energy and the development and
15 siting of renewable energy resources; ~~and;~~ a statement of policy on patterns
16 and densities of land use ~~and control devices~~ likely to result in conservation of
17 energy; and an identification of potential areas for the development and siting
18 of renewable energy resources and areas that are unsuitable for siting those
19 resources or particular categories or sizes of those resources.

1 Sec. 6. 24 V.S.A. § 4352 is added to read:

2 § 4352. OPTIONAL DETERMINATION OF ENERGY

3 COMPLIANCE; ENHANCED ENERGY PLANNING

4 (a) Regional plan. A regional planning commission may submit its adopted
5 regional plan to the Commissioner of Public Service appointed under
6 30 V.S.A. § 1 for a determination of energy compliance. The Commissioner
7 shall issue an affirmative determination on finding that the regional plan meets
8 the requirements of subsection (c) of this section and allows for the siting in
9 the region of all types of renewable generation technologies.

10 (b) Municipal plan. If the Commissioner of Public Service has issued an
11 affirmative determination of energy compliance for a regional plan that is in
12 effect, a municipal legislative body within the region may submit its adopted
13 municipal plan to the regional planning commission for issuance of a
14 determination of energy compliance. The regional planning commission shall
15 issue an affirmative determination, signed by the chair of the regional planning
16 commission, on finding that the municipal plan meets the requirements of
17 subsection (c) of this section and is consistent with the regional plan.

18 (c) Enhanced energy planning; requirements. To obtain an affirmative
19 determination of energy compliance under this section, a plan must:

20 (1) in the case of a regional plan, include the energy element as
21 described in subdivision 4348a(a)(3) of this title;

1 (2) in the case of a municipal plan, include an energy element that has
2 the same components as described in subdivision 4348a(a)(3) of this title for a
3 regional plan and be confirmed under section 4350 of this title;

4 (3) be consistent with the following, with consistency determined in the
5 manner described under subdivision 4302(f)(1) of this title:

6 (A) Vermont's greenhouse gas reduction goals under 10 V.S.A.
7 § 578(a);

8 (B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A.
9 § 580;

10 (C) Vermont's building efficiency goals under 10 V.S.A. § 581;

11 (D) State energy policy under 30 V.S.A. § 202a and the
12 recommendations for regional and municipal energy planning pertaining to the
13 efficient use of energy and the siting and development of renewable energy
14 resources contained in the State energy plans adopted pursuant to 30 V.S.A.
15 §§ 202 and 202b (State energy plans); and

16 (E) the distributed renewable generation and energy transformation
17 categories of resources to meet the requirements of the Renewable Energy
18 Standard under 30 V.S.A. §§ 8004 and 8005; and

19 (4) meet the standards for issuing a determination of energy compliance
20 included in the State energy plans.

1 (d) State energy plans; recommendations; standards.

2 (1) The State energy plans shall include the recommendations for
3 regional and municipal energy planning and the standards for issuing a
4 determination of energy compliance described in subdivision (c)(3) of this
5 section.

6 (2) The recommendations shall provide strategies and options for
7 regional planning commissions and municipalities to employ in meeting the
8 goals and policies contained in statutes listed in subdivision (c)(3) of this
9 section.

10 (3) The standards shall consist of a list of criteria for issuing a
11 determination of energy compliance that ensure consistency with the goals and
12 policies contained in the statutes listed in subdivision (c)(3) of this section and
13 the recommendations developed pursuant to this subsection.

14 (4) In developing standards and recommendations under this subsection,
15 the Commissioner of Public Service shall consult with all persons identified
16 under 30 V.S.A. § 202(d)(1); the Secretaries of Agriculture, Food and Markets,
17 of Commerce and Community Development, of Natural Resources, and of
18 Transportation; and other affected persons.

19 (5) The Commissioner of Public Service shall provide the
20 Commissioner of Housing and Community Development with a copy of the
21 recommendations and standards developed under this subsection for inclusion

1 in the planning and land use manual prepared pursuant to section 4304 of this
2 title.

3 (e) Process for issuing determinations of energy compliance. Review of
4 whether to issue a determination of energy compliance under this section shall
5 include a public hearing noticed at least 15 days in advance by direct mail to
6 the requesting regional planning commission or municipal legislative body,
7 posting on the website of the entity from which the determination is requested,
8 and publication in a newspaper of general publication in the region or
9 municipality affected. The Commissioner or regional planning commission
10 shall issue the determination in writing within two months of the receipt of a
11 request for a determination. If the determination is negative, the
12 Commissioner or regional planning commission shall state the reasons for
13 denial in writing and, if appropriate, suggest acceptable modifications.
14 Submissions for a new determination that follow a negative determination shall
15 receive a new determination within 45 days.

16 (f) Appeal. A regional planning commission aggrieved by an act or
17 decision of the Commissioner of Public Service under this section may appeal
18 to the Natural Resources Board established under 10 V.S.A. chapter 151 within
19 30 days of the act or decision. The provisions of 10 V.S.A. § 6024 regarding
20 assistance to the Board from other departments and agencies of the State shall
21 apply to this subsection. The Board shall conduct a de novo hearing on the act

1 or decision under appeal and shall proceed in accordance with the contested
2 case requirements of the Vermont Administrative Procedure Act. The Board
3 shall issue a final decision within 90 days of the filing of the appeal.

