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H.245

Introduced by Representatives Higley of Lowell, Hubert of Milton, Turner of Milton, Batchelor of Derby, Beyor of Highgate, Bouchard of Colchester, Branagan of Georgia, Browning of Arlington, Burditt of West Rutland, Canfield of Fair Haven, Cupoli of Rutland City, Devereux of Mount Holly, Dickinson of St. Albans Town, Donahue of Northfield, Fagan of Rutland City, Feltus of Lyndon, Greshin of Warren, Helm of Fair Haven, Johnson of Canaan, Juskiewicz of Cambridge, Kilmartin of Newport City, Koch of Barre Town, Komline of Dorset, Krebs of South Hero, Larocque of Barnet, Lawrence of Lyndon, Lewis of Berlin, Marcotte of Coventry, Martin of Wolcott, McFaun of Barre Town, Mitchell of Fairfax, Myers of Essex, Potter of Clarendon, Quimby of Concord, Ralston of Middlebury, Savage of Swanton, Scheuermann of Stowe, Shaw of Pittsford, Shaw of Derby, Smith of New Haven, Strong of Albany, Terenzini of Rutland Town, Townsend of Randolph, Winters of Williamstown, and Young of Glover

Referred to Committee on

Date:

1 Subject: Energy; land use; conservation and development; natural resources;
2 public service; electric generation; moratorium

3 Statement of purpose of bill as introduced: This bill proposes to impose a
4 three-year moratorium on wind electric generation plants to allow for a
5 planning and assessment process for the siting of these plants. The bill also
6 proposes to move siting jurisdiction over all in-state electric generation plants,
7 except for net metering systems, from the Public Service Board to the district
8 environmental commissions and local land use authorities.

9 An act relating to siting of electric generation plants

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

11 * * * Moratorium; Wind Generation * * *

12 Sec. 1. FINDINGS

13 The General Assembly finds that:

14 (1) In Vermont, developers site industrial wind generation projects on
15 ridgelines, which often contain sensitive habitat and important natural areas.
16 Vermont's ridgelines also define and enhance the state's natural and scenic
17 beauty. Vermont has invested substantial time and effort to develop regulatory
18 policy and programs to protect its ridgelines.

1 (2) Ridgeline wind generation plants have potential impacts on natural
2 resources, scenic beauty, and quality of life, including effects on endangered
3 and threatened species, wildlife habitat, and aesthetics, and impacts from
4 blasting and turbine noise. Residents near installed wind generation plants
5 have raised concerns about health impacts, including sleep loss. Significant
6 controversy has arisen over whether the Public Service Board review process
7 adequately protects ridgelines from negative impacts caused by these projects.

8 (3) No statewide analysis and planning is performed to address the
9 environmental, land use, and health impacts of siting wind generation projects
10 in Vermont. Instead, the Public Service Board examines the impacts on a
11 case-by-case basis only.

12 (4) The General Assembly must act to ensure that case-by-case
13 regulation of wind generation projects does not result in substantial
14 degradation of the state's ridgelines or negatively affect the health and welfare
15 of nearby residents. The General Assembly therefore enacts a three-year
16 moratorium on the construction and permitting of wind electric generation so
17 that a statewide assessment can be made and a comprehensive policy
18 developed to support effective regulation that protects those ridgelines and the
19 public health and welfare.

1 Sec. 2. 3 V.S.A. chapter 4 is added to read:

2 CHAPTER 4. MORATORIUM; WIND GENERATION

3 § 75. DEFINITIONS

4 In this chapter:

5 (1) “Person” shall have the same meaning as in 10 V.S.A. § 6001(14).

6 (2) “Plant” and “plant capacity” shall have the same meaning as in
7 30 V.S.A. § 8002.

8 (3) “Wind generation plant” means a plant that captures the energy of
9 the wind and converts it into electricity. The term includes all associated
10 facilities and infrastructure such as wind turbines, towers, guy wires, power
11 lines, roads, and substations. The term does not include plants having a plant
12 capacity of 500 kilowatts or less.

