1	H.596
2	Introduced by Representatives Gamache of Swanton, Savage of Swanton,
3	Bancroft of Westford, Batchelor of Derby, Branagan of
4	Georgia, Browning of Arlington, Burditt of West Rutland,
5	Canfield of Fair Haven, Christie of Hartford, Cupoli of
6	Rutland City, Devereux of Mount Holly, Dickinson of
7	St. Albans Town, Eastman of Orwell, Fagan of Rutland City,
8	Gage of Rutland City, Graham of Williamstown, Hebert of
9	Vernon, Helm of Fair Haven, Higley of Lowell, Hubert of
10	Milton, LaClair of Barre Town, Lefebvre of Newark, Lucke of
11	Hartford, Martel of Waterford, McFaun of Barre Town,
12	Morrissey of Bennington, Myers of Essex, Parent of
13	St. Albans Town, Quimby of Concord, Shaw of Derby, Strong
14	of Albany, Tate of Mendon, Terenzini of Rutland Town, Van
15	Wyck of Ferrisburgh, Viens of Newport City, and Willhoit of
16	St. Johnsbury
17	Referred to Committee on
18	Date:
19	Subject: Energy; conservation and development; natural resources; land use;
20	public service; electric generation; siting; municipal regulation

1	Statement of purpose of bill as introduced: This bill proposes to enable local
2	bylaws for review and approval or denial of proposed electric generation
3	facilities, except for small solar and wind generation. The review would be by
4	a panel designated by the municipality such as the development review board
5	or planning commission. The panel's decision would be subject to a petition
6	for review by the municipality's legislative body. The bill would bar the
7	Public Service Board from issuing a certificate of public good for an electric
8	generation facility in a municipality that has adopted a bylaw under this act
9	unless the municipality has approved the facility.

10 An act relating to local land use regulation of electric generation facilities 11 It is hereby enacted by the General Assembly of the State of Vermont: * * * Local Review of Electric Generation; 12 Enabling Legislation * * * 13 14 Sec. 1. 24 V.S.A. § 4414 is amended to read: 15 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS 16 Any of the following types of regulations may be adopted by a municipality 17 in its bylaws in conformance with the plan and for the purposes established in

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section 4302 of this title.

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

* * *

(15) Solar plants; screening Renewable electric generation.

Notwithstanding any contrary provision of sections 2291a and 4413 of this title of 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to either establish screening requirements for solar plants in accordance with subdivision (B) of this subdivision (15) or to require review and issuance or denial of approval, in accordance with subdivision (C) of this subdivision (15), of each electric generation facility subject to 30 V.S.A. § 248 that will be located in the municipality.

(A) Definitions. As used in this subdivision (15):

(i) "kW," "plant" and "plant capacity" shall have the same meaning as in 30 V.S.A. § 8002.

1	(ii) "Screening" means reasonable aesthetic mitigation measures
2	to harmonize a facility with its surroundings and includes landscaping,
3	vegetation, fencing, and topographic features.
4	(B) Solar plants; screening. A bylaw under this subdivision (15)(B)
5	may establish screening requirements that shall apply to a ground-mounted
6	plant that generates electricity from solar energy. In a proceeding under
7	30 V.S.A. § 248, the municipality may make recommendations to the Public
8	Service Board applying the bylaw to such a plant. The bylaw may designate
9	the municipal body to make this recommendation. Screening requirements and
10	recommendations adopted under this subdivision shall be a condition of a
11	certificate of public good issued for the plant under 30 V.S.A. § 248, provided
12	that they do not prohibit or have the effect of prohibiting the installation of
13	such a plant and do not have the effect of interfering with its intended
14	functional use.
15	(A) Screening requirements under this subdivision shall not be more
16	restrictive than screening requirements applied to commercial development in
17	the municipality under this chapter or, if the municipality does not have other
18	bylaws except flood hazard, 10 V.S.A. chapter 151.
19	(B) In this section "plant" shall have the same meaning as in
20	30 V.S.A. § 8002 and "screening" means reasonable aesthetic mitigation

