

1 H.446

2 Introduced by Committee on Natural Resources and Energy

3 Date:

4 Subject: Conservation; energy; energy efficiency; renewable energy; public
5 service; SPEED program; standard offer; clean energy development
6 fund; stimulus funds for energy programs; state lands; agency of
7 natural resources; solar energy tax credits; residential and
8 commercial building energy standards; energy efficiency charge
9 exemption; self-managed energy efficiency programs

10 Statement of purpose: This bill proposes to amend the Sustainably Priced
11 Energy Enterprise Program (SPEED) to require that the public service board,
12 on behalf of all of Vermont's retail electricity providers, implement a standard,
13 cost-based long-term contract offer for qualifying SPEED resources of up to
14 2.2 MW capacity; require that federal stimulus funds under an appropriation to
15 the state energy program received by Vermont be deposited into the clean
16 energy development fund; provide that the clean energy development fund can
17 be used for thermal or geothermal projects, regardless of whether the projects
18 benefit electric consumers; provide regulatory incentives for Vermont electric
19 retail utilities to invest in renewable energy; establish state policy to support
20 development of wind energy on state lands where appropriate; make technical
21 corrections regarding solar energy tax credits; require changes to Vermont's

1 residential and commercial energy building standards to address requirements
2 of federal stimulus legislation; require that the department of public service
3 and the public service board adopt a new class of self-managed energy
4 efficiency programs for transmission and industrial ratepayers; and provide
5 that approved participants in this new class will be exempt from the energy
6 efficiency charge.

7 An act relating to renewable energy and energy efficiency

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

9 Sec. 1. DESIGNATION OF ACT

10 This act shall be referred to as the Vermont Energy Act of 2009.

11 * * * SPEED Standard Offer * * *

12 Sec. 2. 30 V.S.A. § 8002 is amended to read:

13 § 8002. DEFINITIONS

14 For purposes of this chapter:

15 * * *

16 (10) “Board” means the public service board.

17 (11) “Commissioned” or “commissioning” means the first time a plant
18 is put into operation following initial construction or modernization if the costs
19 of modernization are at least 50 percent of the costs that would be required to
20 build a new plant including all buildings and structures technically required for

1 the new plant's operation. However, these terms shall not include activities
2 necessary to establish operational readiness of a plant.

3 (12) "Plant" means any independent technical facility that generates
4 electricity from renewable energy. A group of newly constructed facilities,
5 such as wind turbines, shall be considered one plant if the group is part of the
6 same project and uses common equipment and infrastructure such as roads,
7 control facilities, and connections to the electric grid.

8 (13) "Plant capacity" means the rated electrical nameplate for a plant.

9 (14) "Plant owner" means a person who has the right to sell electricity
10 generated by a plant.

11 (15) "SPEED facilitator" means an entity appointed by the board
12 pursuant to section 8005(b)(1) of this title.

13 Sec. 3. 30 V.S.A. § 8004 is amended to read:

14 § 8004. RENEWABLE PORTFOLIO STANDARDS FOR SALES OF
15 ELECTRIC ENERGY

16 (a) Except as otherwise provided in section 8005 of this title, in order for
17 Vermont retail electricity providers to achieve the goals established in section
18 8001 of this title, no retail electricity provider shall sell or otherwise provide or
19 offer to sell or provide electricity in the state of Vermont without ownership of
20 sufficient energy produced by renewable resources as described in this chapter,
21 or sufficient tradeable renewable energy credits that reflect the required

1 renewable energy as provided for in subsection (b) of this section. In the case
2 of members of the Vermont Public Power Supply Authority, the requirements
3 of subsection (b) of this section chapter may be met in the aggregate ~~through~~
4 ~~all requirements contracts pursuant to section 4002a of this title, or in the~~
5 ~~aggregate otherwise as approved by the board.~~

6 * * *

7 Sec. 4. 30 V.S.A. § 8005 is amended to read:

8 § 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE

9 DEVELOPMENT (SPEED) PROGRAM

10 * * *

11 (b) The SPEED program shall be established, by rule, order, or contract, by
12 the public service board by January 1, 2007. As part of the SPEED program,
13 the public service board may, and in the case of subdivisions (1), (2), and
14 ~~(3)~~(5) of this subsection shall:

15 (1) ~~name~~ Name one or more entities to become engaged in the purchase
16 and resale of electricity generated within the state by means of qualifying
17 SPEED resources or nonqualifying SPEED resources; and shall implement the
18 standard offer required by subdivision (2) of this subsection through this entity
19 or entities. An entity appointed under this subdivision shall be known as a
20 SPEED facilitator.

