

1 H.9

2 Introduced by Representative Klein of East Montpelier

3 Referred to Committee on

4 Date:

5 Subject: Land use; natural resources; conservation and development; energy;  
6 public service; telecommunications; municipal and regional planning  
7 and development; statewide land use plan

8 Statement of purpose: This bill proposes to require the Natural Resources  
9 Board to prepare a statewide land use plan that would address all forms of  
10 development. The plan would be subject to review and approval by the  
11 Governor and General Assembly.

12 An act relating to a statewide land use plan

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

14 Sec. 1. FINDINGS AND PURPOSE

15 (a) When 10 V.S.A. chapter 151 (Act 250) was enacted in 1970, the  
16 General Assembly directed the preparation and adoption of a statewide  
17 capability and development plan to be followed by preparation and adoption of  
18 a statewide land use plan. The capability and development plan would be  
19 made with the general purpose of guiding development of the State, and the

1 land use plan would include a map and statements of present and prospective  
2 land uses that determine in broad categories the proper use of Vermont's lands.

3 (b) The General Assembly later adopted a capability and development plan,  
4 found at 1973 Acts and Resolves No. 85, Sec. 7. However, the statewide land  
5 use plan was not adopted, and the statute calling for such a plan was repealed  
6 in 1983.

7 (c) The absence of a statewide land use plan hinders the process of  
8 development review and environmental protection. Planning that affects land  
9 use occurs in multiple forums that are not fully coordinated, including local  
10 and regional planning and state energy and telecommunications plans. Further,  
11 instead of being addressed from a broad perspective in a coordinated and  
12 orderly manner, significant issues affecting land use policy are often decided  
13 on a case-by-case basis in administrative proceedings or in judicial appeals  
14 from those proceedings.

15 (d) Examples of issues that would benefit from statewide land use planning  
16 include the growth of sprawl and strip development in the state and recent  
17 controversies over the siting of energy and telecommunications facilities.

18 (e) The purpose of this act is to ensure a coordinated and orderly approach  
19 to land use regulation in Vermont that applies to all forms of development and  
20 at all levels of government.

1       Sec. 2. 10 V.S.A. § 6043 is added to read:

2       § 6043. LAND USE PLAN

3           (a) Plan. The Board shall adopt a land use plan which shall consist of a  
4       map and statements of present and prospective land uses that determine in  
5       broad categories the proper use of the lands in the State whether for forestry,  
6       recreation, conservation, agriculture, energy, telecommunications, urban, or  
7       other purposes, the plan to be further implemented at the state and local levels  
8       through authorized environmental, siting, and land use regulation such as the  
9       requirements of this chapter, 24 V.S.A. chapter 117 (municipal and regional  
10       planning and development), and 30 V.S.A. §§ 248 and 248a (Public Service  
11       Board siting review of electric generation and transmission facilities, natural  
12       gas facilities, and telecommunications facilities).

13           (b) Consideration; other plans and bylaws. In the preparation of a land use  
14       plan, the Board shall give full account and consideration to the following:

15           (1) Duly adopted regional plans and duly adopted municipal plans,  
16       capital programs, and bylaws pursuant to 24 V.S.A. chapter 117.

17           (2) The most recently adopted 20-year electric energy and  
18       comprehensive energy plans pursuant to 30 V.S.A. §§ 202 and 202b.

19           (3) The most recently adopted state telecommunications plan pursuant  
20       to 30 V.S.A. § 202d.

1       (c) Consistency; capability and development plan; statutory policies and  
2 goals.

3       (1) The land use plan shall be consistent with the following:

4           (A) The capability and development plan adopted pursuant to section  
5 6042 of this title, found at 1973 Acts and Resolves No. 85, Sec. 7.

6           (B) 10 V.S.A. §§ 551 (air quality; declaration of policy and purpose),  
7 578 (greenhouse gas reduction goals), 581 (building efficiency goals), and  
8 1250 (state water quality policy).

9           (C) Protection of the resources described in subsection 6086(a)  
10 (issuance of permits; criteria) of this title.

11           (D) 24 V.S.A. § 4302(a), (b), and (c) (municipal and regional  
12 planning and development; purpose; goals).

13           (E) 30 V.S.A. § 202a (state energy policy).

14           (F) 30 V.S.A. § 202c (state telecommunications policy).

15           (G) 30 V.S.A. § 8001(a) (renewable energy goals).