1	measures to harmonize a facility with its surroundings and includes
2	landscaping, vegetation, fencing, and topographic features.
3	(C) This subdivision (15)(B) shall not authorize requiring a
4	municipal land use permit for a solar electric generation plant and a municipal
5	action under this subdivision shall not be subject to the provisions of
6	subchapter 11 (appeals) of this chapter. Notwithstanding any contrary
7	provision of this title, enforcement of a bylaw adopted under this subdivision
8	shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of
9	30 V.S.A. § 248.
10	(C) A bylaw under this subdivision (15)(C) may require review and
11	issuance or denial of approval by an appropriate municipal panel of each
12	electric generation facility subject to 30 V.S.A. § 248 that will be located in the
13	municipality, unless the facility constitutes solar generation with a plant
14	capacity of 15 kW or less or wind generation with a plant capacity of 100 kW
15	or less.
16	(i) The bylaw shall identify the appropriate municipal panel to
17	conduct this review. Notwithstanding any contrary provision of section 4303
18	of this title, such a panel shall not be the legislative body of the municipality.
19	(ii) The bylaw shall state the criteria to be applied by the panel in
20	making its determination. These criteria may include one or more of the

1	review criteria set forth in subdivision (3) of this section, 10 V.S.A. § 6086(a),
2	and 30 V.S.A. § 248(b).
3	(iii) In conducting this review, the panel shall give notice, convene
4	a warned public hearing, and issue a written decision pursuant to the provisions
5	of section 4464 of this title applicable to conditional use review and, if the
6	decision is in favor of the applicant, may attach conditions as authorized in that
7	section. The panel shall provide the regional planning commission and the
8	Public Service Board established under 30 V.S.A. § 3 with a copy of its
9	decision.
10	(iv) A decision by an appropriate municipal panel under this
11	subdivision (C) shall not become final for the purpose of appeal if five percent
12	of the voters of the municipality petition the legislative body of the
13	municipality to review the decision and the petition is filed within 20 days of
14	the decision. In that case, the legislative body shall apply the same procedures
15	used by the appropriate municipal panel in reaching and issuing its decision,
16	except that the legislative body shall base its decision on the facts and evidence
17	presented to the panel and shall not take new evidence. The legislative body's
18	decision shall be subject to appeal under section 4471 of this title and
19	10 V.S.A. § 8504 and the period for filing an appeal shall run from the date on
20	which the legislative body issued its decision.

1	* * * Local Approval; Conforming Amendments;
2	Disabling Statutes * * *
3	Sec. 2. 24 V.S.A. § 2291a is amended to read:
4	§ 2291a. RENEWABLE ENERGY DEVICES
5	Notwithstanding any provision of law to the contrary, no municipality, by
6	ordinance, resolution, or other enactment, shall prohibit or have the effect of
7	prohibiting the installation of solar collectors, clotheslines, or other energy
8	devices based on renewable resources. This section shall not apply to patio
9	railings in condominiums, cooperatives, or apartments and shall not govern
10	municipal authority under chapter 117 of this title.
11	Sec. 3. 24 V.S.A. § 4413 is amended to read:
12	§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS
13	* * *
14	(b) A bylaw under this chapter shall not regulate public utility power
15	generating plants and transmission facilities regulated under 30 V.S.A. § 248,
16	except as provided in subdivision 4414(15) of this title.
17	* * *
18	(g) Notwithstanding any provision of law to the contrary, a bylaw adopted
19	under this chapter shall not:
20	(1) Regulate the installation, operation, and maintenance, on a flat roof
21	of an otherwise complying structure, of a solar energy device that heats water

1	or space or generates electricity. For the purpose of As used in this
2	subdivision, "flat roof" means a roof having a slope less than or equal to five
3	degrees.
4	(2) Prohibit or have the effect of prohibiting the installation of solar
5	collectors not exempted that are not exempt from regulation under subdivision
6	(1) of this subsection or that are not subject to regulation pursuant to
7	subdivision 4414(15)(C) of this title, clotheslines, or other energy devices
8	based on renewable resources.
9	* * *
10	* * * Public Service Board Review * * *
11	Sec. 4. 30 V.S.A. § 248 is amended to read:
12	§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND
13	FACILITIES; CERTIFICATE OF PUBLIC GOOD
14	(a)(1) No company, as defined in section 201 of this title, may:
15	(A) in any way purchase electric capacity or energy from outside the
16	State:
17	(i) for a period exceeding five years, that represents more than
18	three percent of its historic peak demand, unless the purchase is from a plant as
19	defined in subdivision 8002(14) of this title that produces electricity from
20	renewable energy as defined under subdivision 8002(17); or

