

## SENATE PROPOSAL OF AMENDMENT

### H. 781

An act relating to renewable energy

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 3, 30 V.S.A. § 8005(b)(2)(F), in subdivision (i)(III), after the words “provider to supply energy” by inserting the following: or attributes, including tradeable renewable energy credits and, in subdivision (iv), by striking out the second and third sentences

Second: In Sec. 7, subsection (a), by striking out the following: “December 31, 2010” and inserting in lieu thereof the following: February 15, 2011

Third: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. 32 V.S.A. § 5930z is amended to read:

§ 5930z. ~~PASS THROUGH OF FEDERAL ENERGY CREDIT FOR CORPORATIONS~~ SOLAR ENERGY TAX CREDIT

(a) A taxpayer of this state shall be eligible for a the business solar energy tax credit against the tax imposed under section 5822 or 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer’s federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided further, that for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

(b) Any taxpayer who has received a credit under subsection (a) of this section in any prior year shall increase its personal or corporate income tax under this chapter by the amount of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit recapture for the taxable year.

(c) The clean energy development board (the board) established pursuant to 10 V.S.A. § 6523 shall certify to the department no more than \$9,400,000.00 of eligible solar energy tax credits. The board shall set aside a portion of this amount for the systems described in subdivision (2) of this subsection. Credits shall be certified only if one of the two following criteria is met:

(1) The investment for which the solar energy tax credit is claimed is made after January 1, 2010, and:

(A) The investment pertains to a solar energy plant that has a plant capacity, as defined in 30 V.S.A. § 8002(13), of 2.2 MW or less;

(B) On or before July 15, 2010, the solar energy plant owner filed a complete petition with the public service board for a certificate of public good under 30 V.S.A. § 248;

(C) On or before September 1, 2011, construction on the solar energy plant is complete and the plant is commissioned or is ready to be commissioned within the meaning of 30 V.S.A. § 8002(11); and

(D) By July 15, 2010, the taxpayer has provided to the clean energy development board on a form prescribed by the board information necessary for the fund to determine the taxpayer's eligibility for the credit; or

(2)(A) The investment is made after January 1, 2010, and before December 31, 2010, and pertains to a system that constitutes energy property as defined in 26 U.S.C. § 48(a)(3)(A)(i) and that does not require a certificate of public good under 30 V.S.A. § 248, or pertains to a net metering system as defined in 30 V.S.A. § 219a(a)(3), provided that the system is of no more than 150 kilowatts (AC) capacity; and

(B) By December 15, 2010, the taxpayer has provided to the clean energy development board on a form prescribed by the board information necessary for the fund to determine the taxpayer's eligibility for the credit.

(d) The final amount of any solar energy tax credit certified under this section shall not exceed the amount awarded to the taxpayer under 26 U.S.C. § 48.

(e) Any unused solar energy tax credit may be carried forward for no more than five succeeding tax years following the first year in which the solar energy tax credit is claimed.

(f) On a regular basis, the department shall notify the treasurer and the clean energy development board of solar energy tax credits claimed pursuant to this section, and the board shall cause to be transferred from the clean energy development fund to the general fund an amount equal to the amount of solar energy tax credits as and when the credits are claimed.

(g) The clean energy development board and the department shall collaborate in implementing the certification of credits under this section.

Fourth: By striking out Sec. 12 (renewable energy property tax study committee) in its entirety and inserting in lieu thereof "Sec. 12. [Deleted]"

Fifth: After Sec. 13 by inserting two new sections to be numbered Secs. 13a and 13b to read as follows:

\* \* \* Report on Potential Renewable Portfolio Standard, Potential Revision to SPEED Program \* \* \*

Sec. 13a. RENEWABLE PORTFOLIO STANDARD; SPEED PROGRAM; BOARD REPORT

(a) Findings. The general assembly finds that:

(1) In 2005, Vermont enacted a renewable portfolio standard (RPS).

(2) The 2005 RPS required that each retail electric utility shall supply an amount of energy equal to its total incremental energy growth between January 1, 2005, and January 1, 2012, through the use of electricity generated by new renewable resources.

(3) In 2005, the general assembly deferred the effective date of the RPS to allow implementation of the Sustainably Priced Energy Enterprise Development (SPEED) program. The SPEED program was and is designed to promote the development of in-state renewable energy resources.

(4) 30 V.S.A. § 8005(d)(1) provides that the RPS will go into effect only if one of the following SPEED goals is not met:

(A) the amount of qualifying SPEED resources coming into service or having been issued a certificate of public good after January 1, 2005, and before July 1, 2012, equals or exceeds total statewide growth in electric retail sales during that time, and in addition, at least five percent of the 2005 total statewide electric retail sales is provided by qualified SPEED resources or would be provided by qualified SPEED resources that have been issued a certificate of public good; or

(B) the amount of qualifying SPEED resources equals or exceeds 10 percent of total statewide electric retail sales for calendar year 2005.