16       (2) For the purpose of this subsection (c), the term “consistent” means  
17 that the land use plan is in substantial compliance with or makes substantial  
18 progress toward attainment of the goals, policies, and protection of resources  
19 stated or described in the statutes listed in subdivision (1) of this subsection.

1 Sec. 3. 10 V.S.A. § 6044 is amended to read:

2 § 6044. PUBLIC HEARINGS

3 (a) The ~~board~~ Board shall hold public hearings for the purpose of collecting  
4 information to be used in establishing the capability and development plan, and  
5 ~~interim land capability~~ land use plan. The public hearings may be held in an  
6 appropriate area or areas of the ~~state~~ State and shall be conducted according to  
7 rules to be established and published by the ~~board~~ Board.

8 (b) The ~~board~~ Board may, on its own motion or on petition of an interested  
9 agency of the ~~state~~ State or any regional or local planning commission, hold  
10 such other hearings as it may deem necessary from time to time for the purpose  
11 of obtaining information necessary or helpful in the determination of its  
12 policies, the carrying out of its duties, or the formulation of its rules and  
13 regulations.

14 (c) At least one public hearing shall be held in each district prior to  
15 adoption of a plan pursuant to ~~section~~ sections 6042 (capability and  
16 development plan) and 6043 (land use plan) of this title. ~~Notice~~ Not less than  
17 15 days prior to such a hearing, notice of a the hearing shall be furnished to  
18 each municipality, and municipal and regional planning commission in the  
19 district where the hearing is to be held ~~not less than fifteen days prior to the~~  
20 hearing, and to the Agency of Natural Resources and the Department of Public  
21 Service.

1 (d) The provisions of 3 V.S.A. chapter 25 of Title 3 shall not apply to the  
2 hearings under this section.

3 Sec. 4. 10 V.S.A. § 6045 is added to read:

4 § 6045. SUBMISSION; MUNICIPAL AND REGIONAL PLANNING  
5 COMMISSIONS; STATE AGENCIES

6 Prior to approval of a plan, the Board shall submit the draft plan to each  
7 municipal and regional planning commission, the Agency of Natural  
8 Resources, and the Department of Public Service, each of which shall forward  
9 its comments and recommendations to the Board within 30 days. The Board  
10 shall, prior to approval of the plan, consider all such comments and  
11 recommendations, make such changes in the plan as it deems appropriate, and  
12 convey its specific responses to the respective commission, agency, or  
13 department from the comments and recommendations originated.

14 Sec. 5. 10 V.S.A. § 6046 is amended to read:

15 § 6046. APPROVAL OF GOVERNOR AND LEGISLATURE

16 (a) Upon approval of a capability and development or ~~interim~~ land  
17 ~~capability~~ use plan by the ~~board~~ Board, it shall submit the plan to the ~~governor~~  
18 Governor for approval. The ~~governor~~ Governor shall approve the plan, or  
19 disapprove the plan or any portion of a plan, within 30 days of receipt. If the  
20 ~~governor~~ Governor fails to act, the plan shall be deemed approved by the  
21 ~~governor~~ Governor. This section shall also apply to any amendment of a plan.

1 (b) After approval by the ~~governor~~ Governor, plans pursuant to ~~section~~  
2 sections 6042 (capability and development plan) and 6043 (land use plan) of  
3 this title shall be submitted to the ~~general assembly~~ General Assembly when  
4 next in session for approval. A plan shall be considered adopted for the  
5 purposes of subdivision 6086(a)(9) of this title when adopted by the act of the  
6 ~~general assembly~~ General Assembly. ~~No~~ A permit shall not be issued or  
7 denied by a district commission ~~or environmental board~~ which is contrary to or  
8 inconsistent with a local plan, capital program, or municipal bylaw governing  
9 land use unless it is shown and specifically found that the proposed use will  
10 have a substantial impact or effect on surrounding towns, the region, or an  
11 overriding interest of the ~~state~~ State, and the health, safety, and welfare of the  
12 citizens and residents thereof requires otherwise.

13 Sec. 6. 10 V.S.A. § 6047 is amended to read:

14 § 6047. CHANGES IN THE CAPABILITY AND DEVELOPMENT OR  
15 LAND USE PLAN

16 (a) After final adoption, any department or agency of the ~~state~~ State or a  
17 municipality, or any property owner or lessee may petition the ~~board~~ Board for  
18 a change in the capability and development plan or land use plan.