1 (2) ~~allow the developer of a facility that is one megawatt or less, and is a~~
2 ~~qualifying SPEED resource or a nonqualifying SPEED resource, to sell that~~
3 ~~power under a long term contract that is established at a specified price~~
4 ~~determined by the board to be adequate to promote SPEED resource~~
5 ~~development while remaining consistent with the principles of least cost~~
6 ~~energy services under section 218c of this title. For purposes of this section, a~~
7 ~~long term contract should be 15 years or greater unless the board finds good~~
8 ~~cause for a shorter term;~~

9 (3) ~~encourage Vermont's retail electricity providers to secure long term~~
10 ~~contracts, at stable prices, for qualifying SPEED resources. The board shall~~
11 ~~create a standard contract price, or a set of maximum and minimum provisions,~~
12 ~~or both, for qualifying SPEED resources over 1 MW of capacity. In setting a~~
13 ~~standard contract price for a qualifying SPEED resource, the board shall~~
14 ~~consider the goal of developing qualified SPEED resources, least cost~~
15 ~~provision of energy service under section 218c of this title, and the impact on~~
16 ~~electric rates. The board may create a competitive bid process through which~~
17 ~~to select a portion of those contracts; No later than July 15, 2009, put into~~
18 ~~effect, on behalf of all Vermont retail electricity providers, standard offers for~~
19 ~~qualifying SPEED resources with a plant capacity of 2.2 MW or less. These~~
20 ~~standard offers shall be available until the cumulative plant capacity of all such~~
21 ~~resources commissioned in the state that have accepted a standard offer under~~

1 this subdivision (b)(2) equals or exceeds 50 MW; provided, however, that a
2 plant owned and operated by a Vermont retail electricity provider shall count
3 toward this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less
4 and is commissioned on or after July 15, 2009. The term of a standard offer
5 required by this subdivision (b)(2) shall be 20 years, except that the term of a
6 standard offer for a plant using solar power shall be 25 years. The price paid to
7 a plant owner under a standard offer required by this subdivision shall include
8 an amount for each kilowatt-hour (kWh) generated that shall be set as follows:

9 (A) Until the board determines the price to be paid to a plant owner
10 in accordance with subdivision (2)(B) of this subsection, the price shall be:

11 (i) For a plant using methane derived from a landfill or an
12 agricultural operation, \$0.12 per kWh.

13 (ii) For a plant using wind power that has a plant capacity of 15
14 kW or less, \$0.20 per kWh.

15 (iii) For a plant using solar power, \$0.30 per kWh.

16 (iv) For a plant using hydropower, wind power with a plant
17 capacity greater than 15 kW, or biomass power that is not subject to
18 subdivision (2)(A)(i) of this subsection, a price equal, at the time of the plant's
19 commissioning, to the average residential rate per kWh charged by all of the
20 state's retail electricity providers weighted in accordance with each such
21 provider's share of the state's electric load.

1 (B) On or before January 15, 2011, the board by order shall set the
2 price to be paid to a plant owner, including the owner of a plant described in
3 subdivisions (2)(A)(i)–(iv) of this subsection, under a standard offer as
4 follows:

5 (i) The board shall determine a generic cost, based on an
6 economic analysis, for each category of generation technology that constitutes
7 renewable energy. Within each such category, the board shall consider
8 different generic costs for plants of different plant capacities.

9 (ii) The board shall include a rate of return not less than the
10 highest rate of return received by a Vermont investor-owned retail electric
11 service provider under its board-approved rates as of the date a standard offer
12 goes into effect.

13 (iii) The board shall include such adjustment as the board
14 determines to be necessary to ensure that the price provides sufficient incentive
15 for the rapid development and commissioning of plants and does not exceed
16 the amount needed to provide such an incentive.

17 (C) On or before January 15, 2013 and every second January 15 after
18 that date, the board shall review the prices set under subdivision (2)(B) of this
19 subsection and determine whether such prices are providing sufficient
20 incentive for the rapid development and commissioning of plants. In the event
21 the board determines that such a price is inadequate or excessive, the board

1 shall reestablish the price, in accordance with the requirements of subdivisions
2 (2)(B)(i)–(iii) of this subsection, for effect on a prospective basis commencing
3 on March 1 of the following year.

4 (D) Once the board determines, under subdivision (2)(B) or (C) of
5 this subsection, the generic cost and rate of return elements for a category of
6 renewable energy, the price paid to a plant owner under a subsequently
7 executed standard offer contract shall comply with that determination, subject
8 to the provisions of subdivision (2)(E) of this subsection.

9 (E) The board shall provide that, when a standard offer contract is
10 executed with respect to a particular plant, any tax credits and other incentives
11 provided by federal, state, or local government to a plant are subtracted from
12 the generic cost element of the price paid to the plant owner under that
13 contract. For the purpose of this subdivision (b)(2)(E), the term “tax credits
14 and other incentives” excludes tradeable renewable energy credits.

15 (F) A plant owner who has executed a contract for a standard offer
16 under this section prior to a determination by the board under subdivision
17 (2)(B) or (C) of this subsection shall continue to receive the price agreed on in
18 that contract.