4 (g) Municipality; determination from DPS; time-limited option. Until
5 July 1, 2018, a municipality whose plan has been confirmed under section
6 4350 of this title may seek issuance of a determination of energy compliance
7 from the Commissioner of Public Service if it is a member of a regional
8 planning commission whose regional plan has not received such a
9 determination.

10 (1) The Commissioner shall issue an affirmative determination of
11 energy compliance for the municipal plan on finding that the plan meets the
12 requirements of subsection (c) of this section. The Commissioner's review of
13 the municipal plan shall be for the purpose only of determining whether a
14 determination of energy compliance should be issued because those
15 requirements are met.

16 (2) A municipality aggrieved by an act or decision of the Commissioner
17 under this subsection may appeal in accordance with the procedures of
18 subsection (f) of this section.

19 (h) Determination; time period. An affirmative determination of energy
20 compliance issued pursuant to this section shall remain in effect until the end
21 of the period for expiration or readoption of the plan to which it applies.

1 succeeding six-year period, and long-term sustainable strategies for achieving
2 and maintaining the lowest possible electric rates over the full 20-year
3 planning horizon consistent with the goal of maintaining a financially stable
4 electric utility industry in Vermont; and

5 (6) recommendations for regional and municipal energy planning and
6 standards for issuing a determination of energy compliance pursuant to
7 24 V.S.A. § 4352.

8 (c) In developing the Plan, the Department shall take into account the
9 protection of public health and safety; preservation of environmental quality;
10 the relevant goals of 24 V.S.A. § 4302; the potential for reduction of rates paid
11 by all retail electricity customers; the potential for reduction of electrical
12 demand through conservation, including alternative utility rate structures; use
13 of load management technologies; efficiency of electrical usage; utilization of
14 waste heat from generation; and utility assistance to consumers in energy
15 conservation.

16 (d) In establishing plans, the Director shall:

17 (1) Consult with:

18 (A) the public;

19 (B) Vermont municipal utilities and planning commissions;

20 (C) Vermont cooperative utilities;

21 (D) Vermont investor-owned utilities;

- 1 (E) Vermont electric transmission companies;
- 2 (F) environmental and residential consumer advocacy groups active
- 3 in electricity issues;
- 4 (G) industrial customer representatives;
- 5 (H) commercial customer representatives;
- 6 (I) the Public Service Board;
- 7 (J) an entity designated to meet the public's need for energy
- 8 efficiency services under subdivision 218c(a)(2) of this title;
- 9 (K) other interested State agencies; ~~and~~
- 10 (L) other energy providers; and
- 11 (M) the regional planning commissions.

12 * * *

13 (e) The Department shall conduct public hearings on the final draft and
14 shall consider the evidence presented at such hearings in preparing the final
15 Plan. The Plan shall be adopted no later than January 1, 2016 and readopted in
16 accordance with this section by every sixth January + 15 thereafter, and shall
17 be submitted to the General Assembly each time the plan is adopted or
18 readopted. The provisions of 2 V.S.A. § 20(d)(expiration of required reports)
19 shall not apply to the submission to be made under this subsection.

20 * * *

1 (h) The Plans adopted under this section shall become the electrical energy
2 portion of the State Energy Plan.

3 * * *

4 (j) For the purpose of assisting in the development of municipal and
5 regional plans under 24 V.S.A. chapter 117, the Director shall, on request,
6 provide municipal and regional planning commissions with publicly available
7 information detailing the location of electric transmission and distribution
8 infrastructure in the relevant municipality or region and the capacity of that
9 infrastructure to accept additional electric generation facilities without
10 modification. In providing this information, the Director shall be entitled to
11 the assistance of the electric utilities that own electric transmission or
12 distribution systems, or both, located in Vermont, including the ability to
13 obtain from those utilities such publicly available data as the Director
14 considers necessary to discharge his or her duties under this subsection.

15 Sec. 8. 30 V.S.A. § 202b is amended to read:

16 § 202b. STATE COMPREHENSIVE ENERGY PLAN

17 (a) The Department of Public Service, in conjunction with other State
18 agencies designated by the Governor, shall prepare a State Comprehensive
19 Energy Plan covering at least a 20-year period. The Plan shall seek to
20 implement the State energy policy set forth in section 202a of this title and

1 shall be consistent with the relevant goals of 24 V.S.A. § 4302. The Plan shall

2 include:

3 (1) a comprehensive analysis and projections regarding the use, cost,
4 supply, and environmental effects of all forms of energy resources used within
5 Vermont; ~~and~~

6 (2) recommendations for State implementation actions, regulation,
7 legislation, and other public and private action to carry out the comprehensive
8 energy plan; and

9 (3) recommendations for regional and municipal energy planning and
10 standards for issuing a determination of energy compliance pursuant to
11 24 V.S.A. § 4352.

12 * * *

13 (c) The Department shall adopt a State Energy Plan on or before January 1,
14 2016 and shall readopt the Plan by every sixth January ~~±~~ 15 thereafter. On
15 adoption or readoption, the Plan shall be submitted to the General Assembly.
16 The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not
17 apply to such submission.