(5) In 2005, the general assembly also adopted a state goal to assure that 20 percent of total statewide electric retail sales before July 1, 2017, shall be generated by SPEED resources. This particular goal is voluntary. It is separate from an RPS. It does not affect whether or not an RPS comes into effect.

(6) Although a purpose of the SPEED program is to encourage in-state renewable energy resources, the SPEED statute allows its 2012 and 2017 goals to be fulfilled by electricity at all facilities owned by or under long-term contract to Vermont utilities, as long as the generating resource came into service after December 31, 2004.

(7) In a February 2010 report to the general assembly, the public service board stated that, based on load growth since 2005 and the activities of the SPEED program, it is likely that the SPEED goal will be met and an RPS will not come into effect. The board stated that:

(A) From January 1, 2005, to December 31, 2008, statewide energy usage decreased by approximately 0.1 percent.

(B) The SPEED goal of providing at least five percent of the January 1, 2005, total statewide electric retail sales from qualified SPEED resources translates into a goal of 287,421 MWh annually.

(C) The total estimated annual output of qualifying SPEED resources that are operating, approved, or pending before the board was 574,141 MWh.

(8) The total estimate annual output of SPEED resources stated in subdivision (5)(C) of this subsection is approximately 10 percent of Vermont's 2008 electric energy demand, which was 5,743,863,352 MWh.

(9) During the five years since Vermont adopted an RPS, other jurisdictions have adopted or amended their own renewable portfolio standards, including:

(A) Connecticut, which in 2007 amended its existing RPS to establish a goal that at least 23 percent of its retail load will be supplied using renewable energy by 2020.

(B) Massachusetts, which in 2008 amended its existing RPS to establish a goal that renewable energy will account for 15 percent of electricity consumption by 2020, increasing by one percent per year thereafter.

(C) New Hampshire, which in 2007 adopted an RPS that requires electricity providers to acquire renewable energy certificates (RECs) equivalent to 23.8 percent of retail electricity sold to customers by 2025.

(10) This act revises the statutory definition of "renewable" to remove a 200-MW limit on the size of hydroelectric facilities that can be considered renewable. The act delays the effective date of this revision so that it does not affect the 2012 SPEED goals described in subdivision (4) of this subsection. However, the revision could affect achievement of the 2017 SPEED goal described in subdivision (5) of this subsection, as well as the achievement of an RPS should one come into effect in Vermont.

(11) The general assembly has already recognized the environmental and economic benefits of encouraging renewable energy in adopting 30 V.S.A. §§ 202a (state energy policy) and 8001 (renewable energy goals). In light of these benefits, the history and structure of the SPEED program, and the adoption and expansion of renewable portfolio standards in other jurisdictions, there should be a reexamination of the potential implementation of an RPS in Vermont and, in lieu of such implementation, the potential revision of the goals and requirements of the SPEED program.

(b) No later than October 1, 2011, the public service board shall file a report concerning the potential development of a renewable portfolio standard (RPS) in Vermont to amend or replace the RPS enacted in 2005 and the

potential revision of the goals and requirements of the SPEED program in lieu of such an RPS.

(1) The report shall be filed with the house and senate committees on natural resources and energy, the house committee on commerce and economic development and the senate committee on finance.

(2) The report shall include at least the following:

(A) An evaluation of whether or not Vermont should adopt an RPS to amend or replace the RPS adopted in 2005 or, in lieu of adopting such an RPS, should adopt revised goals and requirements for the SPEED program.

(B) An evaluation of whether the voluntary goals and aspects of the SPEED program should be made mandatory.

(C) An evaluation of the economic and environmental benefits and costs of adopting an RPS at each of the following percentages of Vermont's electricity supply portfolio: 25, 50, 75, and 100 percent. The board shall also perform the same evaluation with respect to the imposition of mandatory SPEED goals at the same portfolio percentages.

(D) An evaluation of the effect on the development of in-state renewable energy resources that may occur if an RPS is adopted and, under such an RPS, out-of-state resources with capacities in excess of 200 MW are considered renewable. The board shall also perform the same evaluation with respect to the imposition of mandatory SPEED goals. Such evaluations shall take into account each of the percentages discussed under subdivision (2)(C) of this subsection.

(E) Analysis of RPS statutes and rules that have been adopted in other jurisdictions and their strengths and weaknesses, and a discussion of how a Vermont RPS and, in lieu of an RPS, revised SPEED goals and requirements might integrate with such statutes and rules.