19 ~~(4)(3) maximize~~ Maximize the benefit to rate payers from the sale of
20 tradeable renewable energy credits or other credits that may be developed in

1 the future, especially with regard to ~~the projects approved~~ those plants that
2 accept the standard offer issued under subdivision ~~(3)~~(2) of this subsection;

3 ~~(5)~~(4) ~~encourage~~ Encourage retail electricity provider sponsorship and
4 partnerships in the development of renewable energy projects;

5 ~~(6) make available to~~ (5) Require all Vermont retail electricity
6 providers ~~for~~ to purchase through the SPEED program, ~~on a pro rata basis in~~
7 accordance with subdivision (g)(2) of this section, a specified portion of the
8 power generated by the plants that accept the standard offer required to be
9 issued under subdivisions subdivision (2) and (3) of this subsection. ~~A retail~~
10 ~~electricity provider that chooses not to purchase a pro rata share of power~~
11 ~~generated under subdivision (3) of this section must establish, to the~~
12 ~~satisfaction of the board, that the purchase would impair the provider's ability~~
13 ~~to meet the public's need for energy services after safety concerns are~~
14 ~~addressed at the lowest present value life cycle cost, including environmental~~
15 ~~and economic costs;~~

16 ~~(7)~~(6) ~~establish~~ Establish a method for Vermont retail electrical
17 providers to obtain beneficial ownership of the renewable energy credits
18 associated with any SPEED projects, in the event that a renewable portfolio
19 standard comes into effect under the provisions of section 8004 of this title;. It
20 shall be a condition of a standard offer required to be issued under subdivision
21 (2) of this subsection that tradeable renewable energy credits associated with a

1 plant that accepts the standard offer are owned by the retail electric providers
2 purchasing power from the plant, except that in the case of a plant using
3 methane from agricultural operations, the plant owner shall retain such credits
4 to be sold separately at the owner's discretion.

5 ~~(8)(7) create~~ Create a mechanism by which a retail electricity
6 provider may establish that it has a sufficient amount of renewable energy, or
7 resources that would otherwise qualify under the provisions of subsection (d)
8 of this section, in its portfolio so that equity requires that the retail electricity
9 provider be relieved, in whole or in part, from requirements established under
10 ~~subdivision (6) of this subsection that would require a retail electricity provider~~
11 to purchase SPEED power; provided, however, that this mechanism shall not
12 apply to the requirement to purchase power under subdivision (5) of this
13 subsection unless the retail electricity provider seeking to use the mechanism
14 establishes that it receives at least 25 percent of its energy from qualifying
15 SPEED resources that were in operation on or before July 15, 2009.

16 ~~(9)(8) provide~~ Provide that in any proceeding under subdivision
17 248(a)(2)(A) of this title, a demonstration of compliance with subdivision
18 248(b)(2) of this title, relating to establishing need for the facility, shall not be
19 required if the facility is a SPEED resource and if no part of the facility is
20 financed directly or indirectly through investments, other than power contracts,
21 backed by Vermont electricity ratepayers; ~~and.~~

1 (3) The SPEED facilitator shall transfer any tradeable renewable energy
2 credits attributable to electricity purchased under standard offer contracts to the
3 Vermont retail electricity providers in accordance with their pro rata share of
4 the costs for such electricity as determined under subdivision (2) of this
5 subsection, except that in the case of a plant using methane from agricultural
6 operations, the plant owner shall retain such credits to be sold separately at the
7 owner's discretion.

8 (4) All reasonable costs of a Vermont retail electricity provider incurred
9 under this subsection shall be included in the provider's revenue requirement
10 for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title.
11 In including such costs, the board shall appropriately account for any credits
12 received under subdivisions (2) and (3) of this subsection. Costs included in a
13 retail electricity provider's revenue requirement under this subdivision shall be
14 allocated to the provider's ratepayers in accordance with the rate design
15 otherwise applicable to costs included in that revenue requirement.

16 (h) With respect to standard offers under this section, the board shall by
17 rule or order:

18 (1) Determine a SPEED facilitator's reasonable expenses arising from
19 its role and the allocation of such expenses among plant owners and Vermont
20 retail electricity providers.

1 (2) Determine the manner and timing of payments by a SPEED
2 facilitator to plant owners for energy purchased under an executed contract for
3 a standard offer.

4 (3) Determine the manner and timing of payments to the SPEED
5 facilitator by the Vermont retail electricity providers for energy distributed to
6 them under executed contracts for standard offers.

7 (4) Establish reporting requirements of a SPEED facilitator, a plant
8 owner, and a Vermont retail electricity provider.

9 (i) With respect to standard offers under this section, the board shall
10 determine whether its existing rules sufficiently address interconnection,
11 metering, and the allocation of metering and interconnection costs, and make
12 such rule revisions as needed to implement the standard offer requirements of
13 this section.

