

1 H.446

2 Introduced by Representative Johnson of Canaan

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; siting; in-state electric generation facilities;

6 requirements prior to filing petition for certificate of public good;

7 assistance to municipalities

8 Statement of purpose of bill as introduced: This bill proposes to make various
9 amendments concerning in-state electric generation facilities subject to
10 regulation by the Public Service Board under 30 V.S.A. § 248.

11 An act relating to the process for siting in-state electric generation facilities

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

13 Sec. 1. 30 V.S.A. § 248 is amended to read:

14 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND

15 FACILITIES; CERTIFICATE OF PUBLIC GOOD

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

17 * * *

18 (5) With respect to an in-state electric generation facility other than a
19 facility that the Board determines is eligible for treatment under subsection (j)
20 of this section, the Board shall:

1 (A) require submission of a scoping plan to the Board and to the
2 legislative body of the municipality or municipalities in which the facility is to
3 be located.

4 (i) The scoping plan shall include the proposed plans for the
5 facility and the petitioner's plans for a public hearing and engagement process
6 concerning the proposed facility. The Board by rule shall adopt additional
7 requirements for the scoping plan after consultation with the Agency of
8 Natural Resources.

9 (ii) The scoping plan shall be submitted:

10 (I) if the proposed facility has a plant capacity of less than
11 15 megawatts, 60 days prior to application under this section for a certificate of
12 public good for the facility; and

13 (II) if the facility has a plant capacity of 15 megawatts or more,
14 180 days prior to application under this section for a certificate of public good
15 for the facility.

16 (iii) In this subdivision (5), "plant capacity" shall have the same
17 meaning as in section 8002 of this title;

18 (B) assign a case manager, within 10 days of receiving the scoping
19 plan, who shall:

20 (i) be an employee of the Board who shall not be involved in the
21 Board's deliberations or decision-making concerning the facility;

1 (ii) be assigned to the facility through its lifetime including siting
2 and application review, monitoring, and decommissioning;

3 (iii) assist the petitioner, municipalities, and intervenors by
4 answering questions about the requirements for receiving a certificate of public
5 good, permitting, and procedural requirements and issues; and

6 (iv) perform any other duties assigned by the Board to ensure that
7 there is sufficient public outreach about the facility and to ensure that the
8 petitioner complies with all permitting and monitoring requirements;

9 (C) retain legal, natural resources, and engineering experts, who
10 shall:

11 (i) not be involved in the Board's deliberations or decision-making
12 concerning the facility;

13 (ii) assist the municipality or municipalities in which the facility is
14 proposed to be located as well as municipalities that demonstrate their interests
15 will be affected under the criteria of subsection (b) of this section; and

16 (iii) be made available to those municipalities on a case-by-case
17 basis at the Board's discretion;

18 (D) for a proposed facility with a plant capacity of 15 megawatts or
19 more, develop a set of guidelines for a public hearing and engagement process
20 for the citizens of the municipality or municipalities in which the facility will
21 be located as well as for the citizens of municipalities whose interests will be

1 affected under the criteria of subsection (b) of this section to be commenced by
2 the petitioner once the petitioner has complied with the requirements of
3 subdivision (5)(A) of this subsection, but no later than 60 days after the Board
4 receives the complete scoping plan;

5 (E) require the petitioner to submit, with its application for a
6 certificate of public good under this section, copies of each other permit
7 necessary for the construction and operation of the facility or evidence that a
8 complete application for such other permit has been submitted;

9 (F) adopt by rule application fees in an amount determined
10 appropriate by the Board that are scaled based on the size of the proposed
11 facility and that shall be used to fund:

12 (i) case managers appointed under this subdivision (5);

13 (ii) legal, natural resources, and engineering experts retained by
14 the Board under this subdivision (5) to assist municipalities; and

15 (iii) monitoring and enforcement;

16 (G) at the time it receives an application for a certificate of public
17 good for an in-state electric generation facility that has a plant capacity of
18 15 megawatts or more, ensure the appointment of two temporary members
19 pursuant to section 3 of this title.

