

1 H.654

2 Introduced by Representative Cheney of Norwich

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; renewable generation; natural resources;
6 permitting; stormwater; taxation

7 Statement of purpose: This bill proposes to provide that appeals of
8 environmental permits for a renewable energy plant shall be to the public
9 service board instead of the environmental court, to be consolidated with that
10 board's review of the plant under 30 V.S.A. § 248; to expedite the process of
11 public service board consideration of wind measurement stations; to require
12 the public service board to use streamlined interconnection procedures for
13 so called "standard offer" renewable energy plants; to provide that, until the
14 Vermont department of environmental conservation complies with the
15 requirements of Act 54 of this biennium regarding alternative stormwater
16 measures for high elevation renewable energy projects, the developer of such a
17 project shall have the right to petition the public service board for waiver of
18 existing state law requirements; and to provide that the same alternative
19 education tax that applies to wind generation facilities shall apply to other
20 renewable energy plants.

1 (c) The provisions of subdivisions 8504(c)(2) (notice of appeal) and
2 (f)(1)(A) (automatic stays of certain permits), (j) (appeals to discharge under a
3 general permit), and (n) (intervention) of this title shall apply to appeals under
4 this section.

5 (d) The public service board shall consolidate or coordinate appeals under
6 this section with each other and with proceedings under 30 V.S.A. § 248,
7 where those appeals and proceedings all relate to the same project, unless such
8 consolidation or coordination would be clearly unreasonable.

9 (e) In an appeal under this section, the public service board, applying the
10 substantive standards that were applicable before the secretary, shall hold a de
11 novo hearing on those issues which have been appealed.

12 (f) Sections 9 (court of record), 10 (service of process), 11 (pleadings; rules
13 of practice; findings of fact), and 12 (review by supreme court) of Title 30
14 shall apply to appeals under this section.

15 Sec. 4. 30 V.S.A. § 223 is amended to read:

16 § 223. APPEAL FROM MUNICIPAL AUTHORITIES

17 A person or corporation aggrieved by an order or decision of the municipal
18 authorities made under the provisions of any statute, relative to the granting of
19 a license or permit for location or to activity associated with a renewable
20 energy plant for which a certificate of public good is required under section
21 248 of this title, may appeal therefrom to the board at any time within 30 days

1 from the date of such order or decision. The right of appeal established under
2 this section shall be exclusive for orders or decisions to which it applies.
3 Included in the right of appeal established under this section are acts and
4 decisions of a municipal authority under section 1111 of Title 19 (permitted
5 use of the right-of-way), section 1400a of Title 23 (local highway and bridge
6 overweight permits), and ordinances and rules adopted under chapter 59 of
7 Title 24. After notice and public hearing of all parties interested, ~~as provided~~
8 ~~in section 208 of this title,~~ the decision of the board thereon shall be final,
9 subject to a right to transfer such cause to the supreme court as provided by
10 section 12 of this title. In the case of a renewable energy plant for which a
11 certificate of public good is required under section 248 of this title, the board
12 shall consolidate or coordinate appeals under this section with each other and
13 with proceedings under section 248, where those appeals and proceedings all
14 relate to the same project, unless such consolidation or coordination would be
15 clearly unreasonable. For the purpose of this section, “plant” and “renewable
16 energy” have the same meaning as under section 8002 of this title.

1 * * * Permitting for Wind Measurement Stations * * *

2 Sec. 5. 30 V.S.A. § 246 is amended to read:

3 § 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

4 (a) For purposes of this section, a “meteorological station” consists of one
5 temporary tower, which may include guy wires, and attached instrumentation
6 to collect and record wind speed, wind direction, and atmospheric conditions.

7 (b) The public service board shall establish by rule or order standards and
8 procedures governing application for, and issuance or revocation of, a
9 certificate of public good for the temporary installation of one or more
10 meteorological stations under the provisions of section 248 of this title. A
11 meteorological station shall be deemed to promote the public good of the state
12 if it is in compliance with the criteria of this section and the board rules or
13 orders. An applicant for a certificate of public good for a meteorological
14 station shall be exempt from the requirements of subsection 202(f) of this title.