14 (j) Wood biomass resources that would otherwise constitute qualifying
15 SPEED resources may receive a standard offer under subdivision (b)(2) of this
16 section only if they constitute combined heat and power, producing both
17 electric power and thermal energy, with a design system efficiency (the sum of
18 full load design thermal output and electric output divided by the heat input) of
19 at least 70 percent.

20 (k) A Vermont retail electricity provider shall not be eligible for a standard
21 offer contract under subdivision (b)(2) of this section.

1 (l) The existence of a standard offer under subdivision (b)(2) of this section
2 shall not preclude a voluntary contract between a plant owner and a Vermont
3 retail electricity provider on terms that may be different from those under the
4 standard offer. A plant owner who declines a voluntary contract may still
5 accept a standard offer under this section.

6 (m) The state shall not be liable to a plant owner or retail electricity
7 provider with respect to any matter related to SPEED, including costs
8 associated with a standard offer contract under this section or any damages
9 arising from breach of such a contract, the flow of power between a plant and
10 the electric grid, or the interconnection of a plant to that grid.

11 (n) On or before January 15, 2011 and every second January 15 afterward,
12 the board shall report to the house and senate committees on natural resources
13 and energy concerning the status of the standard offer program under this
14 section. In its report, the board at a minimum shall:

15 (1) Assess the progress made toward attaining the cumulative statewide
16 capacity ceiling stated in subdivision (b)(2) of this section.

17 (2) If that cumulative statewide capacity ceiling has not been met,
18 identify the barriers to attaining that ceiling and detail the board's
19 recommendations for overcoming such barriers.

20 (3) If that cumulative statewide capacity has been met or is likely to be
21 met within a year of the date of the board's report, recommend whether the

1 standard offer program under this section should continue and, if so, whether
2 there should be any modifications to the program.

3 Sec. 4a. 30 V.S.A. § 8003 is amended to read:

4 § 8003. RENEWABLE ENERGY PRICING

5 (a) ~~Unless the board finds good cause to exempt a utility, by no later than~~
6 ~~July 1, 2009, each~~ An electric utility, municipal department formed under local
7 charter or chapter 79 of this title, ~~and each~~ or electric cooperative formed under
8 chapter 81 of this title ~~shall~~ may implement a renewable energy pricing
9 program under this section for its customers, or ~~shall~~ offer customers the
10 option of making a voluntary contribution to the Vermont clean energy
11 development fund established under 10 V.S.A. § 6523. Such renewable energy
12 pricing programs may include, but are not limited to, tariffs, standard special
13 contracts, or other arrangements whose purpose is to increase the company's
14 reliance on, or the customer's support of, renewable sources of energy or the
15 type and quantity of renewable energy resources available.

16 * * *

17 * * * Clean Energy Development Fund; Thermal; Geothermal; State Energy
18 Program Appropriation under Federal Stimulus * * *

19 Sec. 5. 10 V.S.A. § 6523 is amended to read:

20 § 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

21 (a) Creation of fund.

1 (1) There is established the Vermont clean energy development fund to
2 consist of all of the following:

3 (A) ~~the~~ The proceeds due the state under the terms of the
4 memorandum of understanding between the department of public service and
5 Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered
6 under public service board docket 6812; together with the proceeds due the
7 state under the terms of any subsequent memoranda of understanding entered
8 before July 1, 2005 between the department of public service and Entergy
9 Nuclear VY and Entergy Nuclear Operations, Inc.; ~~and~~

10 (B) All funds received by the state under the appropriation contained
11 in the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to
12 the state energy program authorized under 42 U.S.C. § 6321 et seq.

13 (C) ~~any~~ Any other monies that may be appropriated to or deposited
14 into the fund.

15 (2) Balances in the fund ~~shall be held for the benefit of ratepayers,~~ shall
16 be expended solely for the purposes set forth in this subchapter; and shall not
17 be used for the general obligations of government. All balances in the fund at
18 the end of any fiscal year shall be carried forward and remain part of the fund.
19 Interest earned by the fund shall be deposited in the fund. This fund is
20 established in the state treasury pursuant to subchapter 5 of chapter 7 of
21 Title 32.

1 (b) Definitions. For purposes of this section, the following definitions shall
2 apply:

3 (1) "Clean energy resources" means electric power supply and
4 demand-side resources, or thermal energy or geothermal resources, that are
5 either "combined heat and power facilities," "cost-effective energy efficiency
6 resources," or "renewable energy" resources.

7 * * *

8 (c) Purposes of fund. The purposes of the fund shall be to promote the
9 development and deployment of cost-effective and environmentally sustainable
10 electric power and thermal energy or geothermal resources, for the long-term
11 benefit of Vermont ~~electric customers~~ consumers, primarily with respect to
12 renewable energy resources, and the use of combined heat and power
13 technologies. The general assembly expects and intends that the public service
14 board, public service department, and the state's power and efficiency utilities
15 will actively implement the authority granted in Title 30 to acquire all
16 reasonably available cost-effective energy efficiency resources for the benefit
17 of Vermont ratepayers and the power system. The fund shall be managed,
18 primarily, to promote:

19 * * *

20 (d) Expenditures authorized.