1 (b) Before the ~~public service board~~ Public Service Board issues a certificate
2 of public good as required under subsection (a) of this section, it shall find that
3 the purchase, investment, or construction:

4 * * *

5 (5) with respect to an in-state facility, will not have an undue adverse
6 effect on esthetics, historic sites, air and water purity, the natural environment,
7 the use of natural resources, and the public health and safety, with due
8 consideration having been given to the criteria specified in 10 V.S.A.
9 §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) and greenhouse gas
10 impacts. In applying this criterion to an electric generation facility, the Board
11 shall consider the impacts of the facility cumulatively with the impacts of
12 similarly sized facilities in the State;

13 * * *

14 Sec. 2. 30 V.S.A. § 3 is amended to read:

15 § 3. PUBLIC SERVICE BOARD

16 (a) The ~~public service board~~ Public Service Board shall consist of a
17 chairperson ~~and~~ two members, and, pursuant to subsection (h) of this section,
18 two temporary members. The chairperson and each member shall not be
19 required to be admitted to the practice of law in this ~~state~~ State.

20 (b) The chairperson shall be nominated, appointed, and confirmed in the
21 manner of a superior judge.

1 (c) Members of the ~~board~~ Board other than the chairperson shall be
2 appointed in accordance with this subsection. Whenever a vacancy occurs,
3 public announcement of the vacancy shall be made. The ~~governor~~ Governor
4 shall submit at least five names of potential nominees to the ~~judicial~~
5 ~~nominating board~~ Judicial Nominating Board for review. The ~~judicial~~
6 ~~nominating board~~ Judicial Nominating Board shall review the candidates in
7 respect to judicial criteria and standards only and shall recommend to the
8 ~~governor~~ Governor those candidates the ~~board~~ Board considers qualified. The
9 ~~governor~~ Governor shall make the appointment from the list of qualified
10 candidates. The appointment shall be subject to the consent of the ~~senate~~
11 Senate.

12 (d) The term of each member shall be six years. Any appointment to fill a
13 vacancy shall be for the unexpired portion of the term vacated. A member
14 wishing to succeed himself or herself in office may seek reappointment under
15 the terms of this section.

16 (e) Notwithstanding ~~section 3 V.S.A. § 2004 of Title 3,~~ or any other
17 provision of law, members of the ~~board~~ Board may be removed only for cause.
18 When a board member, who hears all or a substantial part of a case, retires
19 from office before such case is completed, he or she shall remain a member of
20 the ~~board~~ Board for the purpose of concluding and deciding such case, and
21 signing the findings, orders, decrees, and judgments therein. A retiring

1 chairperson shall also remain a member for the purpose of certifying questions
2 of law if appeal is taken. For such service he or she shall receive a reasonable
3 compensation to be fixed by the remaining members of the ~~board~~ Board and
4 necessary expenses while on official business.

5 (f) A case shall be deemed completed when the ~~board~~ Board enters a final
6 order therein even though such order is appealed to the ~~supreme court~~ Supreme
7 Court and the case remanded by that ~~court~~ Court to the ~~board~~ Board. Upon
8 remand the ~~board~~ Board then in office may in its discretion consider relevant
9 evidence including any part of the transcript of testimony in the proceedings
10 prior to appeal.

11 (g) The chairperson shall have general charge of the offices and employees
12 of the ~~board~~ Board.

13 (h) Notwithstanding subsections (c) and (d) of this section, when the Board
14 receives an application for a certificate of public good for an in-state electric
15 generation facility that has a capacity of 15 megawatts or more, two temporary
16 members shall be added to the Board for the purpose of that proceeding only.
17 One temporary member shall be the Secretary of Natural Resources or
18 designee and one temporary member, appointed by the Governor, shall be
19 either a regional planning commissioner under 24 V.S.A. chapter 117 or a
20 district commissioner under 10 V.S.A. chapter 151 for the region where the
21 facility is to be sited. The terms of the two temporary members shall terminate

1 once the Board enters a final order. If the final order is appealed to the
2 Supreme Court and remanded to the Board, then on remand the case shall
3 constitute a new proceeding for the purposes of this subsection. The
4 provisions of subsection (e) of this section shall apply to a temporary member
5 appointed under this subsection. If a temporary member is removed from his
6 or her seat prior to the issuance of a final order, a new temporary member shall
7 be designated or appointed pursuant to this subsection.

8 Sec. 3. EFFECTIVE DATE

9 This act shall take effect on July 1, 2013.