13 § 76. MORATORIUM; WIND GENERATION PLANTS

14 Notwithstanding 1 V.S.A. §§ 213 and 214, Title 10, 24 V.S.A. chapter 117,
15 and Title 30, a person shall not commence or complete construction of any
16 wind generation plant, and an agency of the State, including the Agency of
17 Natural Resources, the district environmental commissions, and the Public
18 Service Board, shall not issue a land use, siting, or environmental permit,
19 certificate, or other approval or amendment thereto authorizing the
20 construction or operation of such a plant. This section shall apply retroactively

1 to construction of plants receiving permits and to applications filed before the
2 section's effective date.

3 § 77. EXCEPTION

4 During the moratorium established under section 76 of this title, a person
5 may complete construction of a wind generation plant if, as of the effective
6 date of this chapter, the plant has received all required land use, siting, and
7 environmental permits, certificates, and approvals.

8 § 78. VIOLATIONS; ENFORCEMENT

9 For the purpose of 10 V.S.A. chapters 201 (enforcement authority of the
10 secretary and the board) and 221 (civil enforcement), a violation of this chapter
11 shall be deemed a violation of 10 V.S.A. chapter 151 (state land use).

12 Sec. 3. REPEAL OF MORATORIUM

13 3 V.S.A. chapter 4, as contained in Sec. 1 of this act, shall be repealed three
14 years from the chapter's effective date. This repeal shall not affect the
15 enforcement of violations of 3 V.S.A. chapter 4 arising prior to the date of
16 repeal.

17 * * * Assessment and Policy Development * * *

18 Sec. 4. WIND GENERATION; ASSESSMENT; POLICY DEVELOPMENT;

19 REPORT

20 (a) General charge; definitions. The Department of Public Service shall
21 conduct, coordinate, and complete a process for assessment of and

1 development of statewide policy for the siting of wind generation plants in
2 Vermont. In this process, the Department of Public Service shall consult with
3 and be entitled to the assistance of the Agency of Natural Resources and the
4 Departments of Health and of Taxes. In this section:

5 (1) “Agency” or “ANR” means the Agency of Natural Resources.

6 (2) “DPS” means the Department of Public Service.

7 (3) “Greenfield condition” means the removal of all human-made
8 structures and facilities from a site whether above or below grade and
9 regrading and replanting the site to return it to a natural state.

10 (4) “Plant” shall have the same meaning as in 30 V.S.A. § 8002(14).

11 (5) “Plant capacity” shall have the same meaning as in 30 V.S.A.
12 § 8002(15).

13 (6) “VDH” means the Department of Health.

14 (7) “Wind generation plant” means a plant that captures the energy of
15 the wind and converts it into electricity. The term includes all associated
16 facilities and infrastructure, such as wind turbines, towers, guy wires, power
17 lines, roads, and substations. The term does not include plants having a plant
18 capacity of 500 kilowatts or less.

19 (b) Assessment. Assisted by ANR, VDH, and the Department of Taxes,
20 DPS shall assess and analyze:

21 (1) the economic costs and benefits of wind generation plants;

1 (2) the ability of wind generation plants to be self-sustaining
2 economically, without incentives or other subsidy, when selling their energy
3 generation at market prices;

4 (3) the impacts on the public health, environment, natural resources,
5 quality of life, and property values of all wind generation plants in Vermont in
6 existence or under construction as of the effective date of this section. The
7 assessment of these impacts shall include impacts from noise generated by
8 wind generation plants;

9 (4) setback requirements for wind generation plants that have been
10 imposed in other jurisdictions within and outside the United States and the
11 rationales for those requirements;

12 (5) the environmental costs and benefits of wind generation plants,
13 including the value of any ecosystem services affected by such plants and
14 towers;

15 (6) decommissioning requirements that have been imposed to date on
16 wind generation plants in Vermont, including whether those requirements have
17 been consistent from site to site and whether they mandate return of plant sites
18 to greenfield condition; and

19 (7) any other issue related to the impacts and benefits of siting wind
20 generation in Vermont that DPS considers relevant.