21 * * *

1 (4) Projects for funding may include the following:

2 (A) projects that will sell power in commercial quantities;

3 (B) among those projects that will sell power in commercial
4 quantities, funding priority will be given to those projects that commit to sell
5 power to Vermont utilities on favorable terms;

6 (C) projects to benefit publicly owned or leased buildings;

7 (D) renewable energy projects on farms, which may include any or
8 all costs incurred to upgrade to a three-phase line to serve a system on a farm;

9 (E) small scale renewable energy in Vermont residences and
10 businesses;

11 (F) projects under the agricultural economic development special
12 account established under 6 V.S.A. § 4710(g) to harvest biomass, convert
13 biomass to energy, or produce biofuel;

14 (G) until December 31, 2008 only, super-efficient buildings; ~~and~~

15 (H) effective projects that are not likely to be established in the
16 absence of funding under the program; and

17 (I) projects to develop and use thermal or geothermal energy,
18 regardless of whether they also involve the generation of electricity.

19 * * *

20 (f) Notwithstanding any other provision of this section, funds received by
21 the state under the appropriation contained in the American Recovery and

1 Reinvestment Act of 2009, Pub.L. No. 111-5, to the state energy program
2 authorized under 42 U.S.C. § 6321 et seq. shall be disbursed for one or more of
3 the following, if consistent with that act and applicable federal regulations:

4 (1) The Vermont small-scale renewable energy incentive program
5 currently administered by the renewable energy resource center, for use in
6 residential and business installations. These funds may be used by the program
7 for all forms of renewable energy as that term is defined under 30 V.S.A.
8 § 8002(2), including biomass and geothermal heating.

9 (2) Grant and loan programs for renewable energy resources, including
10 thermal resources such as district biomass heating that may not involve the
11 generation of electricity.

12 (3) Grants and loans to thermal energy efficiency incentive programs,
13 community-scale renewable energy financing programs, certification and
14 training for renewable energy workers, promotion of local biomass and
15 geothermal heating, and an anemometer loan program.

16 * * * Regulatory Incentives for Renewables * * *

17 Sec. 6. 30 V.S.A. § 218 is amended to read:

18 § 218. JURISDICTION OVER CHARGES AND RATES

19 * * *

20 (f) Regulatory incentives for renewable generation.

1 (1) Notwithstanding any other provision of law, an electric distribution
2 utility subject to rate regulation under this chapter shall be entitled to recover
3 in rates its prudently incurred costs in applying for and seeking any certificate,
4 permit, or other regulatory approval issued or to be issued by federal, state, or
5 local government for the construction of new renewable energy to be sited in
6 Vermont, regardless of whether the certificate, permit, or other regulatory
7 approval ultimately is granted.

8 (2) Notwithstanding any other provision of law, an investor-owned
9 electric distribution utility subject to rate regulation under this chapter shall be
10 entitled to the following return on equity on any just and reasonable capital
11 investment made by it in a renewable energy generation facility sited in
12 Vermont: The same return on equity allowed on its other capital investment
13 plus an additional one and one-half percent.

14 (3) At the request of a municipal electric department created under local
15 charter or chapter 79 of this title or an electric cooperative created under
16 chapter 81 of this title that makes a just and reasonable capital investment in a
17 renewable energy generation facility sited in Vermont, the board shall provide
18 to the municipal electric department or electric cooperative an incentive that it
19 reasonably determines to be comparable in value to a one and one-half percent
20 rate of return on the investment.

1 (4) For the purpose of this subsection, “renewable energy” and “new
2 renewable energy” shall be as defined in section 8002 of this title.

3 * * * Regulatory Review of Renewable Energy Projects * * *

4 Sec. 7. 30 V.S.A. § 248(o) is added to read:

5 (o) The board shall not reject as incomplete a petition under this section for
6 a wind generation facility on the grounds that the petition does not specify the
7 exact make or dimensions of the turbines and rotors to be installed at the
8 facility as long as the petition provides the maximum horizontal and vertical
9 dimensions of those turbines and rotors and the maximum decibel level that the
10 turbines and rotors will produce as measured at the nearest residential structure
11 over a 12-hour period commencing at 7:00 p.m.

12 * * * Wind Energy Generation on State Lands * * *

13 Sec. 8. 3 V.S.A. § 2840 is added to read:

14 § 2840. WIND ENERGY GENERATION; STATE LANDS

15 (a) Wind energy generation facilities can provide an important combination
16 of environmental, energy, and economic benefits to the state. Given these
17 benefits, and the fact that the state has allowed other types of facilities to be
18 sited on state lands, it is reasonable to site wind energy generation facilities on
19 state lands, including wind energy generation facilities that are of commercial
20 scale, if such siting does not directly conflict with a specific restriction in
21 federal or state law or with a specific restriction or covenant contained in a

1 conveyance of an interest in the property to the state or one of its agencies or
2 departments, and if sites for wind energy on state lands are chosen and
3 developed in a manner that maximizes energy production and minimizes
4 environmental and aesthetic impacts.