15 (c) In developing rules or orders, the board:

16 (1) Shall develop a simple application form and shall require that
17 completed applications be filed with the board, the department of public
18 service, the agency of natural resources, and the municipality in which the
19 meteorological station is proposed to be located.

20 (2) Shall require that if no objections are filed within 30 days of the
21 board’s receipt of a complete application and the board determines that the

1 applicant has met all of the requirements of section 248 of this title, the
2 certificate of public good shall be issued for a period that the board finds
3 reasonable, but in no event for more than five years. Upon request of an
4 applicant, the board may renew a certificate of public good. Upon expiration
5 of the certificate, the meteorological station and all associated structures and
6 material shall be removed, and the site shall be restored substantially to its
7 preconstruction condition.

8 (3) May waive the requirements of section 248 of this title that are not
9 applicable to meteorological stations, including criteria that are generally
10 applicable to public service companies as defined in this title, and may modify
11 notice and hearing requirements of this title as it deems appropriate. The board
12 shall not waive review regarding whether construction will have an undue
13 adverse effect on esthetics, historic sites, air and water purity, the natural
14 environment, and the public health and safety. Notwithstanding whether the
15 board has acted pursuant to this subdivision (3), the following criteria of
16 subsection 248(b) of this title shall not apply to a temporary meteorological
17 station: (2) (need), (3) (system stability and reliability), (4) (economic
18 benefit), (6) (integrated resource plan), (7) (compliance with electric energy
19 plan), (9) (waste to energy facility), and (10) (existing or planned transmission
20 facilities).

1 (4) Shall seek to simplify the application and review process, as
2 appropriate, in conformance with this section.

3 (d) A ~~proposal for~~ final decision shall be issued within five months of when
4 the board receives a completed application for a certificate of public good for
5 the temporary installation of one or more meteorological stations under the
6 provisions of section 248 of this title.

7 (e) Notwithstanding any other provision of this title, in a proceeding under
8 section 248 of this title concerning the temporary installation of a
9 meteorological station, the board shall not convene a hearing to take evidence
10 on the impact of such a station under subdivision 248(b)(5) of this title if the
11 petition for approval of the station under section 248 provides evidence
12 establishing that there will be no undue adverse effect under subdivision
13 248(b)(5), unless a party submits evidence by a qualified expert that rebuts the
14 petitioner's evidence.

15 (f) For the purpose of this subsection, "standard meteorological station"
16 means a meteorological station that will be less than 260 feet tall, will be
17 removed after no more than five years, will not involve the creation of new
18 roads or trails, will not involve more than two acres of clearing, will not be
19 connected to the electric transmission or distribution system, and will not
20 require a notice of construction or alteration under the regulations of the

1 Federal Aviation Administration. With respect to a standard meteorological
2 station:

3 (1) The provisions of subdivisions 248(a)(4)(A) through (D) (notice and
4 hearing requirements), subsection 248(f) (prior submission to planning
5 commissions), and subdivision 248(j)(2) (petition and notice requirements) of
6 this title shall not apply.

7 (2) The following shall apply to a petition for approval of a standard
8 meteorological station under this section and section 248 of this title:

9 (A) The petitioner shall file an application on a simplified application
10 form developed by the board and shall submit copies of that application to all
11 the same parties to which an application for a wind generation net metering
12 system is required to be sent under rules adopted by the board pursuant to
13 section 219a of this title. A 10-day period for parties to comment or request a
14 hearing shall follow the filing of an application for a standard meteorological
15 station and the copies of the application sent to parties shall provide notice of
16 this period. The board shall hold a hearing on such an application only if the
17 request for hearing complies with subsection (e) of this section and
18 demonstrates that the petition raises a significant issue with respect to
19 substantive criteria of subsection 248(b) of this title that are applicable to the
20 station.

