

1 S.203

2 Introduced by Senator Hartwell

3 Referred to Committee on

4 Date:

5 Subject: Energy; natural resources; public service; Attorney General; land use;
6 facility siting; energy siting counsel

7 Statement of purpose of bill as introduced: This bill proposes to create an
8 independent Office of Energy Siting Counsel, housed within the Office of the
9 Attorney General, to represent before the Public Service Board the interests of
10 residents and municipalities affected by the siting of an electric generation or
11 transmission or natural gas facility.

12 An act relating to establishing the Office of Energy Siting Counsel

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

14 Sec. 1. 3 V.S.A. § 168 is added to read:

15 § 168. OFFICE OF ENERGY SITING COUNSEL

16 (a) Definitions. As used in this section:

17 (1) "Board" means the Public Service Board created under

18 30 V.S.A. § 3.

19 (2) "Counsel" means the Energy Siting Counsel appointed under this
20 section.

1 (3) “Department” means the Department of Public Service created under
2 section 212 of this title and 30 V.S.A. § 1.

3 (4) “Office” means the Office of Energy Siting Counsel created under
4 this section.

5 (b) Establishment. There is created the independent Office of Energy
6 Siting Counsel to participate in proceedings related to in-state facilities
7 requiring a certificate of public good under 30 V.S.A. § 248. The Office shall
8 consist of an Energy Siting Counsel and those other persons that the Counsel
9 considers necessary to conduct the business of the Office under this section.
10 The Office shall be housed within the Office of Attorney General.

11 (c) Appointment; qualifications; term.

12 (1) The Attorney General shall appoint the Energy Siting Counsel with
13 the advice and consent of the Joint Energy Committee created under 2 V.S.A.
14 chapter 17. At least 30 days prior to making an appointment, the Attorney
15 General shall announce publically and shall advise all members of the Vermont
16 Bar that an appointment is to be made and shall solicit applications. The
17 position of Counsel shall be exempt from the classified service. The power to
18 remove the Counsel shall rest with the Joint Energy Committee. On
19 recommendation of the Attorney General or on its own motion, the Joint
20 Energy Committee may remove the Counsel for cause only.

1 (2) The Counsel shall be an attorney admitted to practice in Vermont.
2 The Counsel shall satisfy the qualifications established under 30 V.S.A. § 4
3 (qualifications of the members and Clerk of the Board and of the
4 Commissioner of Public Service).

5 (3) The Counsel or any full-time employee of the Office shall not
6 actively engage in any other business or profession; serve as the representative
7 of any political party or on any executive committee or other governing body
8 thereof; serve as an executive, officer, or employee of any political party,
9 committee, organization, or association; receive remuneration for activities on
10 behalf of any candidate for public office; or engage on behalf of any candidate
11 for public office in the solicitation of votes or other activities on behalf of such
12 candidacy. The Counsel or any employee of the Office shall not become a
13 candidate for election to public office unless he or she first resigns from his or
14 her office or employment.

15 (4) The term of the Counsel shall be six years. Any appointment to fill a
16 vacancy shall be for the unexpired portion of the term vacated. A Counsel
17 wishing to succeed himself or herself in office may seek reappointment under
18 the terms of this subsection.

19 (d) Duties; powers. The Counsel shall represent the interests of residents
20 of and municipalities within Vermont that are affected or potentially affected
21 by the siting of an in-state facility for which a certificate of public good is

1 required under 30 V.S.A. § 248 and shall assist these residents and
2 municipalities in resolving disputes with the applicant. The Counsel shall have
3 the powers necessary to carry out the Counsel's duties, including the powers:

4 (1) with respect to in-state facilities:

5 (A) to appear in proceedings for the issuance or amendment of a
6 certificate of public good under 30 V.S.A. § 248 and any related
7 postcertification review under that section or related eminent domain
8 proceedings under 30 V.S.A. chapter 3;

9 (B) to initiate or to appear in proceedings for a declaratory ruling
10 concerning the applicability of 30 V.S.A. § 248 or for enforcement or
11 revocation of a decision or order issued under that section;

12 (C) to file or participate in appeals of decisions or orders issued in
13 proceedings identified in this subsection; and

14 (D) to inspect and monitor the compliance of facilities with decisions
15 or orders issued in proceedings identified in this subsection;

16 (2) with respect to any proceeding in which the Counsel is authorized to
17 appear:

18 (A) to urge the position that the Counsel considers, in his or her
19 independent judgment, to be in the interests of Vermont residents and
20 municipalities affected by the relevant facilities;

1 (B) to have access to and use of all files, records, and data of the
2 Board and the Department available to any other attorney representing a party
3 in a proceeding before the Board;

4 (C) to use all forms of discovery available to attorneys in civil actions
5 generally; and