5 (b) The existing policy of the agency, entitled “Wind Energy and Other
6 Renewable Energy Development on ANR Lands” (Dec. 2004) (the existing
7 policy) shall not bar the agency from considering any proposal to construct a
8 meteorological station or wind energy generation facility, including a wind
9 energy generation facility of commercial scale, on lands that the agency owns
10 or controls. If the agency receives such a proposal, the agency shall review the
11 proposal within a reasonably prompt period and provide the entity making the
12 proposal with information regarding the feasibility of and potential constraints
13 that may apply to the proposal. The agency also shall consider the potential
14 costs and benefits of the proposal to the state of Vermont, including any
15 benefits or impacts that would be derived from leasing state lands to the entity
16 making the proposal.

17 (c) On receipt of significant new information on the existing policy or on
18 wind energy generation on state lands, the agency shall undertake a review of
19 that policy and determine if a change in the policy is warranted. During that
20 review, the agency shall solicit the comments and recommendations of wind

1 energy developers, renewable energy organizations, and other potentially
2 affected entities.

3 (d) No later than February 15, 2010, the agency shall report to the house
4 and senate natural resources and energy committees on at least each of the
5 following:

6 (1) The agency shall identify whether significant new information on
7 the existing policy or on wind energy generation on state lands was received by
8 the agency after April 2, 2009.

9 (2) The agency shall state whether, after April 2, 2009, it undertook a
10 review of the existing policy.

11 (3) If the agency undertook a review of the existing policy after
12 April 2, 2009, the agency shall summarize each conclusion reached by the
13 agency as a result of that review and the reasons for each such conclusion.

14 (4) The agency shall state whether, after April 2, 2009, it made any
15 changes in the existing policy and summarize each such change.

16 (5) The agency shall state whether it has received any proposals for
17 construction and operation of meteorological stations or wind energy
18 generation facilities on state lands.

19 (6) If the agency received any proposals for construction and
20 operation of meteorological stations or wind energy generation facilities on

1 state lands, the agency shall provide a summary of each such proposal and the
2 agency's response to each such proposal.

3 * * * Solar Energy Tax Credits * * *

4 Sec. 9. 32 V.S.A. § 5822(d) is amended to read:

5 (d) A taxpayer shall be entitled to a credit against the tax imposed under
6 this section of 24 percent of each of the credits allowed against the taxpayer's
7 federal income tax for the taxable year as follows: elderly and permanently
8 totally disabled credit, investment tax credit attributable to the
9 Vermont-property portion of the investment, and child care and dependent care
10 credits. A taxpayer shall also be entitled to a credit against the tax imposed
11 under this section of 76 percent of the Vermont-property portion of the
12 business solar energy investment tax credit component of the federal
13 investment tax credit allowed against the taxpayer's federal income tax for the
14 taxable year under Section 48 of the Internal Revenue Code. Any unused
15 credit for business solar energy investment made in Vermont may be carried
16 forward for no more than five years following the first year in which the credit
17 is claimed.

18 Sec. 9a. 32 V.S.A. § 5930z(c) is added to read:

19 (c) Any unused credit for business solar energy investment made in
20 Vermont may be carried forward for no more than five years following the first
21 year in which the credit is claimed.

1 Sec. 10. Sec. 29 of No. 92 of the 2007 Adj. Sess. (2008) is amended to read:

2 Secs. 27 and 28 of this act (business energy tax credits) shall apply to ~~carry~~
3 ~~through and recapture of federal credits related to~~ taxable year 2008 and after.

4 * * * Building Energy Standards * * *

5 Sec. 11. 21 V.S.A. § 266 is amended to read:

6 § 266. RESIDENTIAL BUILDING ENERGY STANDARDS

7 (a) Definitions. For purposes of this subchapter, the following definitions
8 apply:

9 (1) "Builder" means the general contractor or other person in charge of
10 construction, who has the power to direct others with respect to the details to
11 be observed in construction.

12 (2) "Residential buildings" means one family dwellings, two family
13 dwellings, and multi-family housing three stories or less in height. "Residential
14 buildings" shall not include hunting camps.

15 (3) "Residential construction" means new construction of residential
16 buildings, and the construction of residential additions that create 500 square
17 feet of new floor space, or more. Before July 1, 1998, this definition shall only
18 apply to residential construction that is subject to the jurisdiction of 10 V.S.A.
19 chapter 151. Effective July 1, 1998, this definition shall apply to residential
20 construction, regardless of whether or not it is subject to the jurisdiction of
21 10 V.S.A. chapter 151.

