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H.592

Introduced by Representatives Krawczyk of Bennington, Wilson of
Manchester, Wright of Burlington, Acinapura of Brandon,
Ainsworth of Royalton, Baker of West Rutland, Bissonnette of
Winooski, Botzow of Pownal, Branagan of Georgia, Brennan of
Colchester, Clerkin of Hartford, Corcoran of Bennington,
Dickinson of St. Albans Town, Donaghy of Poultney, Fagan of
Rutland City, Greshin of Warren, Helm of Castleton, Higley of
Lowell, Hubert of Milton, Jerman of Essex, Komline of Dorset,
Lawrence of Lyndon, Lewis of Derby, McAllister of Highgate,
McDonald of Berlin, McNeil of Rutland Town, Mook of
Bennington, Morrissey of Bennington, Myers of Essex, Olsen
of Jamaica, Pearce of Richford, Perley of Enosburg, Reis of
St. Johnsbury, Savage of Swanton, Shand of Weathersfield,
Shaw of Pittsford, Smith of Mendon, Turner of Milton and
Winters of Williamstown

Referred to Committee on

Date:

Subject: Conservation and development; public service; hydroelectric
projects; electric utilities; SPEED; standard offer

1 Statement of purpose: This bill proposes to require the agency of natural
2 resources (ANR) to establish a general permit program for hydroelectric power
3 projects. ANR would also be required to implement the general permit
4 program for hydroelectric power projects through implementation of a pilot
5 program. In addition, the bill would require ANR, upon the request of a
6 hydroelectric project developer, to issue a federal Clean Water Act § 401
7 certification prior to the developer filing an application with the Federal
8 Energy Regulatory Commission. The bill would also amend the rate required
9 to be paid under the SPEED standard offer program to hydroelectric projects.

10 An act relating to the development and permitting of hydroelectric projects

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

12 Sec. 1. 10 V.S.A. § 1007 is added to read:

13 § 1007. GENERAL PERMITTING OF HYDROELECTRIC PROJECTS

14 (a) Findings. The general assembly finds and declares that:

15 (1) The generation of renewable power within Vermont is critical to the
16 economic development, energy independence, and financial security of the
17 state.

18 (2) The generation of hydroelectric power is a legitimate use of the
19 waters of the state, and it is the policy of Vermont to allow beneficial and
20 environmentally sound hydroelectric generation development, consistent with

1 applicable federal and state law.

2 (3) Section 401 of the federal Clean Water Act (CWA), 33 U.S.C.
3 § 1341, requires any applicant for a federal permit for an activity that may
4 involve a discharge to navigable waters to obtain certification from the state
5 that the permitted activity does not violate the state's water quality standards.

6 (4) As set forth in section 1004 of this title, the secretary of natural
7 resources is the agent that the U.S. Environmental Protection Agency
8 delegated to conduct CWA § 401 certifications in the state of Vermont.

9 (5) The secretary of natural resources has implemented a simplified
10 process with defined standards for the issuance of a CWA § 401 certification
11 for projects that require a federal permit due to impacts on wetlands.

12 (6) Other states have issued CWA § 401 certifications in a timely
13 manner for general permits.

14 (7) The natural resources board, as part of the stakeholder hydroelectric
15 interested parties process (SHIPP) required by No. 92 of the Acts of the 2007
16 Adj. Sess. (2008), recommended that the Vermont conservation flow standards
17 be applied to allow for a default conservation flow standard for certain new
18 hydroelectric power projects in the state.

19 (8) To further the policy of Vermont to allow beneficial and
20 environmentally sound hydroelectric generation development and to
21 implement the recommendations of the natural resources board to establish a

1 default conservation flow standard for certain hydroelectric power projects in
2 the state, the agency of natural resources shall be required to issue and
3 implement a general permit for hydroelectric facilities and shall issue a CWA
4 § 401 certification for the general permit.

5 (b) Definitions. As used in this section:

6 (1) “Conduit” means any tunnel, canal, pipeline, aqueduct, flume, ditch,
7 or similar constructed water conveyance that is operated for the distribution of
8 water for agricultural, municipal, or industrial consumption and not primarily
9 for the generation of electricity.