1 (c) Policy development. In consultation with ANR, VDH, and the
2 Department of Taxes, DPS shall develop a comprehensive statewide policy
3 with respect to the siting of wind generation plants in Vermont for proposal to
4 the General Assembly. In developing this proposal, DPS shall:

5 (1) consider the information gathered and the analysis performed
6 pursuant to the assessment required by subsection (b) of this section;

7 (2) determine whether the economic benefits of in-state development of
8 wind generation plants outweigh the economic costs of such development;

9 (3) determine whether, under current and forecasted market conditions,
10 wind generation plants are likely to be self-sustaining economically, without
11 incentives or other subsidy, when selling their energy generation at market
12 prices;

13 (4) determine whether the environmental benefits of in-state
14 development of wind generation plants outweigh the environmental costs of
15 such development;

16 (5) provide an analysis of the effect of wind generation plants on the
17 value of nearby real property;

18 (6) recommend standards applicable to all wind generation plants to
19 address their impacts on public health, the environment, land use, and quality
20 of life, including standards to protect natural areas and wildlife habitat and to
21 limit noise and address sleep loss from such plants. These recommendations

1 shall include proposed setback requirements for wind generation plants from
2 habitable structures, adjacent property lines, and public and utility
3 rights-of-way. The recommendations also shall include proposed revisions to
4 the substantive criteria under which the siting of wind generation plants is
5 reviewed that are necessary to enact the recommended standards; and

6 (7) recommend decommissioning requirements applicable to all wind
7 generation plants that are consistent from site to site and that direct the return
8 of plant sites to greenfield condition. These recommendations shall include
9 proposed statutory provisions to enact the recommended requirements.

10 (d) Public notice and participation.

11 (1) DPS shall give widespread public notice of the assessment and
12 policy development process required by this section and shall maintain on its
13 website a prominent page concerning this process that provides notice of all
14 public meetings held and posts relevant information and all documents
15 submitted and developed as part of the process.

16 (2) In performing the assessment and policy development required by
17 this section, DPS assisted by ANR, VDH, and the Department of Taxes shall
18 provide an opportunity for members of the public to submit relevant factual
19 information and analysis and to comment on a draft of the policy developed
20 under subsection (c) of this section prior to its submission to the General
21 Assembly under subsection (e) of this section. This opportunity shall include

1 meetings conducted by the DPS, with assistance from ANR, VDH, and the
2 Department of Taxes, at locations that are geographically distributed around
3 the state to receive such information, analysis, and comment.

4 (e) Report. On or before December 15, 2015, DPS shall submit a report to
5 the General Assembly. DPS shall prepare the report in consultation with the
6 ANR, VDH, and the Department of Taxes. The report shall:

7 (1) detail the assessment conducted under subsection (b) of this section
8 and state the conclusions drawn from that assessment and the reasons for those
9 conclusions;

10 (2) provide the proposed policy required by subsection (c) of this
11 section, including the analysis required by subdivision (c)(5) (property values)
12 and the recommendations required by subdivisions (c)(6) (substantive criteria)
13 and (7) (decommissioning) of this section. The report shall state the reasons
14 for the proposed policy and recommendations;

15 (3) describe the public notice and participation process conducted under
16 this section and summarize and respond to each significant comment received
17 as part of that participation process.

18 Sec. 5. APPROPRIATION

19 For fiscal year 2014, the sum of \$200,000.00 is appropriated to the
20 Department of Public Service from the General Fund for the purpose of Sec. 4
21 of this act (wind generation; assessment; policy development; report).

1 first finds that the same will promote the general good of the ~~state~~ State and
2 issues a certificate to that effect.