1 (B) The board shall issue a decision on a petition for a standard
2 meteorological station within 30 days of the date on which a complete
3 application is filed. Instead of the 12 days' notice of hearing required by
4 section 12 of this title, the board shall provide at least five days' notice prior to
5 a hearing on such a petition.

6 Sec. 6. RULEMAKING; APPLICATION FORMS; STANDARD

7 METEOROLOGICAL STATIONS

8 No later than December 15, 2010, the public service board shall adopt and
9 issue all rules, orders, waivers, and application forms required by
10 subsection 246(b) and subdivisions 246(c)(1), (c)(3), (c)(4), and (f)(2)(A) of
11 Title 30. Until such time as the board issues a simplified application form for a
12 standard meteorological station under subdivision 246(f)(2)(A) of Title 30, an
13 applicant for such a station may use the board's application form for a net
14 metering system, including those sections applicable to wind generation. With
15 respect to portions of that application form that ask for information specific to
16 a generation facility, the applicant shall instead provide information regarding
17 the facts and specifications of the meteorological station, including such
18 information as is necessary to demonstrate that the applicant proposes a
19 standard meteorological station as defined in subsection 246(f) of Title 30.

1 * * * Interconnection of Standard Offer Projects with Utility System * * *

2 Sec. 7. 30 V.S.A. § 8005(i) is amended to read:

3 (i)(1) With Notwithstanding any other provision of law, with respect to the
4 interconnection of a plant that accepts a standard offers offer under this section
5 to the system of a Vermont retail electricity provider, the board shall:

6 (A) Apply to plants with a plant capacity of 150 kW or less the same
7 interconnection requirements that apply under its rules to net metering systems
8 up to 150 kW capacity.

9 (B) Apply to plants with a plant capacity of more than 150 kW the
10 model interconnection procedures (2009 edition) of the interstate renewable
11 energy council.

12 (2) The board also shall determine whether its existing rules sufficiently
13 address ~~interconnection~~, metering, and the allocation of metering ~~and~~
14 ~~interconnection~~ costs, and make such rule revisions as needed to implement the
15 standard offer requirements of this section.

16 Sec. 8. INTERCONNECTION RULES; CONFORMANCE

17 As of the effective date of this act, Sec. 7 of this act shall supersede any
18 contrary provisions of the rules of the public service board. No later than
19 December 15, 2010, the board shall conform its interconnection rules to the
20 requirements of subsection 8005(i) of Title 30. The failure of the board to

1 conform its rules to subsection 8005(i) shall not affect the operation of that
2 subsection.

3 * * * Stormwater Permitting and Wind Facilities * * *

4 Sec. 9. Sec. 43 of No. 54 of the Acts of 2009 is amended to read:

5 Sec. 43. ALTERNATIVE GUIDANCE FOR STORMWATER
6 PERMITTING; WIND FACILITIES

7 To facilitate responsible development of renewable energy projects in
8 high-elevation settings, the Vermont department of environmental
9 conservation (DEC) shall consult with project developers and interested
10 stakeholders and, by January 15, 2010 or in the process currently under way to
11 update the Vermont stormwater management manual, whichever occurs first,
12 amend its rules or the stormwater management manual, pursuant to chapter 25
13 of Title 3, to include alternative guidance for operational-phase stormwater
14 permitting of renewable energy projects located in high-elevation settings.
15 Such alternative guidance shall include consideration of measures that
16 minimize the extent and footprint of stormwater-treatment practices so as to
17 preserve vegetation and trees and limit disturbances; that reflect the fragile
18 ecosystems, shallow soils, and sensitive streams found in high-elevation
19 settings; and that reflect the temporary nature and infrequent use of
20 construction and access roads to such projects. Notwithstanding the
21 requirements of 10 V.S.A. §§ 1264 and 1264a, until DEC has amended its