6 (D) with the approval of the Attorney General, to retain personnel in
7 addition to the regular personnel of the Office to assist the Counsel and to
8 monitor compliance with any decision or order. The Counsel may retain these
9 additional personnel only after notice to the applicant or public service
10 company or companies involved in the proceeding. The Counsel shall fix the
11 amount of compensation and expenses to be paid to these additional personnel
12 and may allocate the cost of these personnel in the manner set forth in
13 30 V.S.A. § 21. An applicant or public service company to which the Counsel
14 allocates costs under this subdivision shall pay statements rendered into the
15 State Treasury in the manner directed by the Counsel and shall have the same
16 right to petition the Board as under 30 V.S.A. § 21;

17 (3) regardless of whether a proceeding is pending:

18 (A) to issue subpoenas to any person or legal entity for any
19 information that is relevant, or that reasonably may lead to information that is
20 relevant, to determining compliance with 30 V.S.A. § 248 or with any decision
21 or order issued under that section or issued in any other proceeding in which

1 the Counsel is authorized to appear. Enforcement of such a subpoena shall be
2 in accordance with sections 809a and 809b of this title; and

3 (B) to enter on lands to conduct inspections, investigations,
4 examinations, tests, or site evaluations;

5 (4) to receive funds allocated to the Office under subsection (e) of this
6 section or otherwise appropriated to the Office by the General Assembly; and

7 (5) with the approval of the Attorney General:

8 (A) to receive grants, gifts, loans, or contributions from any source;

9 (B) to appoint and employ, at the expense of the State, legal counsel,
10 experts, clerks, and temporary employees as the Counsel considers necessary
11 in the performance of his or her duties; and

12 (C) to establish eligibility criteria and resource allocation for parties
13 seeking representation by the Office; and

14 (6) to have charge of the Office and its employees.

15 (e) Budget. After consultation with the Attorney General, the Counsel
16 annually by January 15 shall submit the Office's budget request for the
17 following fiscal year to the General Assembly.

18 (1) The amount of the Office's budget approved by the General
19 Assembly shall be allocated each fiscal year to the Office from the revenues
20 under 30 V.S.A. § 22, unless the General Assembly provides otherwise.

1 (2) Neither the Governor nor any agency headed by an appointee of the
2 Governor shall have any authority to withhold funds allocated or appropriated
3 to the Office or to determine the number, or fix the compensation, of the
4 employees of the Office or to exercise any manner of control over them.

5 (f) Office personnel; nontransfer. There shall be no transfer or assignment
6 of the Office's personnel to a different function or division without the consent
7 of the Counsel or to a department or agency outside the Office of the Attorney
8 General. The provisions of chapter 41 of this title (executive reorganization)
9 shall not apply to the Office.

10 (g) Pleadings. The Board shall provide the Counsel with a copy of the
11 initial pleadings in all proceedings in which the Counsel is authorized to
12 appear.

13 Sec. 2. 30 V.S.A. § 22 is amended to read:

14 § 22. TAX TO FINANCE DEPARTMENT OF PUBLIC SERVICE ~~AND,~~
15 PUBLIC SERVICE BOARD, AND SITING COUNSEL

16 (a) For the purpose of maintaining the Department of Public Service ~~and~~
17 the Public Service Board, and the Office of Energy Siting Counsel created
18 under 3 V.S.A. § 168, including expenses related to maintaining an adequate
19 engineering, legal, and administrative force in the Department of Public
20 Service and paying all the expenses incident thereof, including rents, each
21 person, partnership, association, or private or municipal corporation

1 conducting a business subject to the supervision of the Department of Public
2 Service and Public Service Board, including electric cooperatives, shall pay
3 into the State Treasury on or before April 15 annually, in addition to the taxes
4 now required by law to be paid, a tax, at the rate hereinafter named, according
5 to the nature of the public service business engaged in by such person,
6 partnership, association, or private or municipal corporation, based on the
7 gross operating revenue received by such person, partnership, association, or
8 private, or municipal corporation in the conduct of such business in the State
9 during the year next preceding, as shown by the annual report filed on or
10 before such date with the Department of Public Service on the form prescribed
11 by it and containing such information as may be necessary to enable the
12 Department to determine the amount of the tax payable. The rate of tax for
13 each type of public service company shall be the following:

14 * * *

15 (c) Of the revenue deposited into the special fund for the maintenance of
16 engineering and accounting forces, after the allocation to the Office of Energy
17 Siting Counsel of the amount necessary to support its approved budget under
18 3 V.S.A. § 168, 40 percent shall be allocated to the Public Service Board and
19 60 percent shall be allocated to the Department of Public Service.

1 (d)(1) On June 30 of each year any balance in the amount allocated to the
2 Public Service Board from the special fund for the maintenance of engineering
3 and accounting forces, after accounting for expenditures and encumbrances, in
4 excess of 20 percent of the Board's allocation for that year shall be used in the
5 manner provided by subdivision (3) of this subsection.

6 (2) On June 30 of each year any balance in the amount allocated to the
7 Department of Public Service from the special fund for the maintenance of
8 engineering and accounting forces, after accounting for expenditures and
9 encumbrances, in excess of 20 percent of the Department's allocation for that
10 year shall be used in the manner provided by subdivision (3) of this subsection.