19 (b) Within 10 days of receipt, the ~~board~~ Board shall forward a copy of the  
20 petition to the district commission ~~and~~, regional planning ~~agency~~ commission,  
21 and Agency of Natural Resources for comments and recommendations. If no

1 regional planning commission exists, the copy shall be sent to the affected  
2 municipal planning commissions and municipalities. If the change involves a  
3 facility or proposed facility subject to 30 V.S.A. § 248 (electric generation,  
4 transmission and natural gas facilities) or 248a (telecommunications facilities),  
5 the petition also shall be forwarded to the Department of Public Service.

6 (c) After 60 days but within 120 days of the original receipt of a petition,  
7 the ~~board~~ Board shall advertise a public hearing to be held in the appropriate  
8 county. The ~~board~~ Board shall notify the persons and agencies that have an  
9 interest in the change of the time and place of the hearing and the procedures  
10 established for initial adoption of a plan shall apply.

11 (d) A petition under this section shall demonstrate that the petitioner's  
12 interests are affected by the portion of the plan proposed to be changed.

13 (e) No petition under this section may be granted unless each of the  
14 following applies:

15 (1) The land subject to the petition is capable of sustaining the use  
16 proposed in a manner that meets the consistency requirement of subsection  
17 6043(c) (land use plan; consistency) of this title.

18 (2) Conditions have so changed since the adoption of the plan provision  
19 proposed for revision that the proposed revision is reasonable.

1 Sec. 7. 10 V.S.A. § 6086 is amended to read:

2 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

3 (a) Before granting a permit, the district commission shall find that the  
4 subdivision or development:

5 \* \* \*

6 (9) Is in conformance with a duly adopted capability and development  
7 plan, and land use plan when adopted. ~~However, the legislative findings of~~  
8 ~~subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria~~  
9 ~~in the consideration of applications by a district commission.~~

10 \* \* \*

11 Sec. 8. 24 V.S.A. § 4348a is amended to read:

12 § 4348a. ELEMENTS OF A REGIONAL PLAN

13 (a) A regional plan shall be consistent with the land use plan adopted under  
14 10 V.S.A. chapter 151 and the goals established in section 4302 of this title and  
15 shall include but need not be limited to the following:

16 \* \* \*

17 Sec. 9. 24 V.S.A. § 4382 is amended to read:

18 § 4382. THE PLAN FOR A MUNICIPALITY

19 (a) A plan for a municipality may be consistent with the goals established  
20 in section 4302 of this title and compatible with approved plans of other  
21 municipalities in the region and with the regional plan. A plan for a

1 municipality shall be consistent with the land use plan adopted under  
2 10 V.S.A. chapter 151 and shall include the following:

3 \* \* \*

4 Sec. 10. 24 V.S.A. § 4410 is amended to read:

5 § 4410. REGULATORY IMPLEMENTATION OF THE MUNICIPAL  
6 PLAN

7 A municipality that has adopted a plan through its bylaws may define and  
8 regulate land development in any manner that the municipality establishes in  
9 its bylaws, provided those bylaws are in conformance with the land use plan  
10 adopted under 10 V.S.A. chapter 151 and the municipal plan and are adopted  
11 for the purposes set forth in section 4302 of this title. In its bylaws, a  
12 municipality may utilize any or all of the tools provided in this subchapter and  
13 any other regulatory tools or methods not specifically listed. However, ~~no~~  
14 bylaws shall not directly conflict with sections 4412 and 4413 of this title and  
15 subchapters 9, 10, and 11 of this title.

16 Sec. 11. 24 V.S.A. § 4411 is amended to read:

17 § 4411. ZONING BYLAWS

18 (a) A municipality may regulate land development in conformance with the  
19 land use plan adopted under 10 V.S.A. chapter 151 and its adopted municipal  
20 plan and for the purposes set forth in section 4302 of this title to govern the use  
21 of land and the placement, spacing, and size of structures and other factors

1 specified in the bylaws related to public health, safety, or welfare. Zoning  
2 bylaws may permit, prohibit, restrict, regulate, and determine land  
3 development, including the following:

4 \* \* \*

5 Sec. 12. 24 V.S.A. § 4414 is amended to read:

6 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

7 Any of the following types of regulations may be adopted by a municipality  
8 in its bylaws in conformance with the land use plan adopted under 10 V.S.A.  
9 chapter 151 and the municipal plan and for the purposes established in section  
10 4302 of this title.