10 (2) “Hydroelectric project” means a run of river facility, site, or conduit
11 planned or operated for the generation of water-powered electricity that has a
12 generation capacity of no more than five megawatts and does not create a new
13 impoundment.

14 (3) “Impoundment” means “riverine impoundment” as defined in the
15 Vermont water quality standards adopted pursuant to chapter 47 and
16 subdivision 6025(d)(3) of this title.

17 (c) General permit requirement. On or before January 1, 2011, the
18 secretary of natural resources shall adopt by rule a general permit for the
19 operation of the following categories of hydroelectric projects:

1 (1) Hydroelectric projects where data provided by an applicant provide
2 reasonable assurance that the hydroelectric project will comply with the
3 Vermont water quality standards;

4 (2) Hydroelectric projects utilizing conduits;

5 (3) Hydroelectric projects without a bypass reach or a de minimis
6 bypass reach, as defined by the secretary of natural resources;

7 (4) Hydroelectric projects that were previously certified under CWA
8 § 401 and that are operating in compliance with such certification as
9 demonstrated by existing administrative, monitoring, reporting, or enforcement
10 data; and

11 (5) Other categories of hydroelectric projects that the secretary
12 concludes are suitable for coverage under a general permit.

13 (d) The general permit required by subsection (c) of this section shall:

14 (1) Set a Vermont-specific default conservation flow standard for
15 hydroelectric projects that is sufficient to protect aquatic habitat and that shall
16 serve as a substitute for site-specific flow studies.

17 (2) Include terms and conditions necessary to ensure that a hydroelectric
18 project seeking coverage under the permit complies with the Vermont water
19 quality standards.

1 (3) Satisfy the requirements for a stream alteration permit under section
2 1021 of this title, including the terms and conditions for the issuance of a
3 stream alteration permit.

4 (4) Include reasonable time frames for agency review of and response to
5 an application for coverage under a general permit.

6 (5) Include provisions consistent with the requirements of subsection
7 7503(b) of this title that require public notice of the fact that a hydroelectric
8 project has sought coverage under a general permit issued under this section.

9 (e) The secretary of natural resources shall issue a CWA § 401 certification
10 for a general permit adopted under this section. The secretary shall coordinate
11 issuance of the CWA § 401 certification for a general permit adopted under
12 this section in order to ensure implementation of the general permit upon
13 adoption.

14 (f) Duration of general permit. A general permit adopted pursuant to this
15 section shall have a term of no more than ten years. Prior to the expiration of
16 the general permit, the secretary shall review the terms and conditions of the
17 general permit and may issue subsequent general permits with the same or
18 different conditions as necessary to carry out the purposes of this subchapter.

19 (g) Development of draft general permit. The secretary of natural
20 resources shall convene a public stakeholder process of interested parties to

1 develop the draft rule of the general permit required under subsection (c) of
2 this section.

3 Sec. 2. 10 V.S.A. § 1008 is added to read:

4 § 1008. CERTIFICATIONS FOR HYDROELECTRIC POWER PROJECTS

5 Upon request of a developer of a hydroelectric project, as that term is
6 defined in section 1007 of this title, the secretary of natural resources shall
7 issue a certification required by the federal Clean Water Act (CWA), 33 U.S.C.
8 § 1341, to the developer prior to the developer's submission to the Federal
9 Energy Regulatory Commission of an application for a license or exemption
10 for a hydroelectric project under the Federal Power Act.

11 Sec. 3. HYDROELECTRIC POWER PILOT PROGRAM

12 (a) On or before July 1, 2011, the secretary of natural resources shall
13 initiate a pilot program for the permitting of hydroelectric projects under the
14 general permit issued according to the requirements of 10 V.S.A. § 1007. In
15 implementing the pilot program, the secretary shall objectively assess the
16 necessity for or appropriateness of the technical, scientific, or procedural
17 requirements for the permitting of the hydroelectric sites participating in the
18 pilot program.

19 (b) The pilot program may include up to five hydroelectric projects and
20 shall include the following hydroelectric projects:

1 (1) the Vermont Tissue site on the Walloomsac River in the town of
2 Bennington; and

3 (2) the Basin Farm Renewable Energy project on the Saxtons River in
4 Westminster.

5 (c) The definitions set forth in 10 V.S.A. § 1007 shall apply to this section.