18 * * *

1 Sec. 9. INITIAL IMPLEMENTATION; RECOMMENDATIONS;

2 STANDARDS

3 (a) On or before November 1, 2016, the Department of Public Service shall
4 publish recommendations and standards in accordance with 24 V.S.A. § 4352
5 as enacted by Sec. 6 of this act. Prior to issuing these recommendations and
6 standards, the Department shall perform each of the following:

7 (1) Consult with all persons identified under 30 V.S.A. § 202(d)(1); the
8 Secretaries of Agriculture, Food and Markets, of Commerce and Community
9 Development, of Natural Resources, and of Transportation; and other affected
10 persons.

11 (2) Post on its website a draft set of initial recommendations and
12 standards.

13 (3) Provide notice and an opportunity to comment and request a public
14 hearing to all persons listed in 30 V.S.A. § 202(d)(1). The Commissioner may
15 elect to hold one or more public hearings on the Commissioner's own
16 initiative.

17 (b) In addition to the requirements of Sec. 6 of this act, the standards
18 developed under this section shall address the following elements in a manner
19 consistent with the State energy plans adopted pursuant to 30 V.S.A. §§ 202
20 and 202b:

1 (1) analysis of total current energy use across transportation, heating,
2 and electric sectors;

3 (2) identification and mapping of existing electric generation and
4 renewable resources;

5 (3) establishment of 2025, 2035, and 2050 targets for energy
6 conservation, efficiency, fuel-switching, and use of renewable energy for
7 transportation, heating, and electricity;

8 (4) analysis of amount of thermal-sector conservation, efficiency, and
9 conversion to alternative heating fuels needed to achieve these targets;

10 (5) analysis of transportation system changes and land use strategies
11 needed to achieve these targets;

12 (6) analysis of electric-sector conservation and efficiency needed to
13 achieve these targets;

14 (7) pathways and recommended actions to achieve these targets,
15 informed by this analysis;

16 (8) identification of potential areas for the development and siting of
17 renewable energy resources and of the potential electric generation from such
18 resources in the identified areas, taking into account factors including resource
19 availability, environmental constraints, and the location and capacity of electric
20 grid infrastructure; and

1 (9) identification of areas, if any, that are unsuitable for siting those
2 resources or particular categories or sizes of those resources.

3 (c) On publication under subsection (a) of this section, the specific
4 recommendations and standards shall be considered an appendix to the
5 currently adopted plans under 30 V.S.A. §§ 202 and 202b. After this
6 publication, the Department may revise these recommendations and standards
7 in accordance with the procedures for adopting and revising plans under those
8 statutes.

9 Sec. 10. TRAINING

10 Following publication of the recommendations and standards under
11 Sec. 9(a) of this act, the Department of Public Service shall collaborate with
12 the Vermont League of Cities and Towns and the Vermont Association of
13 Planning and Development Agencies on the development and presentation of
14 training sessions for municipal and regional planning commissions to assist
15 them in the development of municipal and regional plans that are eligible to
16 receive a determination of energy compliance under Sec. 6 of this act,
17 24 V.S.A. § 4352, with at least one such session to be held in the area of each
18 regional planning commission after notice of the session to the regional
19 planning commission and its member municipalities.

1 Sec. 10a. PLANNING SUPPORT; ALLOCATION OF COSTS

2 (a) During fiscal year 2017, the Commissioner of Public Service, in
3 consultation with the Commissioner of Housing and Community
4 Development, shall award the amount of \$300,000.00 to regional planning
5 commissions established under 24 V.S.A. chapter 117 and to municipalities for
6 the purpose of providing training under Sec. 10 (training) of this act or
7 assisting municipalities in the implementation of this act.

8 (b) In awarding funds under this section, the Commissioners shall consider
9 the need and size of a municipality or region and the availability, if any, of
10 other assistance, expertise, or funds to a municipality or region to implement
11 this act.

12 (c) The Commissioner of Public Service shall allocate costs under
13 subsection (a) of this section to the electric distribution utilities subject to its
14 supervision under Title 30 of the Vermont Statutes Annotated based on their
15 pro rata share of total Vermont retail kilowatt-hour sales for the previous fiscal
16 year. Each of these utilities shall pay its allocation into the State Treasury at
17 such time and in such manner as the Commissioner may direct.

1 * * *

2 (4)(A) With respect to a facility located in the State, the Public Service
3 Board shall hold a nontechnical public hearing on each petition for such
4 finding and certificate in at least one county in which any portion of the
5 construction of the facility is proposed to be located.

6 * * *

7 (C) At the time of filing its application with the Board, copies shall
8 be given by the petitioner to the Attorney General and the Department of
9 Public Service, and, with respect to facilities within the State, the Department
10 of Health, Agency of Natural Resources, Historic Preservation Division,
11 Agency of Transportation, Agency of Agriculture, Food and Markets, and to
12 the chair or director of the municipal and regional planning commissions and
13 the municipal legislative body for each town and city in which the proposed
14 facility will be located.