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1	(ii) for a period exceeding ten years, that represents more than ten
2	percent of its historic peak demand, if the purchase is from a plant as defined
3	in subdivision 8002(14) of this title that produces electricity from renewable
4	energy as defined under subdivision 8002(17); or
5	(B) invest in an electric generation or transmission facility located
6	outside this State unless the Public Service Board first finds that the same will
7	promote the general good of the State and issues a certificate to that effect.
8	(2) Except for the replacement of existing facilities with equivalent
9	facilities in the usual course of business, and except for electric generation
10	facilities that are operated solely for on-site electricity consumption by the
11	owner of those facilities:
12	(A) no company, as defined in section 201 of this title, and no person
13	as defined in 10 V.S.A. § 6001(14), may begin site preparation for or
14	construction of an electric generation facility or electric transmission facility
15	within the State which is designed for immediate or eventual operation at any
16	voltage; and
17	(B) no such company may exercise the right of eminent domain in
18	connection with site preparation for or construction of any such transmission of
19	generation facility, unless the Public Service Board first finds that the same

will promote the general good of the State and issues a certificate to that effect

located; and

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1	and, if the facility is subject to a bylaw adopted pursuant to 24 V.S.A.
2	§ 4414(15)(C), the municipality has approved the facility under that bylaw.
3	* * *
4	(b) Before the Public Service Board issues a certificate of public good as
5	required under subsection (a) of this section, it shall find that the purchase,
6	investment, or construction:
7	(1) With respect to an in-state facility, will not unduly interfere with the
8	orderly development of the region with due consideration having been given to
9	the recommendations of the municipal and regional planning commissions, the
10	recommendations of the municipal legislative bodies, and the land
11	conservation measures contained in the plan of any affected municipality.
12	However:
13	(A) with respect to a natural gas transmission line subject to Board
14	review, the line shall be in conformance with any applicable provisions
15	concerning such lines contained in the duly adopted regional plan; and, in
16	addition, upon application of any party, the Board shall condition any
17	certificate of public good for a natural gas transmission line issued under this
18	section so as to prohibit service connections that would not be in conformance
19	with the adopted municipal plan in any municipality in which the line is

(B) with respect to an electric generation facility subject to a bylaw adopted pursuant to 24 V.S.A. § 4414(15)(C), the municipality has approved the facility under that bylaw; and

(C) with respect to a ground-mounted solar electric generation facility, shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Board finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

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(f) However, The petitioner shall submit plans for the construction of such a facility within the State must be submitted by the petitioner required to obtain a certificate of public good under this section to the municipal and regional planning commissions no less than 45 90 days prior to application for such a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions shall make recommendations, if any, to the Public Service Board and to the petitioner at least seven days prior to filing of the

1	petition with the Public Service Board. However, with respect to an electric
2	generation facility subject to a bylaw adopted under 24 V.S.A. § 4414(15)(C):
3	(1) The petitioner shall submit the plans no later than the date on which
4	it applies for approval under that bylaw, which shall be not less than 90 days
5	before applying for a certificate under this section.
6	(2) The municipal body receiving the submission shall be the municipal
7	panel that the bylaw identifies to conduct review of the facility and issuance of
8	approval or denial.
9	(3) The regional planning commission shall receive a copy of the plans
10	at the same time as the municipal panel.
11	(g) Notwithstanding the 45 90 days' notice required by subsection (f) of
12	this section, plans involving the relocation of an existing transmission line
13	within the State must be submitted to the municipal and regional planning
14	commissions no less than 21 days prior to application for a certificate of public
15	good under this section.
16	* * *
17	* * * EFFECTIVE DATE * * *
18	Sec. 5. EFFECTIVE DATE
19	This act shall take effect on passage.