11 (3) The excess balances determined under subdivisions (1) and (2) of
12 this subsection shall be used in the next succeeding year to directly reduce the
13 rates otherwise collected from the ratepayers of this State for the costs of the
14 ~~telephone lifeline program~~ Telephone Lifeline Program authorized by ~~section~~
15 subsection 218(c) of this title.

16 (4) Notwithstanding 3 V.S.A. § 23, as of June 30 of each year, any
17 balance in the amount allocated to the Office of Energy Siting Counsel shall be
18 retained in the fund and may be used to support that Office's approved budget
19 under 3 V.S.A. § 168 for the following fiscal year.

1 Sec. 3. 30 V.S.A. § 248(a)(4)(C) is amended to read:

2 (C) At the time of filing its application with the Board, copies shall
3 be given by the petitioner to the Attorney General and the Department of
4 Public Service, and, with respect to facilities within the State, the Office of
5 Energy Siting Counsel, Department of Health, Agency of Natural Resources,
6 ~~historic preservation division~~ Division for Historic Preservation, Agency of
7 Transportation, ~~the~~ and Agency of Agriculture, Food and Markets and to the
8 chairperson or director of the municipal and regional planning commissions
9 and the municipal legislative body for each town and city in which the
10 proposed facility will be located. At the time of filing its application with the
11 Board, the petitioner shall give the Byways Advisory Council notice of the
12 filing.

13 Sec. 4. 2 V.S.A. § 601 is amended to read:

14 § 601. CREATION OF COMMITTEE

15 (a) There is created a ~~joint energy committee~~ Joint Energy Committee
16 whose membership shall be appointed each biennial session of the ~~general~~
17 ~~assembly~~ General Assembly. The ~~committee~~ Committee shall consist of four
18 representatives, at least one from each major party, appointed by the ~~speaker of~~
19 ~~the house~~ Speaker of the House, and four members of the ~~senate~~ Senate, at
20 least one from each major party, appointed by the ~~committee on committees~~
21 Committee on Committees.

1 (b) The ~~committee~~ Committee shall elect a ~~chair, vice chair and clerk~~
2 Chair, Vice Chair, and Clerk and shall adopt rules of procedure. The ~~chair~~
3 Chair shall rotate biennially between the ~~house~~ House and the ~~senate~~ Senate
4 members. The ~~committee~~ Committee may meet during a session of the ~~general~~
5 ~~assembly~~ General Assembly at the call of the ~~chair~~ Chair or a majority of the
6 members of the ~~committee~~ Committee. The ~~committee~~ Committee may meet
7 during adjournment subject to approval of the ~~speaker of the house~~ Speaker of
8 the House and the ~~president pro tempore of the senate~~ President Pro Tempore
9 of the Senate, except that the Committee may meet during adjournment at the
10 call of the Chair or a majority of its members solely for the purpose of
11 considering the appointment or removal of an Energy Siting Counsel under
12 3 V.S.A. § 168. A majority of the membership shall constitute a quorum.
13 Consent or objection to or removal of an Energy Siting Counsel shall be by
14 majority vote of the entire Committee.

15 Sec. 5. 2 V.S.A. § 603 is amended to read:

16 § 603. FUNCTIONS

17 The ~~joint energy committee~~ Joint Energy Committee shall:

18 (1) carry on a continuing review of all energy matters in the ~~state~~ State
19 and in the northeast region of the United States, including energy sources,
20 energy distribution, energy costs, energy planning, energy conservation, and
21 pertinent related subjects;

1 (2) work with, assist, and advise other committees of the ~~general~~
2 ~~assembly~~ General Assembly, the ~~executive~~ Executive Branch, and the public in
3 energy-related matters within their respective responsibilities; and

4 (3) perform the functions assigned to the Committee under 3 V.S.A.
5 § 168 and exercise oversight with respect to the Office Energy Siting Counsel.

6 Sec. 6. TRANSFER OF POSITIONS

7 On or before September 1, 2014, the Department of Public Service shall
8 transfer to the Office of Energy Siting Counsel two exempt attorney positions,
9 one classified administrative support position, and one classified energy
10 program specialist position, together with appropriate amounts for personal
11 services and operating expenses.

12 (1) This act confers no right to a person occupying one of these
13 positions prior to the date of transfer to continue in the position.

14 (2) The Energy Siting Counsel appointed in accordance with Sec. 1 of
15 this act shall occupy one of the attorney positions.

16 (3) The Energy Siting Counsel shall employ the energy program
17 specialist position to provide substantive expert assistance in the proceedings
18 in which the Office appears and may reclassify the position as needed to
19 achieve this purpose.

1 Sec. 7. INITIAL APPOINTMENT

2 The Attorney General and Joint Energy Committee shall ensure that the
3 initial appointment of the Energy Siting Counsel under Sec. 1 of this act is
4 made on or before September 1, 2014.

5 Sec. 8. EFFECTIVE DATE

6 This act shall take effect on passage.