15 * * *

16 (E) The Agency of Natural Resources shall appear as a party in any
17 proceedings held under this subsection, shall provide evidence and
18 recommendations concerning any findings to be made under subdivision (b)(5)
19 of this section, and may provide evidence and recommendations concerning
20 any other matters to be determined by the Board in such a proceeding.

1 (F) The following shall apply to the participation of the Agency of
2 Agriculture, Food and Markets in proceedings held under this subsection:

3 (i) In any proceeding regarding an electric generation facility that
4 will have a capacity greater than 500 kilowatts and will be sited on a tract
5 containing primary agricultural soils as defined in 10 V.S.A. § 6001, the
6 Agency shall appear as a party and provide evidence and recommendations
7 concerning any findings to be made under subdivision (b)(5) of this section on
8 those soils, and may provide evidence and recommendations concerning any
9 other matters to be determined by the Board in such a proceeding.

10 (ii) In a proceeding other than one described in subdivision (i) of
11 this subsection (4)(F), the Agency shall have the right to appear and
12 participate.

13 (G) The regional planning commission for the region in which the
14 facility is located shall have the right to appear as a party in any proceedings
15 held under this subsection. The regional planning commission of an adjacent
16 region shall have the same right if the distance of the facility's nearest
17 component to the boundary of that planning commission is 500 feet or
18 10 times the height of the facility's tallest component, whichever is greater.

19 (H) The legislative body and the planning commission for the
20 municipality in which a facility is located shall have the right to appear as a
21 party in any proceedings held under this subsection. The legislative body and

1 planning commission of an adjacent municipality shall have the same right if
2 the distance of the facility's nearest component to the boundary of that
3 adjacent municipality is 500 feet or 10 times the height of the facility's tallest
4 component, whichever is greater.

5 (I) When a person has the right to appear as a party in a proceeding
6 before the Board under this chapter, the person may exercise this right by filing
7 a letter with the Board stating that the person appears through the person's duly
8 authorized representative, signed by that representative.

9 (J) This subdivision (J) applies to an application for an electric
10 generation facility with a capacity that is greater than 50 kilowatts, unless the
11 facility is located on a new or existing structure the primary purpose of which
12 is not the generation of electricity. In addition to any other information
13 required by the Board, the application for such a facility shall include
14 information that delineates:

15 (i) the full limits of physical disturbance due to the construction
16 and operation of the facility and related infrastructure, including areas
17 disturbed due to the creation or modification of access roads and utility lines
18 and the clearing or management of vegetation;

19 (ii) the presence and total acreage of primary agricultural soils as
20 defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in

1 connection with the construction and operation of the facility, the amount of
2 those soils to be disturbed, and any other proposed impacts to those soils;

3 (iii) all visible infrastructure associated with the facility; and

4 (iv) all impacts of the facility's construction and operation under
5 subdivision (b)(5) of this section, including impacts due to the creation or
6 modification of access roads and utility lines and the clearing or management
7 of vegetation.

8 (5) The Board shall adopt rules regarding standard conditions on
9 postconstruction inspection and maintenance of aesthetic mitigation and on
10 decommissioning to be included in certificates of public good for in-state
11 facilities approved under this section. The purpose of these standard
12 conditions shall be to ensure that all required aesthetic mitigation is performed
13 and maintained and that facilities are removed once they are no longer in
14 service.

15 (6) In any certificate of public good issued under this section for an
16 in-state plant as defined in section 8002 of this title that generates electricity
17 from wind, the Board shall require the plant to install radar-controlled
18 obstruction lights on all wind turbines for which the Federal Aviation
19 Administration (FAA) requires obstruction lights, if the plant includes four or
20 more wind turbines and the FAA allows the use of radar-controlled lighting
21 technology.

1 (A) Nothing in this subdivision shall allow the Board to approve
2 obstruction lights that do not meet FAA standards.

3 (B) The purpose of this subdivision (6) is to reduce the visual impact
4 of wind turbine obstruction lights on the environment and nearby properties.
5 The General Assembly finds that wind turbine obstruction lights that remain
6 illuminated through the night create light pollution. Radar-controlled
7 obstruction lights are only illuminated when aircraft are detected in the area,
8 and therefore the use of these lights will reduce the negative environmental
9 impacts of obstruction lights.

10 (7) When a certificate of public good under this section or amendment
11 to such a certificate is issued for an in-state electric generation facility with a
12 capacity that is greater than 15 kilowatts, the certificate holder within 45 days
13 shall record a notice of the certificate or amended certificate, on a form
14 prescribed by the Board, in the land records of each municipality in which a
15 facility subject to the certificate is located and shall submit proof of this
16 recording to the Board. The recording under this subsection shall be indexed
17 as though the certificate holder were the grantor of a deed. The prescribed
18 form shall not exceed one page and shall require identification of the land on
19 which the facility is to be located by reference to the conveyance to the current
20 landowner, the number of the certificate, and the name of each person to which

1 the certificate was issued, and shall include information on how to contact the
2 Board to view the certificate and supporting documents.

3 (b) Before the Public Service Board issues a certificate of public good as
4 required under subsection (a) of this section, it shall find that the purchase,
5 investment, or construction:

6 (1) With respect to an in-state facility, will not unduly interfere with the
7 orderly development of the region with due consideration having been given to
8 the recommendations of the municipal and regional planning commissions, the
9 recommendations of the municipal legislative bodies, and the land
10 conservation measures contained in the plan of any affected municipality.