1 The advisory committee may provide the commissioner with additional
2 recommendations for revision of the RBES.

3 (1) Any amendments to the RBES shall be:

4 (A) Consistent with duly adopted state energy policy, as specified in
5 30 V.S.A. § 202a, and consistent with duly adopted state housing policy.

6 (B) Evaluated relative to their technical applicability and reliability.

7 (C) Cost-effective and affordable from the consumer's perspective.

8 (2) ~~Each~~ Except for the amendments required by this subsection to be
9 adopted by January 1, 2011, each time the RBES are amended by the
10 commissioner, the amended RBES shall become effective upon a date
11 specified in the adopted rule, a date that shall not be less than three months
12 after the date of adoption. ~~Persons~~ Except for the amendments required by this
13 subsection to be adopted by January 1, 2011, persons commencing residential
14 construction before the effective date of the amended RBES shall have the
15 option of complying with the applicable provisions of the earlier or the
16 amended RBES. After the effective date of the original or the amended RBES,
17 any person commencing residential construction ~~in an area subject to the~~
18 ~~RBES~~ shall comply with the most recent version of the RBES.

19 * * *

1 Sec. 12. 21 V.S.A. § 268 is amended to read:

2 § 268. COMMERCIAL BUILDING ENERGY STANDARDS

3 * * *

4 (c) Revision and interpretation of energy standards. ~~On or about January 1,~~
5 ~~2009, and at least every three years thereafter~~ No later than January 1, 2011,
6 the commissioner shall complete rulemaking to amend the commercial
7 building energy standards to ensure that commercial building construction
8 must be designed and constructed in a manner that complies with
9 ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC,
10 whichever provides the greatest level of energy savings. These amendments
11 shall be effective on final adoption. At least every three years after January 1,
12 2011, the commissioner of public service shall amend and update the CBES by
13 means of administrative rules adopted in accordance with 3 V.S.A. chapter 25.
14 The commissioner shall ensure that appropriate revisions are made promptly
15 after the issuance of updated standards for commercial construction under the
16 ~~international energy conservation code (IECC)~~ IECC or
17 ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level
18 of energy savings. At least a year prior Prior to final adoption of each required
19 revision of the CBES, the department of public service shall convene an
20 advisory committee to include one or more mortgage lenders; builders;
21 building designers; architects; civil, mechanical, and electrical engineers;

1 utility representatives; and other persons with experience and expertise, such as
2 consumer advocates and energy conservation experts. The advisory committee
3 may provide the commissioner of public service with additional
4 recommendations for revision of the CBES.

5 (1) Any amendments to the CBES shall be:

6 (A) Consistent with duly adopted state energy policy, as specified in
7 30 V.S.A. § 202a.

8 (B) Evaluated relative to their technical applicability and reliability.

9 (2) ~~Each~~ Except for the amendments required by this subsection to be
10 adopted by January 1, 2011, each time the CBES are amended by the
11 commissioner of public service, the amended CBES shall become effective
12 upon a date specified in the adopted rule, a date that shall not be less than three
13 months after the date of adoption. ~~Persons~~ Except for the amendments
14 required by this subsection to be adopted by January 1, 2011, persons
15 submitting an application for any local permit authorizing commercial
16 construction, or an application for construction plan approval by the
17 commissioner of public safety pursuant to 20 V.S.A. chapter 173, before the
18 effective date of the amended CBES shall have the option of complying with
19 the applicable provisions of the earlier or the amended CBES. After the
20 effective date of the original or the amended CBES, any person submitting

1 such an application for commercial construction in an area subject to the CBES
2 shall comply with the most recent version of the CBES.

3 * * *

4 Sec. 13. 21 V.S.A. § 269 is added to read:

5 § 269. COMPLIANCE PLAN

6 The commissioner of public service shall perform all of the following:

7 (1) No later than September 1, 2011, issue a plan for achieving
8 compliance with the energy standards adopted under this subchapter no later
9 than February 1, 2017 in at least 90 percent of new and renovated residential
10 and commercial building space. In preparing this plan, the department shall
11 review enforcement mechanisms for building energy codes that have been
12 adopted in other jurisdictions and shall solicit the comments and
13 recommendations of one or more mortgage lenders; builders; building
14 designers; architects; civil, mechanical, and electrical engineers; utility
15 representatives; environmental organizations; consumer advocates; energy
16 efficiency experts; the attorney general; and other persons who are potentially
17 affected or have relevant expertise.

18 (2) No later than June 30, 2012, by means of administrative rules
19 adopted in accordance with 3 V.S.A. chapter 25:

20 (A) Establish active training and enforcement programs to meet the
21 energy standards adopted under this subchapter.

1 (A) A member of the transmission or industrial electric rate classes
2 shall be eligible to apply to participate in the self-managed energy efficiency
3 program class if the charges to the applicant under subdivision (d)(3) of this
4 section were a minimum of \$1.5 million during calendar year 2008.