11 \* \* \*

12 Sec. 13. 24 V.S.A. § 4418 is amended to read:

13 § 4418. SUBDIVISION BYLAWS

14 In order to guide community settlement patterns and to ensure the efficient  
15 extension of services, utilities, and facilities as land is developed, a  
16 municipality may regulate the division of a lot or parcel of land into two or  
17 more lots or other division of land for sale, development, or lease. Subdivision  
18 bylaws shall require conformance with the land use plan adopted under  
19 10 V.S.A. chapter 151 and establish standards and procedures for approval,  
20 modification, or disapproval of plats of land and approval or modification of  
21 plats previously filed in the office of the municipal clerk or land records.

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Sec. 14. 30 V.S.A. § 202 is amended to read:

§ 202. ELECTRICAL ENERGY PLANNING

(a) The ~~department of public service~~ Department of Public Service, through the ~~director for regulated utility planning~~ Director for Regulated Utility Planning, shall constitute the responsible utility planning agency of the ~~state~~ State for the purpose of obtaining for all consumers in the ~~state~~ State proper utility service at minimum cost under efficient and economical management consistent with other public policy of the ~~state~~ State. The ~~director~~ Director shall be responsible for the provision of plans for meeting emerging trends related to electrical energy demand, supply, safety, and conservation.

(b) The ~~department~~ Department, through the ~~director~~ Director, shall prepare an electrical energy plan for the state. The plan shall be for a 20-year period and shall serve as a basis for state electrical energy policy. The electric energy plan shall be based on the principles of “least cost integrated planning” set out in and developed under section 218c of this title. The plan shall be consistent with the land use plan adopted under 10 V.S.A. chapter 151. The plan shall include at a minimum:

\* \* \*

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

2 § 202b. STATE COMPREHENSIVE ENERGY PLAN

3 (a) The ~~department of public service~~ Department of Public Service, in  
4 conjunction with other state agencies designated by the ~~governor~~ Governor,  
5 shall prepare a comprehensive state energy plan covering at least a 20-year  
6 period. The plan shall seek to implement the state energy policy set forth in  
7 section 202a of this title and shall be consistent with the land use plan adopted  
8 under 10 V.S.A. chapter 151. The plan shall include:

9 \* \* \*

10 Sec. 16. 30 V.S.A. § 202d is amended to read:

11 § 202d. TELECOMMUNICATIONS PLAN

12 (a) The ~~department of public service~~ Department of Public Service shall  
13 constitute the responsible planning agency of the ~~state~~ State for the purpose of  
14 obtaining for all consumers in the ~~state~~ State stable and predictable rates and a  
15 technologically advanced telecommunications network serving all service  
16 areas in the ~~state~~ State. The ~~department of public service~~ Department of Public  
17 Service shall be responsible for the provision of plans for meeting emerging  
18 trends related to telecommunications technology, markets, financing, and  
19 competition.

20 (b) The ~~department of public service~~ Department of Public Service shall  
21 prepare a telecommunications plan for the state. The ~~department of innovation~~

1 ~~and information~~ Department of Innovation and Information and the ~~agency of~~  
2 ~~commerce and community development~~ Agency of Commerce and  
3 Community Development shall assist the ~~department of public service~~  
4 Department of Public Service in preparing the plan. The plan shall be for a  
5 seven-year period, shall be consistent with the land use plan adopted under  
6 10 V.S.A. chapter 151, and shall serve as a basis for state telecommunications  
7 policy. Prior to preparing the plan, the ~~department of public service~~  
8 Department of Public Service shall prepare:

9 \* \* \*

10 Sec. 17. 30 V.S.A. § 248 is amended to read:

11 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND  
12 FACILITIES; CERTIFICATE OF PUBLIC GOOD

13 (a)(1) No company, as defined in section 201 of this title, may:

14 (A) in any way purchase electric capacity or energy from outside the  
15 state:

16 (i) for a period exceeding five years, that represents more than  
17 three percent of its historic peak demand, unless the purchase is from a plant as  
18 defined in subdivision 8002(12) of this title that produces electricity from  
19 renewable energy as defined under subdivision 8002(2); or

20 (ii) for a period exceeding ten years, that represents more than ten  
21 percent of its historic peak demand, if the purchase is from a plant as defined

1 in subdivision 8002(12) of this title that produces electricity from renewable  
2 energy as defined under subdivision 8002(2); or

3 (B) invest in an electric generation or transmission facility located  
4 outside this state unless the ~~public service board~~ Public Service Board first  
5 finds that the same will promote the general good of the ~~state~~ State and issues a  
6 certificate to that effect.