11 However:

12 (A) ~~with~~ With respect to a natural gas transmission line subject to
13 Board review, the line shall be in conformance with any applicable provisions
14 concerning such lines contained in the duly adopted regional plan; and, in
15 addition, upon application of any party, the Board shall condition any
16 certificate of public good for a natural gas transmission line issued under this
17 section so as to prohibit service connections that would not be in conformance
18 with the adopted municipal plan in any municipality in which the line is
19 located; ~~and.~~

20 (B) ~~with~~ With respect to a ground-mounted solar electric generation
21 facility, the facility shall comply with the screening requirements of a

1 municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance
2 adopted under 24 V.S.A. § 2291(28), and the recommendation of a
3 municipality applying such a bylaw or ordinance, unless the Board finds that
4 requiring such compliance would prohibit or have the effect of prohibiting the
5 installation of such a facility or have the effect of interfering with the facility's
6 intended functional use.

7 (C) With respect to an in-state electric generation facility, the Board
8 shall give substantial deference to the land conservation measures and specific
9 policies contained in a duly adopted regional and municipal plan that has
10 received an affirmative determination of energy compliance under 24 V.S.A.
11 § 4352. In this subdivision (C), "substantial deference" means that a land
12 conservation measure or specific policy shall be applied in accordance with its
13 terms unless there is a clear and convincing demonstration that other factors
14 affecting the general good of the State outweigh the application of the measure
15 or policy. The term shall not include consideration of whether the
16 determination of energy compliance should or should not have been
17 affirmative under 24 V.S.A. § 4352.

18 * * *

19 (5) With respect to an in-state facility, will not have an undue adverse
20 effect on ~~esthetics~~ aesthetics, historic sites, air and water purity, the natural
21 environment, the use of natural resources, and the public health and safety,

1 with due consideration having been given to the criteria specified in 10 V.S.A.
2 §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary
3 agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.

4 * * *

5 (f) However, plans for the construction of such a facility within the State
6 must be submitted by the petitioner to the municipal and regional planning
7 commissions no less than 45 days prior to application for a certificate of public
8 good under this section, unless the municipal and regional planning
9 commissions shall waive such requirement.

10 (1) Such municipal or regional planning commission may hold a public
11 hearing on the proposed plans. Such commissions shall make
12 recommendations, if any, to the Public Service Board and to the petitioner at
13 least seven days prior to filing of the petition with the Public Service Board.

14 (2) The petitioner's application shall address the substantive written
15 comments related to the criteria of subsection (b) of this section received by
16 the petitioner within 45 days of the submittal made under this subsection and
17 the substantive oral comments related to those criteria made at a public hearing
18 under subdivision (1) of this subsection.

19 * * *

20 (t) Notwithstanding any contrary provision of the law, primary agricultural
21 soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric

1 generation facility approved under this section shall remain classified as such
2 soils, and the review of any change in use of the site subsequent to the
3 construction of the facility shall treat the soils as if the facility had never been
4 constructed. Each certificate of public good issued by the Board for a
5 ground-mounted solar generation facility shall state the contents of this
6 subsection.

7 Sec. 11a. RULES; PETITION

8 (a) On or before November 1, 2016, the Department of Public Service shall
9 file a petition for rulemaking with the Public Service Board containing
10 proposed rules to implement 30 V.S.A. § 248(a)(5) (postconstruction
11 inspection of aesthetic mitigation; decommissioning) as enacted by Sec. 11 of
12 this act.

13 (b) On or before December 15, 2016, the Public Service Board shall file
14 proposed rules to implement 30 V.S.A. § 248(a)(5) with the Secretary of State
15 under 3 V.S.A. § 838. The Board shall finally adopt such rules on or before
16 August 15, 2017, unless such deadline is extended by the Legislative
17 Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

18 * * * Sound Standards; Wind Generation Facilities * * *

19 Sec. 12. SOUND STANDARDS; WIND GENERATION

20 (a) On or before July 1, 2017, the Public Service Board (the Board) shall
21 finally adopt rules under 3 V.S.A. chapter 25 regarding sound from wind

1 generation facilities approved under 30 V.S.A. § 248, unless such deadline is
2 extended by the Legislative Committee on Administrative Rules pursuant to
3 3 V.S.A. § 843(c). In developing these rules, the Board shall consider:

4 (1) standards that apply to all wind generation facilities;

5 (2) a methodology for determining sound levels and measurement
6 locations for each such facility on a case-by-case basis; or

7 (3) standards that apply to one or more categories of wind generation
8 facilities, with a methodology for determining sound levels and measurement
9 locations for other such facilities on a case-by-case basis.

10 (b) On or before 45 days after the effective date of this section, the Board
11 shall adopt temporary rules on sound levels from wind generation facilities
12 using the process under 3 V.S.A. § 844. The rules shall be effective on
13 adoption and shall apply to applications for such facilities under 30 V.S.A.
14 § 248 filed on or after the effective date of this section. Until the Board adopts
15 temporary rules pursuant to this subsection (b), the Board shall not issue a
16 certificate of public good for a wind generation facility for which an
17 application is filed on or after the effective date of this section.