(F) Consideration of whether or not Vermont should adopt a definition of renewable resources that includes tiers or classes and a recommended proposal for such a definition.

(G) Consideration of the manner in which Vermont would require third party certification that an energy resource is renewable.

(H) Consideration of the manner in which Vermont would require third party certification that a renewable resource has low environmental impact.

(I) Consideration of the extent to which a Vermont RPS and, in lieu of such an RPS, revised SPEED goals and requirements would include the purchase of electric energy efficiency resources and the appropriate means of verification that the associated energy savings are achieved.

(J) Consideration of whether 30 V.S.A. § 8005(d)(3) (resources that count toward SPEED goals) should be revised with respect to the description of those SPEED resources that will count toward the 2017 SPEED goal described in subdivision (a)(5) of this section.

(K)(i) Proposals for each of the following:

(I) An RPS to be considered for adoption in Vermont.

(II) In lieu of such an RPS, revised goals and requirements for the SPEED program to be considered for adoption in Vermont.

(ii) Each of these proposals shall include a summary of the proposal, a discussion of each major component, the reasons for the proposal, and draft statutory language for the proposal.

(3) The report may address any other issues that the board determines to be relevant to the adoption in Vermont of an RPS and revised goals and requirements for the SPEED program.

(4) Prior to drafting and submitting the report, the board shall consult with interested and affected persons and entities such as the department of public service, other state agencies, utilities, environmental advocates, consumer advocates, and business organizations.

(c) In performing its duties under this section, the board shall have authority to retain expert witnesses, counsel, advisors, and stenographic and other research assistance it may require. The board may compensate the same and allocate related costs, as well as the costs of performing or procuring studies, to retail electricity providers in the same manner authorized for personnel in particular proceedings under 30 V.S.A. §§ 20 and 21.

\* \* \* Environmental Attributes; Utility Revenues \* \* \*

Sec. 13b. 30 V.S.A. § 8008 is added to read:

§ 8008. AGREEMENTS; ATTRIBUTE REVENUES; DISPOSITION BY BOARD

(a) For the purpose of this section, “the revenues” means revenues that are from the sale, through tradeable renewable energy certificates or other means, of environmental attributes associated with the generation of renewable energy from a system of generation resources with a total plant capacity greater than 200 MW and that are received by a Vermont retail electricity provider on and after May 1, 2012, pursuant to an agreement, contract, memorandum of understanding, or other transaction in which a person or entity agrees to transfer such revenues or rights associated with such attributes to the provider.

(b) After notice and opportunity for hearing, the board shall determine the disposition, allocation, and use of the revenues in a manner that promotes state energy policy as stated in section 202a of this title and the goals of this chapter

and supports achievement of the greenhouse gas reduction and building efficiency goals contained in 10 V.S.A. §§ 578(a) and 581.

(1) The board shall provide notice of the proceeding to each Vermont retail electricity provider, the department of public service, the clean energy development board under 10 V.S.A. § 6523, each fuel efficiency service provider appointed under subsection 203a(b) of this title, each energy efficiency entity appointed under subdivision 209(d)(2) of this title, the institute for energy and the environment at the Vermont Law School, the transportation research center at the University of Vermont, and any other persons or entities that have requested notice. The board may provide notice to additional persons or entities.

(2) In determining the disposition, allocation, and use of the revenues, the board shall consider each of the following potential uses of the revenues:

(A) Development of in-state renewable energy resources.

(B) Deposit into the clean energy development fund for use pursuant to 10 V.S.A. § 6523.

(C) Deposit into the fuel efficiency fund for use pursuant to 10 V.S.A. § 203a.

(D) Deposit into the electric efficiency fund for use pursuant to 10 V.S.A. § 209(d).

(E) Application, for the benefit of ratepayers, to the revenue requirement of one or more Vermont retail electricity providers.

(F) Development of transportation alternatives to vehicles that use gasoline such as electric or natural gas vehicles and supporting infrastructure and the coordination of such development with so-called “smart grid” electric transmission and distribution networks.

(G) Any other uses that support the statutory policy and goals referenced in this subsection (b).

(c) A Vermont retail electricity provider shall notify the board within 30 days of the first receipt of the revenues pursuant to an agreement, contract, memorandum of understanding, or other transaction under which it will receive the revenues. The board will open a proceeding under this section promptly on receipt of such notice and shall issue a final order in the proceeding within 12 months of such receipt.

(d) Any of the revenues that are received prior to completion of the 12-month period described in subdivision (c) of this section shall be credited, for the benefit of ratepayers, against the revenue requirement of the Vermont retail electricity provider that receives the revenues.