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

7 (A) no company, as defined in section 201 of this title, and no person,
8 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or
9 construction of an electric generation facility that is a net metering system
10 under section 219a (self-generation and net metering) of this title or an electric
11 transmission facility within the ~~state~~ State which is designed for immediate or
12 eventual operation at any voltage; and

13 (B) no such company may exercise the right of eminent domain in
14 connection with site preparation for or construction of any such transmission or
15 generation facility, unless the ~~public service board~~ Public Service Board first
16 finds that the same will promote the general good of the ~~state~~ State and issues a
17 certificate to that effect.

18 * * *

1 transmission facility that requires a certificate of public good under 30 V.S.A.
2 § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a
3 telecommunications facility issued a certificate of public good under 30 V.S.A.
4 § 248a;

5 (iii) ~~Repealed.~~ the construction of improvements for the purpose
6 of generating electricity that will be consumed on-site by the owner of the
7 improvements, provided that the improvements are below the elevation of
8 2,500 feet and are not part of a larger project or on a tract that is otherwise
9 subject to jurisdiction under this chapter.

10 * * *

11 * * * Electric Generation Siting Jurisdiction;

12 Local Land Use Bylaws * * *

13 Sec. 9. 24 V.S.A. § 4411 is amended to read:

14 § 4411. ZONING BYLAWS

15 * * *

16 (b) All zoning bylaws shall apply to all lands within the municipality other
17 than as specifically limited or exempted in accordance with specific standards
18 included within those bylaws and in accordance with the provisions of this
19 chapter. The provisions of those bylaws may be classified so that different
20 provisions may be applied to different classes of situations, uses, and structures
21 and to different and separate districts of the municipality as may be described

1 by a zoning map made part of the bylaws. The land use map required pursuant
2 to subdivision 4382(a)(2) of this title of any municipality may be designated as
3 the zoning map except in cases in which districts are not deemed by the
4 planning commission to be described in sufficient accuracy or detail by the
5 municipal plan land use map. All provisions shall be uniform for each class of
6 use or structure within each district, except that additional classifications may
7 be made within any district for any or all of the following:

8 * * *

9 (5) to regulate, restrict, or prohibit uses or structures associated with the
10 generation of electricity from all fuels or particular fuels, except as provided in
11 sections 4412 and 4413 of this title.

12 Sec. 10. 24 V.S.A. § 4413 is amended to read:

13 § 4413. LIMITATIONS ON MUNICIPAL BYLAWS

14 * * *

15 (b) A bylaw under this chapter shall not regulate:

16 (1) net metering systems as defined under 30 V.S.A. § 219a; and

17 (2) public utility ~~power generating plants and~~ transmission facilities

18 regulated under 30 V.S.A. § 248.

19 * * *

1 (g) Notwithstanding any provision of law to the contrary, a bylaw adopted
2 under this chapter shall not:

3 (1) ~~Regulate~~ regulate the installation, operation, and maintenance, on a
4 flat roof of an otherwise complying structure, of a solar energy device that
5 heats water or space or generates electricity. For the purpose of this
6 subdivision, “flat roof” means a roof having a slope less than or equal to five
7 degrees; or

8 (2) ~~Prohibit~~ prohibit or have the effect of prohibiting the installation of
9 solar collectors not exempted from regulation under subdivision (1) of this
10 subsection, clotheslines, or other energy devices that are based on renewable
11 resources and do not generate electricity from wind.

12 * * *

13 * * * Transition; Effective Dates * * *

14 Sec. 11. TRANSITION; TRANSFER OF PENDING APPLICATIONS AND
15 EXISTING CERTIFICATES

16 (a) In this section, “pending application” means an application or petition
17 that is before the Public Service Board as of this section’s effective date.
18 Notwithstanding 1 V.S.A. §§ 213 and 214, this section applies retroactively to
19 pending applications regardless of whether they were complete as of that date.