18 (1) The standard under 3 V.S.A. § 844(a) regarding imminent peril to
19 public health, safety, or welfare shall not apply to the rules to be adopted under
20 this subsection. This subsection employs the process set forth in 3 V.S.A.

1 § 844 solely for the purpose of using an existing rulemaking procedure to
2 adopt temporary rules in a short time frame.

3 (2) With respect to sound levels from wind generation facilities, these
4 rules shall state:

5 (A) standards that apply to all such facilities;

6 (B) a methodology for determining sound levels and measurement
7 locations for each such facility on a case-by-case basis; or

8 (C) standards that apply to one or more categories of such facilities,
9 with a methodology for determining sound levels and measurement locations
10 for other such facilities on a case-by-case basis.

11 (3) These rules shall not allow sound levels from a wind generation
12 facility that exceed the lowest maximum decibel levels authorized in any
13 certificate of public good that contains limits on decibel levels issued by the
14 Board for the same category of wind generation facility before the effective
15 date of this section. For the purpose of this subdivision (3), there shall be two
16 categories of wind generation facilities:

17 (A) facilities with a plant capacity as defined in 30 V.S.A. § 8002 of
18 500 kilowatts (kW) or less; and

19 (B) facilities with a plant capacity as defined in 30 V.S.A. § 8002
20 greater than 500 kW.

1 locations other than parking lots or parking lot canopies and, separately,
2 one-sixth of the annual increase of the annual increase to new standard offer
3 plants that will be wholly located over parking lots or on parking lot canopies.

4 (i) To qualify for these allocations, the plant shall not require the
5 construction of a new substation by the interconnecting retail electricity
6 provider or by increasing the capacity of one or more of the provider's existing
7 facilities. To qualify for the allocation to plants wholly located over parking
8 lots or on parking lot canopies, the location shall remain in use as a parking lot.

9 (ii) These allocations shall apply proportionally to the independent
10 developer block and provider block.

11 (iii) If an allocation under this pilot project is not fully subscribed,
12 the Board in 2017 shall allocate the unsubscribed capacity to new standard
13 offer plants outside the pilot project.

14 (iv) As used in this subdivision (D), "preferred location" means a
15 site within the State on which a renewable energy plant will be located that is
16 one of the following:

17 (I) A new or existing structure whose primary use is not the
18 generation of electricity or providing support for the placement of equipment
19 that generates electricity.

20 (II) A parking lot canopy over a paved parking lot, provided
21 that the location remains in use as a parking lot.

1 (III) A tract previously developed for a use other than siting a
2 plant on which a structure or impervious surface was lawfully in existence and
3 use prior to July 1 of the year preceding the year in which an application for a
4 certificate of public good under section 248 of this title for the plant is filed or
5 in which the plant seeks an award of a contract under the standard offer
6 program under this section, whichever is earlier. To qualify under this
7 subdivision (III), the limits of disturbance of a proposed renewable energy
8 plant must include either the existing structure or impervious surface and shall
9 not include any headwaters, streams, shorelines, floodways, rare and
10 irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered
11 species, productive forestlands, and primary agricultural soils, all of which are
12 as defined in 10 V.S.A. chapter 151.

13 (IV) Land certified by the Secretary of Natural Resources to be
14 a brownfield site as defined under 10 V.S.A. § 6642.

15 (V) A sanitary landfill as defined in 10 V.S.A. § 6602,
16 provided that the Secretary of Natural Resources certifies that the land
17 constitutes such a landfill and is suitable for the development of the plant.

18 (VI) The disturbed portion of a gravel pit, quarry, or similar
19 site for the extraction of a mineral resource, provided that all activities
20 pertaining to site reclamation required by applicable law or permit condition
21 are satisfied prior to the installation of the plant.

1 (VII) A specific location designated in a duly adopted
2 municipal plan under 24 V.S.A. chapter 117 for the siting of a renewable
3 energy plant or specific type or size of renewable energy plant, provided that
4 the plant meets any siting criteria recommended in the plan for the location.

5 (VIII) A site listed on the National Priorities List (NPL)
6 established under the Comprehensive Environmental Response, Compensation,
7 and Liability Act, 42 U.S.C. chapter 103, if the U.S. Environmental Protection
8 Agency or the Agency of Natural Resources confirms each of the following:

9 (aa) The site is listed on the NPL.

10 (bb) Development of the plant on the site will not
11 compromise or interfere with remedial action on the site.

12 (cc) The site is suitable for development of the plant.

13 (IX) A new hydroelectric generation facility at a dam in
14 existence as of January 1, 2016 or a hydroelectric generation facility that
15 was in existence but not in service for a period of at least 10 years prior to
16 January 1, 2016 and that will be redeveloped for electric generation, if the
17 facility has received approval or a grant of exemption from the U.S. Federal
18 Energy Regulatory Commission.

19 * * *

20 (f) Price. The categories of renewable energy for which the Board shall set
21 standard offer prices shall include at least each of the categories established

1 pursuant to subdivision (c)(2) of this section. The Board by order shall
2 determine and set the price paid to a plant owner for each kWh generated
3 under a standard offer required by this section, with a goal of ensuring timely
4 development at the lowest feasible cost. The Board shall not be required to
5 make this determination as a contested case under 3 V.S.A. chapter 25.

