

1 S.21

2 Introduced by Senators Galbraith, Benning, Campbell, Hartwell, Kitchel,

3 Rodgers, and Starr

4 Referred to Committee on

5 Date:

6 Subject: Natural resources; state lands; conserved lands; prohibition;

7 commercial construction; electric generation facilities; public service;

8 certificates of public good; wind towers and turbines

9 Statement of purpose: This bill proposes to prohibit most commercial
10 construction, including electric generation facilities, in state parks and forests,
11 in designated natural areas, on conserved lands, and on lands managed by the
12 Agency of Natural Resources. This bill also proposes to amend the Public
13 Service Board's criteria for issuing a certificate of public good for wind towers
14 and turbines by requiring the approval of affected municipalities.

15 An act relating to prohibiting commercial construction on certain state and
16 conserved lands and to municipal approval of wind towers and turbines

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

1 * * * State and Conserved Lands * * *

2 Sec. 1. 10 V.S.A. chapter 88 is added to read:

3 CHAPTER 88. PROHIBITION; COMMERCIAL CONSTRUCTION;

4 CERTAIN PUBLIC AND CONSERVED LANDS

5 § 2801. POLICY

6 Vermont's state parks, state forests, natural areas, wilderness areas, wildlife
7 management areas and wildlife refuges, and conserved lands are intended to
8 remain in a natural or wild state forever and shall be protected and managed
9 accordingly.

10 § 2802. PROHIBITION

11 (a) Construction for any commercial purpose, including the generation of
12 electric power, shall not be permitted within any state park or forest,
13 wilderness area designated by law, natural area designated under section 2607
14 of this title, or any area conserved to protect its wilderness, scenic, or wildlife
15 habitat characteristics, or on any land managed by the Agency of Natural
16 Resources created under 3 V.S.A. chapter 51.

17 (b) This section shall not prohibit:

18 (1) the construction of a concession or other structure for the use of
19 visitors to state parks or forests;

20 (2) a modification or improvement to a dam in existence as of the
21 effective date of this section, if the modification or improvement is:

1 (A) to ensure public safety; or

2 (B) to allow the dam's use for the generation of electricity, and the
3 construction of any power lines and facilities necessary for such use;

4 (3) the construction of telecommunications facilities, as defined in
5 30 V.S.A. § 248a(b) (certificate of public good; communications facilities), in
6 accordance with all other applicable state law;

7 (4) a temporary structure or road for forestry purposes as may be
8 permitted on a state land or pursuant to the terms governing a conserved land;

9 (5) tapping of maple trees and associated activities on state forestland
10 authorized under a license pursuant to section 2606b of this title;

11 (6) construction on state land that is permitted under a lease or license
12 that was in effect on January 1, 2013.

13 Sec. 2. REPEAL

14 10 V.S.A. § 2606(c) (state forests; parks; leases for mining or quarrying) is
15 repealed.

16 * * * Municipal Approval; Wind Generation Projects * * *

17 Sec. 3. FINDINGS

18 The General Assembly finds:

19 (1) Vermont's beautiful landscape, including its mountains, is a major
20 factor in the quality of life for Vermonters and makes an important
21 contribution to the State's economy.

1 (2) Industrial wind turbines can degrade mountain tops and affect the
2 view of the landscape for many miles.

3 (3) Industrial wind turbines should be built only when all affected towns
4 consent, and not only the town or towns in which the turbines will be located.

5 Sec. 4. 30 V.S.A. § 248 is amended to read:

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

8 (a)(1) ~~No~~ A company, as defined in section 201 of this title, may not:

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

11 (i) for a period exceeding five years, that represents more than
12 three percent of its historic peak demand, unless the purchase is from a plant as
13 defined in subdivision 8002(14) of this title that produces electricity from
14 renewable energy as defined under subdivision 8002(17); or

15 (ii) for a period exceeding ten years, that represents more than ten
16 percent of its historic peak demand, if the purchase is from a plant as defined
17 in subdivision 8002(14) of this title that produces electricity from renewable
18 energy as defined under subdivision 8002(17); or

19 (B) invest in an electric generation or transmission facility located
20 outside this ~~state~~ State unless the ~~public service board~~ Public Service Board

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~~ a company, as defined in section 201 of this title, and ~~no~~ a
8 person, as defined in 10 V.S.A. § 6001(14), may not begin site preparation for
9 or construction of an electric generation facility or electric transmission facility
10 within the ~~state~~ State which is designed for immediate or eventual operation at
11 any voltage; and

12 (B) ~~no~~ such company may not exercise the right of eminent domain
13 in connection with site preparation for or construction of any such transmission
14 or generation facility, unless the ~~public service board~~ Public Service Board
15 first finds that the same will promote the general good of the ~~state~~ State and
16 issues a certificate to that effect.