Sixth: After Sec. 18, by inserting three new sections to be Secs. 18a, 18b and 18c to read as follows:

\* \* \* Natural Gas Vehicles \* \* \*

Sec. 18a. 10 V.S.A. § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

\* \* \*

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources, and emerging energy-efficient technologies, for the long-term benefit of Vermont consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The fund also may be used to support natural gas vehicles in accordance with subdivision (d)(1)(K) of this section. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

(1) Projects for funding may include, and in the case of subdivision (1)(E)(ii) of this subsection shall include continuous funding for as long as funds are available, the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences, institutions, and businesses:

(i) generally; and

(ii) through the small-scale renewable energy incentive program;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings;

(H) projects to develop and use thermal or geothermal energy, regardless of whether they also involve the generation of electricity;

(I) emerging energy-efficient technologies;

(J) effective projects that are not likely to be established in the absence of funding under the program; and

(K) natural gas vehicles and associated fueling infrastructure if each such vehicle is dedicated only to natural gas fuel and, on a life cycle basis, the vehicle's emissions will be lower than commercially available vehicles using other fossil fuel, and any such infrastructure will deliver gas without interruption of flow.

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\* \* \* Residential Building Energy Standards \* \* \*

Sec. 18b. 21 V.S.A. § 266 is amended to read:

#### § 266. RESIDENTIAL BUILDING ENERGY STANDARDS

(a) Definitions. For purposes of this subchapter, the following definitions apply:

(1) "Builder" means the general contractor or other person in charge of construction, who has the power to direct others with respect to the details to be observed in construction.

(2) "Residential buildings" means one family dwellings, two family dwellings, and multi-family housing three stories or less in height. "Residential buildings" shall not include hunting camps.

(3) "Residential construction" means new construction of residential buildings, and the construction of residential additions ~~that create 500 square feet of new floor space, or more. Before July 1, 1998, this definition shall only apply to residential construction that is subject to the jurisdiction of 10 V.S.A. chapter 151. Effective July 1, 1998, this definition shall apply to residential construction, regardless of whether or not it is subject to the jurisdiction of 10 V.S.A. chapter 151,~~ alterations, renovations, or repairs to an existing residential building.

(4) "IECC" means the International Energy Conservation Code of the International Code Council.

(b) Adoption of Residential Building Energy Standards (RBES). Residential construction ~~commencing on or after July 1, 1997~~ shall be in compliance with the standards ~~contained in the 1995 edition of the "Model Energy Code" (MEC) prepared by the Council of American Building Officials, as those standards have been amended by the general assembly in the act that~~

initially adopts the Model Energy Code adopted by the commissioner of public service in accordance with subsection (c) of this section.

(c) Revision and interpretation of energy standards. The commissioner of public service shall amend and update the RBES, by means of administrative rules adopted in accordance with ~~3 V.S.A.~~ chapter 25 of Title 3. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. These amendments shall be effective on final adoption. After January 1, 2011, the commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the IECC. The department of public service shall provide technical assistance and expert advice to the commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner with additional recommendations for revision of the RBES.

\* \* \*

(5) A home energy rating, ~~from~~ conducted at the time of construction by a Vermont-accredited home energy rating organization, that is determined to indicate energy performance equivalent to the RBES, shall be an acceptable means of demonstrating compliance if the rating indicates energy performance equivalent to the RBES.

\* \* \*

Sec. 18c. FEDERAL RESIDENTIAL RETROFIT ENERGY LEGISLATION; ROLE OF EFFICIENCY UTILITY

The 111th Congress of the United States currently is considering H.R. 5019, the Home Energy Retrofit Act of 2010. With respect to any federal legislation pertaining to residential energy retrofits that is enacted during the 111th Congress, the governor, the public service board, the department of public service, any state agency that is authorized or eligible for authorization by the federal government to receive benefits or funding under such legislation, and any entity that is appointed pursuant to 30 V.S.A. § 209 promptly shall take those actions necessary to obtain the greatest possible benefit for the state from such legislation. To deliver services in the state pursuant to any such legislation, including implementation of quality assurance programs and coordination of financial service delivery, Vermont shall use the entities that

are appointed under 30 V.S.A. § 209 and that deliver energy efficiency services to electric, heating, or process-fuel customers, to the extent such use is not prohibited by such federal legislation.

Seventh: By adding Sec. 18d to read as follows

Sec. 18d. 26 V.S.A. § 910(7) is added to read:

(7) Installation of solar electric modules and racking on complex structures to the point of connection to field-fabricated wiring and erection of net metered wind turbines.