7 (2) Except for the replacement of existing facilities with equivalent  
8 facilities in the usual course of business, and except for electric generation  
9 facilities that are operated solely for on-site electricity consumption by the  
10 owner of those facilities:

11 (A) no company, as defined in section 201 of this title, and no person,  
12 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or  
13 construction of an electric generation facility or electric transmission facility  
14 within the state which is designed for immediate or eventual operation at any  
15 voltage; and

16 (B) no such company may exercise the right of eminent domain in  
17 connection with site preparation for or construction of any such transmission or  
18 generation facility, unless the ~~public service board~~ Public Service Board first  
19 finds that the same will promote the general good of the ~~state~~ State and  
20 conforms to the land use plan adopted under 10 V.S.A. chapter 151 and issues  
21 a certificate to that effect. However, the Board may certify an electric

1 transmission or generation facility that does not conform to the land use plan if  
2 it finds the facility otherwise meets the requirements of this section, is  
3 proposed to remedy a reliability deficiency, and cannot be designed in a  
4 manner that will both remedy the deficiency and conform to the land use plan.

5 (3) No company, as defined in section 201 of this title, and no person, as  
6 defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or  
7 commence construction of any natural gas facility, except for the replacement  
8 of existing facilities with equivalent facilities in the usual course of business,  
9 unless the ~~public service board~~ Public Service Board first finds that the same  
10 will promote the general good of the ~~state~~ State and conforms to the land use  
11 plan adopted under 10 V.S.A. chapter 151 and issues a certificate to that effect  
12 pursuant to this section.

13 \* \* \*

14 Sec. 18. 30 V.S.A. § 248a is amended to read:

15 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
16 FACILITIES

17 (a) Certificate. Notwithstanding any other provision of law, if the applicant  
18 seeks approval for the construction or installation of telecommunications  
19 facilities that are to be interconnected with other telecommunications facilities  
20 proposed or already in existence, the applicant may obtain a certificate of  
21 public good issued by the ~~public service board~~ Public Service Board under this

1 section, which the ~~board~~ Board may grant if it finds that the facilities will  
2 promote the general good of the ~~state~~ State consistent with subsection 202c(b)  
3 of this title and will conform to the land use plan adopted under 10 V.S.A.  
4 chapter 151. However, the Board may certify a telecommunications facility  
5 that does not conform to the land use plan if it finds that the facility otherwise  
6 meets the requirements of this section and will provide broadband or wireless  
7 telecommunications service and requiring the facility to conform to the land  
8 use plan would leave the area to be served by the facility without such service.

9 A single application may seek approval of one or more telecommunications  
10 facilities. An application under this section shall include a copy of each other  
11 state and local permit, certificate, or approval that has been issued for the  
12 facility under a statute, ordinance, or bylaw pertaining to the environment or  
13 land use.

14 \* \* \*

15 Sec. 19. POSITION; APPROPRIATION

16 (a) The position of Land Use Planner is created within the classified system  
17 as an employee of the Natural Resources Board. The Land Use Planner shall:

18 (1) assist the Board in the preparation, revision, and implementation of  
19 the land use plan under 10 V.S.A. chapter 151;

1           (2) provide information and assistance to other state agencies and local  
2 governments on issues of consistency with and conformance to the land use  
3 plan;

4           (3) testify in proceedings on issues related to the land use plan, when  
5 directed to do so by the Board; and

6           (4) discharge such other duties as the Board may direct.

7           (b) For fiscal year 2014, the sum of \$100,000.00 is appropriated to the  
8 Natural Resources Board from the General Fund for the purpose of this  
9 section.

10       Sec. 20. EFFECTIVE DATES; IMPLEMENTATION

11           (a) This section and Secs. 1 (findings), 2 (land use plan), 3 (public  
12 hearings), 4 (submission), 5 (approval of Governor and Legislature), and 6  
13 (changes to plans) of this act shall take effect on passage. The remaining  
14 sections of this act shall take effect on July 1, 2014.

15           (b) Pursuant to Sec. 5 of this act, 10 V.S.A. § 6046, the Natural Resources  
16 Board shall submit a land use plan for approval to the Governor by  
17 December 15, 2013 and to the General Assembly by January 15, 2014.

18           (c) On passage of this act, the Natural Resources Board may begin  
19 recruitment for the position identified in Sec. 19(a) (land use planner) of this  
20 act, so that the position may be occupied commencing July 1, 2014.