6 * * *

7 (5) Price; preferred location pilots. For the period during which the
8 Board allocates capacity to new standard offer plants that will be wholly
9 located in one or more preferred locations as set forth in subdivision (c)(1)(D)
10 of this section, the following shall apply to the price paid to such a plant:

11 (A) If the Board uses a market-based mechanism under subdivision
12 (1) of this subsection (f) to determine this price for one or both of the two
13 allocations of capacity, the Board shall compare only the proposals of plants
14 that qualify for the allocation.

15 (B) If the Board uses avoided costs under subdivision (2) of this
16 subsection (f) to determine this price for one or both of the two allocations of
17 capacity, the Board shall apply the definition of “avoided costs” as set forth in
18 subdivision (2)(B) of this subsection with the modification that the avoided
19 energy or capacity shall be from distributed renewable generation that is sited
20 on a location that qualifies for the allocation.

1 (C) With respect to the allocation to the new standard offer plants
2 that will be wholly located over parking lots or on parking lot canopies, if the
3 Board receives only one application or multiple applications for plants owned
4 or controlled by the same person as defined in 10 V.S.A. § 6001, the Board
5 shall investigate each application and shall have discretion to reduce the price
6 to be consistent with the standard offer price for plants outside the pilot project
7 using the same generation technology.

8 * * *

9 Sec. 12b. STANDARD OFFER PILOT; REPORT

10 On or before January 15, 2018, the Public Service Board shall file a report
11 with the House Committee on Commerce and Economic Development, the
12 Senate Committee on Finance, and the House and Senate Committees on
13 Natural Resources and Energy on the standard offer pilot project on preferred
14 locations authorized in Sec. 12a of this act. This report shall itemize the size,
15 type of preferred location, generation technology, and cost per kilowatt hour of
16 each application received under the pilot project and shall identify each
17 generation facility approved under the pilot and the price awarded to each such
18 facility.

1 * * * Net Metering * * *

2 Sec. 13. 30 V.S.A. § 8010 is amended to read:

3 § 8010. SELF-GENERATION AND NET METERING

4 * * *

5 (c) In accordance with this section, the Board shall adopt and implement
6 rules that govern the installation and operation of net metering systems.

7 * * *

8 (3) The rules shall establish standards and procedures governing
9 application for and issuance or revocation of a certificate of public good for net
10 metering systems under the provisions of section 248 of this title. In
11 establishing these standards and procedures, ~~the rules:~~

12 (A) The rules may waive the requirements of section 248 of this title
13 that are not applicable to net metering systems, including criteria that are
14 generally applicable to public service companies as defined in this title;

15 (B) The rules may modify notice and hearing requirements of this
16 title as the Board considers appropriate;

17 (C) The rules shall seek to simplify the application and review
18 process as appropriate; ~~and, including simplifying the application and review~~
19 process to encourage group net metering systems when the system is at least
20 50 percent owned by the customers who receive the bill credits for the
21 electricity generated by the system.

1 (D) ~~with~~ With respect to net metering systems that exceed 150 kW in
2 plant capacity, shall apply the so-called “Quechee” test for aesthetic impact as
3 described by the Vermont Supreme Court in the case of In re Halnon, 174 Vt.
4 515 (2002) (mem.). The rules and application form shall state the components
5 of this test.

6 (E) The rules shall not waive or include provisions that are less
7 stringent than the requirements of subdivision 248(a)(4)(J) (required
8 information) of this title.

9 (F) This subdivision (F) applies to an application for a net metering
10 system with a capacity that is greater than 15 kilowatts, unless the system is
11 located on a new or existing structure the primary purpose of which is not the
12 generation of electricity. With respect to such a system, the rules shall not
13 wave or include provisions that are less stringent than each of the following:

14 (i) the requirement of subdivision 248(a)(4)(C) of this title to
15 provide a copy of the application to the Agencies of Agriculture, Food and
16 Markets and of Natural Resources; the Department of Public Service; the
17 Division for Historic Preservation; the municipal legislative body; and the
18 municipal and regional planning commissions; and

19 (ii) the requirements of subsection 248(f) (preapplication
20 submittal) of this title.

21 * * *

1 (e) If a hydroelectric generation plant seeking approval as a net metering
2 system is subject to licensing jurisdiction under the Federal Power Act,
3 16 U.S.C. chapter 12, subchapter 1, the Board shall require the plant to obtain
4 such approval through means other than by application for a certificate of
5 public good under section 248 of this title.

6 * * * Municipal Electric Utilities; Hydro Facilities;

7 Renewable Energy Standard * * *

8 Sec. 14. 30 V.S.A. § 8005(a)(1) is amended to read:

9 (1) Total renewable energy.

10 (A) Purpose; establishment. To encourage the economic and
11 environmental benefits of renewable energy, this subdivision establishes, for
12 the RES, minimum total amounts of renewable energy within the supply
13 portfolio of each retail electricity provider. To satisfy this requirement, a
14 provider may use renewable energy with environmental attributes attached or
15 any class of tradeable renewable energy credits generated by any renewable
16 energy plant whose energy is capable of delivery in New England.