5 (B) A cost-based fee to be determined by the board shall be charged
6 to the applicant to cover the administrative costs, including savings
7 verification, incurred by the board and department. Certification of the project
8 by a licensed professional engineer in the appropriate engineering field shall
9 suffice as verification of savings. The person performing the savings
10 verification shall be selected by the department and shall not be an employee
11 of the applicant.

12 (C) An applicant shall demonstrate to the department that it has a
13 comprehensive energy management program with annual objectives.
14 Achievement of certification of ISO standard 14001 shall be eligible to satisfy
15 the requirements of having a comprehensive program.

16 (D) An applicant shall commit to a three-year minimum energy
17 efficiency investment of an annual average of no less than \$1 million.

18 (E) Participation in the self-managed program includes efficiency
19 programs and measures applicable to electric and other forms of energy. A
20 participant may balance efficiency investments across all types of energy or
21 fuels without limitations.

1 (F) A participant shall provide to the department annually an
2 accounting of energy investments and energy savings in the form prescribed by
3 the department, which may conduct reasonable audits to ensure accuracy of the
4 data provided.

5 (G) The department shall report to the board and the general
6 assembly annually by April 30 concerning the prior calendar year's class of
7 self-managed energy efficiency programs. The report shall include
8 identification of participants, their annual investments, and resulting savings,
9 and any actions taken to exclude entities from the program.

10 (H) Upon approval of an application by the department, the applicant
11 shall be able to participate in the class of self-managed energy efficiency
12 programs for a three-year period.

13 (I) On a determination that a participant in the self-managed
14 efficiency program class has not met the commitment required by subdivision
15 (h)(4)(D) of this section, the department shall terminate the participant's
16 eligibility for the self-managed program class and the former participant will
17 be subject to the then existing charges under subdivision (d)(3) of this section
18 applicable to its rate class and within 90 days of such termination shall pay to
19 the electric efficiency fund described in subdivision (d)(3) of this section the
20 difference between the investment it made while in the self-managed energy
21 efficiency program and the charges it would have incurred under subdivision

1 (d)(3) of this section had the entity not been part of that program. An entity
2 may not reapply for membership in the self-managed program after such
3 termination.

4 (J) A decision by the department to terminate a participant's
5 membership in the class of self-managed energy efficiency programs may be
6 appealed to the board.

7 (K) A participant in the self-managed program class may request
8 confidentiality of data it reports to the department if the data would qualify for
9 exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is
10 requested, the department shall disclose the data only in accordance with a
11 protective agreement approved by the department and the participant and
12 signed by the recipient of the data, unless a court orders otherwise.

13 (L) Any data not subject to a confidentiality request under
14 subdivision (h)(4)(K) of this section will be a public record.

15 (M) A participant in the self-managed program class may submit
16 projects to the independent system operator of New England, including
17 through recognized aggregators, for payments under that operator's forward
18 capacity market program, and shall invest such payments in electric or fuel
19 efficiency.

20 (N) A participant in the self-managed program class may receive
21 funding from an energy program administered by a government or other entity

1 which is not the participant but may not count such funds received as part of
2 the annual commitment to its self-managed energy efficiency program.

3 (O) If, at the end of the third year after an applicant's approval to
4 participate in the self-managed efficiency program (the three-year period), the
5 applicant has not met the commitment required by subdivision (h)(4)(D) of this
6 subsection, the applicant shall pay to the electric efficiency fund described in
7 subdivision (d)(3) of this section the difference between the investment the
8 applicant made while in the self-managed energy efficiency program and the
9 charges the applicant would have incurred under subdivision (d)(3) of this
10 section during the three-year period had the applicant not been a participant in
11 the program. This payment shall be made no later than 90 days after the end of
12 the three-year period.

13 Sec. 15. GREEN GROWTH ZONE STUDY; PILOT PROJECT

14 The department of public service, in consultation with the agencies of
15 natural resources and of commerce and community development and
16 appropriate stakeholders including representatives of the business community,
17 utilities, residential ratepayers, and environmental organizations, shall research
18 and study in detail the concept of establishing "green growth zones," that is,
19 identifiable, designated areas in which electric generation or district heating is
20 sited for the benefit of new development or development retention within the
21 area. For the purpose of this section, "electric generation" means the

1 production of electricity using renewable energy as defined in 30 V.S.A.
2 § 8002(2) or a combined heat and power facility as defined in 10 V.S.A.
3 § 6523(b)(2). No later than December 15, 2009, the department shall file with
4 the house and senate committees on natural resources and energy a report
5 stating the results of its research, study, and consultation; providing its detailed
6 and fully formed proposal for a green growth zone pilot project that includes at
7 least one area with a renewable energy source and another area with combined
8 heat and power; and attaching draft legislation to implement that proposal.

9 Sec. 16. EFFECTIVE DATE

10 This act shall take effect from passage. Secs. 9 and 9a of this act shall
11 apply to credits taken on and after January 1, 2009.