1 rules or stormwater management manual in accordance with this Sec. 43, the
2 developer of a renewable energy plant proposed for a site with an elevation
3 above 1,500 feet shall have the right to petition the public service board for
4 waiver of one or more state law requirements pertaining to operational
5 stormwater discharges under 10 V.S.A. §§ 1264 and 1264a, the DEC's rules,
6 or the stormwater management manual, and the public service board shall
7 grant such a waiver on finding that alternative measures proposed by the
8 developer will prevent stormwater runoff associated with the plant from
9 resulting in noncompliance with applicable water quality standards adopted
10 under 10 V.S.A. § 6025(d)(3) or in other deleterious impacts on the receiving
11 waters. This waiver authority does not apply to requirements of the Clean
12 Water Act, 33 U.S.C. § 1251 et seq. The public service board shall consolidate
13 any such waiver petition with a proceeding concerning the same plant under
14 30 V.S.A. § 248, unless such consolidation would be clearly unreasonable.
15 For the purpose of this Sec. 43, "plant" and "renewable energy" have the same
16 meaning as under 30 V.S.A. § 8002.

1 * * * Renewable Energy Plant; Taxation * * *

2 Sec. 10. 32 V.S.A. § 5402c is amended to read:

3 § 5402c. ~~WIND-POWERED~~ COMMERCIAL RENEWABLE ELECTRIC
4 GENERATING FACILITIES TAX

5 (a) A facility certified by the commissioner of public service as a facility
6 which produces electrical energy for resale, generated solely from ~~wind power~~
7 renewable energy as defined under 30 V.S.A. § 8002(2), which has an installed
8 ~~capacity of at least five megawatts~~, which was placed in service after
9 January 1, 2007, and which holds a valid certificate of public good issued
10 under 30 V.S.A. § 248, shall be assessed an alternative education property tax
11 on its buildings and fixtures used directly and exclusively in the generation of
12 electrical energy from ~~wind power~~ renewable energy.

13 (b) The tax shall be imposed at a rate per kWh of electrical energy
14 produced by the certified facility, as determined by the public service
15 department for the six months ending April 30 and the six months ending
16 October 31 each year. The rate of the tax shall be \$0.003.

17 * * *

1 Sec. 11. 32 V.S.A. § 5402d is added to read:

2 § 5402d. NET METERED RENEWABLE ELECTRIC GENERATING

3 FACILITIES TAX

4 (a) A facility certified by the commissioner of public service as a net
5 metering system under 30 V.S.A. § 219a, which has an installed capacity of
6 250 kilowatts or less, which was placed in service after January 1, 2010, and
7 which holds a valid certificate of public good issued under 30 V.S.A. § 248,
8 shall be assessed an alternative education property tax on its buildings and
9 fixtures used directly and exclusively in the generation of electrical energy.

10 (b) The tax shall be imposed at a rate per kWh of electrical energy
11 produced by the certified facility. For all net metering systems except those
12 that produce electricity from conversion of energy from the sun, the kWh of
13 electrical energy produced by the facility shall be the number of kWh that
14 would be generated in a year if the facility operated at 15 percent of the
15 facility's average capacity factor, as certified by the installer. For net metering
16 systems that produce electricity from conversion of energy from the sun, the
17 kWh of electrical energy produced by the facility shall be the number of kWh
18 that would be generated in a year if the facility operated at 13.5 percent of the
19 facility's average capacity factor, as certified by the installer. The rate of the
20 tax shall be \$0.003.

1 (c) The tax imposed by this section shall be paid to the commissioner of
2 taxes by the person or entity then owning or operating the certified facility by
3 April 15 for the year ending the prior December 31 for deposit into the
4 education fund. A person or entity failing to make returns or pay the tax
5 imposed by this section within the time required shall be subject to and
6 governed by the provisions of sections 3202 and 3203 and subchapters 8 and 9
7 of chapter 151 of this title.

8 (d) Unless buildings and fixtures are taxed under this section, they shall
9 remain subject to taxation under section 5402 of this title. Buildings and
10 fixtures subject to the education property tax under this section shall not be
11 taken into account in determining the common level of appraisal for the
12 municipality.

13 Sec. 12. EFFECTIVE DATE

14 This act shall take effect on passage. Secs. 10 and 11 of this act shall apply
15 to tax years commencing on and after January 1, 2010.