1 (b) Within 90 days of this section's effective date, the Public Service Board
2 shall transfer to the Natural Resources Board each of the following:

3 (1) custody of all pending applications seeking a certificate of public
4 good under 30 V.S.A. § 246 for a meteorological station or under 30 V.S.A.
5 § 248 for a wind electric generation facility that is not a net metering system,
6 and all files and documents associated with such pending applications;

7 (2) custody of all pending applications for a certificate of public good
8 under 30 V.S.A. § 248(a) seeking approval to construct an electric generation
9 facility that does not use wind as its fuel source and is not a net metering
10 system, or seeking to amend a certificate for the construction of such a facility,
11 and all files and documents associated with such pending applications.

12 However, the Public Service Board shall retain custody of pending applications
13 subject to this subdivision (2) if, as of this section's effective date:

14 (A) with respect to the application, the parties have completed
15 discovery, a party has filed a motion that would dispose of the application, or
16 technical hearings have commenced; or

17 (B) the application qualifies for treatment under 30 V.S.A. § 248(j),
18 the opportunity for comment and requests for hearing on the application has
19 closed, and no party requested a hearing;

20 (3) custody of all certificates of public good issued under 30 V.S.A.
21 § 246 for meteorological stations and 30 V.S.A. § 248 for electric generation

1 facilities that are in operation as of this section's effective date and are not net
2 metering systems, and all files and documents associated with such certificates.

3 (c) Within 30 days of receipt, the Natural Resources Board shall convey the
4 applications, certificates, and files transferred under subsection (b) of this
5 section to the applicable district environmental commission.

6 (d) Proceedings on an application transferred under subdivisions (b)(1)
7 (meteorological stations; wind generation) and (2) (non-wind generation) of
8 this subsection shall be deemed proceedings for issuance of a permit under
9 10 V.S.A. chapter 151 and shall be completed before the applicable district
10 environmental commission, which shall provide the applicant and other parties
11 an opportunity to supplement the record with information necessary for the
12 district commission to make findings under 10 V.S.A. § 6086(a). However,
13 proceedings on an application for a wind generation plant transferred under
14 subdivision (b)(1) of this section shall be subject to 3 V.S.A. § 76
15 (moratorium), and the district commission's processing of such an application
16 shall be stayed during the moratorium.

17 (e) Certificates of public good transferred under subdivision (b)(3) of this
18 section shall be deemed land use permits under 10 V.S.A. chapter 151 that may
19 be amended solely by the applicable district environmental commission under
20 that chapter and the Act 250 rules and that may be enforced under 10 V.S.A.
21 chapters 201 and 221.

1 (f) The Public Service Board shall retain jurisdiction to complete
2 proceedings on a pending application under 30 V.S.A. § 248 described in
3 subdivision (b)(2)(A) or (B) of this section. On issuance of a final decision
4 regarding such an application, including any appeals and remands to the Public
5 Service Board, jurisdiction over the matter and associated files and documents
6 shall be transferred to the applicable district environmental commission. If the
7 final decision includes issuance of a certificate of public good, such certificate
8 shall be deemed a land use permit under 10 V.S.A. chapter 151 and amended
9 and enforced in the same manner as under subsection (e) of this section.

10 (g) Notwithstanding 24 V.S.A. § 4413(b) (limitations on municipal bylaws;
11 public utility plants), a proposed facility that is the subject of a pending
12 application described in subdivision (b)(1) or (2) shall require a municipal land
13 use permit under 24 V.S.A. chapter 117 if the facility would have required
14 such a permit under the applicable local bylaw in effect on January 1, 2013 but
15 for the operation of 24 V.S.A. § 4413(b) as it existed on that date.

16 Sec. 12. EFFECTIVE DATES

17 (a) This section and Secs. 1 (findings), 2 (moratorium; wind generation)
18 and 4 (wind generation; assessment; policy development; report) of this act
19 shall take effect on passage.

20 (b) The remaining sections of this act shall take effect on July 1, 2013.