17 (B) Required amounts. The amounts of total renewable energy
18 required by this subsection shall be 55 percent of each retail electricity
19 provider's annual retail electric sales during the year beginning on January 1,
20 2017, increasing by an additional four percent each third January 1 thereafter,
21 until reaching 75 percent on and after January 1, 2032.

1 * * *

2 (D) Municipal providers; petition. On petition by a provider that is a
3 municipal electric utility serving not more than 6,000 customers, the Board
4 may reduce the provider's required amount under this subdivision (1) for a
5 period of up to three years. The Board may approve one such period only for
6 a municipal provider. The Board may reduce this required amount if it
7 finds that:

8 (i) the terms or conditions of an environmental permit or
9 certification necessitate a reduction in the electrical energy generated by an
10 in-state hydroelectric facility that the provider owns and that this reduction will
11 require the provider to purchase other renewable energy with environmental
12 attributes attached or tradeable renewable energy credits in order to meet this
13 required amount; and

14 (ii) this purchase will:

15 (I) cause the provider to increase significantly its retail rates; or
16 (II) materially impair the provider's ability to meet the public's
17 need for energy services after safety concerns are addressed, in the manner set
18 forth in subdivision 218c(a)(1)(least cost integrated planning) of this title.

1 * * * Access to Public Service Board Process * * *

2 Sec. 15. ACCESS TO PUBLIC SERVICE BOARD WORKING
3 GROUP; REPORT

4 (a) Creation. There is created an Access to Public Service Board Working
5 Group (the Working Group) to be composed of the following five members:

6 (1) One member of the Public Service Board (PSB), appointed by the
7 Chair of the PSB.

8 (2) The Commissioner of Public Service or designee.

9 (3) A judicial officer of the State, appointed by the Chief Justice of the
10 Supreme Court.

11 (4) A House member of the Joint Energy Committee established under
12 2 V.S.A. chapter 17, appointed by the Speaker of the House; and

13 (5) A Senate member of the Joint Energy Committee established under
14 2 V.S.A. chapter 17, appointed by the Committee on Committees.

15 (b) Powers and duties; term.

16 (1) The Working Group shall review the current processes for citizen
17 participation in PSB proceedings and shall make recommendations to promote
18 increased ease of citizen participation in those proceedings.

19 (2) On or before December 15, 2016, the Working Group shall submit
20 its written recommendations to the House and Senate Committees on Natural

1 Resources and Energy, the Senate Committee on Finance, and the Joint Energy
2 Committee.

3 (3) The Working Group shall have the administrative, technical, and
4 legal assistance of the staff of the PSB.

5 (4) The appointed member of the PSB shall call the first meeting of the
6 Working Group to occur on or before July 1, 2016. At the first meeting, the
7 Working Group shall elect a chair from among its members.

8 (5) The Working Group shall cease to exist on February 1, 2017.

9 * * * Regulated Energy Utility Expansion Funds * * *

10 Sec. 15a. 30 V.S.A. § 218d(d) is amended to read:

11 (d) Alternative regulation may include such changes or additions to,
12 waivers of, or alternatives to, traditional rate-making procedures, standards,
13 and mechanisms, including substantive changes to rate base-rate of return rate
14 setting, as the ~~board~~ Board finds will promote the public good and will support
15 the required findings in subsection (a) of this section. In addition, the Board
16 shall not allow a company to set aside funds collected from ratepayers for the
17 purpose of supporting a future expansion or upgrade of its transmission or
18 distribution network except after notice and opportunity for hearing and only if
19 all of the following apply:

1 (1) There is a cost estimate for the expansion or upgrade that the
2 company demonstrates is consistent with the principles of least cost integrated
3 planning as defined in section 218c of this title.

4 (2) The amount of such funds does not exceed 20 percent of the
5 estimated cost of the expansion or upgrade.

6 (3) Interest earned on the funds is credited to the ratepayers.

7 (4) The funds are not disbursed to the company until after expansion or
8 upgrade is in service.

9 (5) The funds are not used to defray any portion of the costs of
10 expansion or upgrade in excess of the cost estimate described in subdivision
11 (1) of this subsection.

12 * * * Effective Dates * * *

13 Sec. 16. EFFECTIVE DATES

14 This act shall take effect on July 1, 2016, except that:

15 (1) This section and Secs. 9 (initial implementation; recommendations;
16 standards), 11 (30 V.S.A. § 248), 11a (rules; petition), 12 (sound standards;
17 wind generation), and 15 (Access to Public Service Board Working Group;
18 Report) shall take effect on passage. Sec. 6 (optional determination of energy
19 compliance) shall apply on passage to the activities of the Department of
20 Public Service under Sec. 9.

1 (2) Sec. 13 (net metering) shall take effect on January 2, 2017, and shall
2 amend 30 V.S.A. § 8010 as amended by 2015 Acts and Resolves No. 56,
3 Sec. 12. Notwithstanding any contrary provision of 1 V.S.A. § 214, Sec. 13
4 shall apply retroactively to the Public Service Board process under 2014 Acts
5 and Resolves No. 99, Sec. 5.