6 (d) On or before January 15, 2012, the secretary of natural resources shall
7 report to the house and senate committees on natural resources and energy and
8 the house committee on fish, wildlife and water resources regarding
9 implementation of the hydroelectric power pilot program required by this
10 section. The report shall include:

11 (1) a copy of the general permit adopted under 10 V.S.A. § 1007;

12 (2) a summary of the number of hydroelectric projects that sought to
13 participate in the hydroelectric power pilot project;

14 (3) a summary of the permitting process for each participating
15 hydroelectric project, including whether a hydroelectric project has received
16 coverage under the general permit and an estimate of the duration of the
17 permitting process for each participating hydroelectric project; and

18 (4) a summary of the objective analysis of the appropriateness of the
19 agency of natural resources' technical, scientific, or procedural requirements
20 for the permitting of the hydroelectric sites participating in the pilot program.

1 the public service board may, and in the case of subdivisions (1), (2), and (5)
2 of this subsection shall:

3 (1) Name one or more entities to become engaged in the purchase and
4 resale of electricity generated within the state by means of qualifying SPEED
5 resources or nonqualifying SPEED resources, and shall implement the standard
6 offer required by subdivision (2) of this subsection through this entity or
7 entities. An entity appointed under this subdivision shall be known as a
8 SPEED facilitator.

9 (2) No later than September 30, 2009, put into effect, on behalf of all
10 Vermont retail electricity providers, standard offers for qualifying SPEED
11 resources with a plant capacity of 2.2 MW or less. These standard offers shall
12 be available until the cumulative plant capacity of all such resources
13 commissioned in the state that have accepted a standard offer under this
14 subdivision (2) equals or exceeds 50 MW; provided, however, that a plant
15 owned and operated by a Vermont retail electricity provider shall count toward
16 this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is
17 commissioned on or after September 30, 2009. The term of a standard offer
18 required by this subdivision (2) shall be 10 to 20 years, except that the term of
19 a standard offer for a plant using solar power shall be 10 to 25 years. The price
20 paid to a plant owner under a standard offer required by this subdivision shall

1 include an amount for each kilowatt-hour (kWh) generated that shall be set as
2 follows:

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

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

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

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

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

16 (v) Notwithstanding subdivision (2)(B) of this subsection, for a
17 plant using hydropower, \$0.15 per kWh.

18 (B) In accordance with the provisions of this subdivision, the board
19 by order shall set the price to be paid to a plant owner under a standard offer,
20 including the owner of a plant described in subdivisions (2)(A)(i)-(iv) of this
21 subsection.

1 (i) The board shall use the following criteria in setting a price
2 under this subdivision:

3 (I) The board shall determine a generic cost, based on an
4 economic analysis, for each category of generation technology that constitutes
5 renewable energy. In conducting such an economic analysis, the board shall:

6 (aa) Include a generic assumption that reflects reasonably
7 available tax credits and other incentives provided by federal and state
8 governments and other sources applicable to the category of generation
9 technology. For the purpose of this subdivision (2)(B), the term “tax credits
10 and other incentives” excludes tradeable renewable energy credits.

11 (bb) Consider different generic costs for subcategories of
12 different plant capacities within each category of generation technology.

13 (II) The board shall include a rate of return on equity not less
14 than the highest rate of return on equity received by a Vermont investor-owned
15 retail electric service provider under its board-approved rates as of the date a
16 standard offer goes into effect.

17 (III) The board shall include such adjustment to the generic
18 costs and rate of return on equity determined under subdivisions (2)(B)(i)(I)
19 and (II) of this subsection as the board determines to be necessary to ensure
20 that the price provides sufficient incentive for the rapid development and

1 commissioning of plants and does not exceed the amount needed to provide
2 such an incentive.

3 * * *

4 Sec. 7. EFFECTIVE DATE

5 (a) This section and Secs. 1 (general permit of hydroelectric projects) and
6 3 (hydroelectric power pilot program) of this act shall take effect upon passage.

7 (b) Secs. 2 (certification of hydroelectric projects), 4 (ANR enforcement),
8 5 (appeal of ANR decisions), and 6 (SPEED standard offer; rates) shall take
9 effect July 1, 2010.