17 (3) ~~No~~ A company, as defined in section 201 of this title, and ~~no~~ a
18 person, as defined in 10 V.S.A. § 6001(14), may not in any way begin site
19 preparation for or commence construction of any natural gas facility, except
20 for the replacement of existing facilities with equivalent facilities in the usual
21 course of business, unless the ~~public service board~~ Public Service Board first

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

3 (A) For the purposes of this section, the term “natural gas facility”
4 shall mean any natural gas transmission line, storage facility, manufactured-gas
5 facility, or other structure incident to any of the above. For purposes of this
6 section, a “natural gas transmission line” shall include any feeder main or any
7 pipeline facility constructed to deliver natural gas in Vermont directly from a
8 natural gas pipeline facility that has been certified pursuant to the Natural Gas
9 Act, 15 U.S.C. § 717 et seq.

10 (B) For the purposes of this section, the term “company” shall not
11 include a “natural gas company” (including a “person which will be a natural
12 gas company upon completion of any proposed construction or extension of
13 facilities”), within the meaning of the Natural Gas Act, 15 U.S.C. § 717 et seq.;;
14 provided, however, that the term “company” shall include any “natural gas
15 company” to the extent it proposes to construct in Vermont a natural gas
16 facility that is not solely subject to federal jurisdiction under the Natural
17 Gas Act.

18 * * *

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

1 (1) with respect to an in-state facility, will not unduly interfere with the
2 orderly development of the region with due consideration having been given to
3 the recommendations of the municipal and regional planning commissions, the
4 recommendations of the municipal legislative bodies, and the land
5 conservation measures contained in the plan of any affected municipality.
6 However, with respect to a natural gas transmission line subject to board
7 review, the line shall be in conformance with any applicable provisions
8 concerning such lines contained in the duly adopted regional plan; and, in
9 addition, upon application of any party, the ~~board~~ Board shall condition any
10 certificate of public good for a natural gas transmission line issued under this
11 section so as to prohibit service connections that would not be in conformance
12 with the adopted municipal plan in any municipality in which the line is
13 located;

14 (2) is required to meet the need for present and future demand for
15 service which could not otherwise be provided in a more ~~cost-effective~~
16 cost-effective manner through energy conservation programs and measures and
17 energy-efficiency and load management measures, including ~~but not limited to~~
18 those developed pursuant to the provisions of subsection 209(d), section 218c,
19 and subsection 218(b) of this title. In determining whether this criterion is met,
20 the ~~board~~ Board shall assess the environmental and economic costs of the
21 purchase, investment, or construction in the manner set out under subdivision

1 218c(a)(1) (least cost integrated plan) of this title and, as to a generation
2 facility, shall consider whether the facility will avoid, reduce, or defer
3 transmission or distribution system investments;

4 (3) will not adversely affect system stability and reliability;

5 (4) will result in an economic benefit to the ~~state~~ State and its residents;

6 (5) with respect to an in-state facility, will not have an undue adverse
7 effect on ~~esthetics~~ aesthetics, historic sites, air and water purity, the natural
8 environment, the use of natural resources, and the public health and safety,
9 with due consideration having been given to the criteria specified in 10 V.S.A.
10 §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) and greenhouse gas
11 impacts, and provided that any analysis of the aesthetic impact of a wind tower
12 or turbine is performed in accordance with subdivision (12) of this subsection;

13 (6) with respect to purchases, investments, or construction by a
14 company, is consistent with the principles for resource selection expressed in
15 that company's approved least cost integrated plan;

16 (7) except as to a natural gas facility that is not part of or incidental to an
17 electric generating facility, is in compliance with the electric energy plan
18 approved by the ~~department~~ Department under section 202 of this title, or that
19 there exists good cause to permit the proposed action;

20 (8) does not involve a facility affecting or located on any segment of the
21 waters of the ~~state~~ State that has been designated as outstanding resource

1 waters by the ~~secretary of natural resources~~ Secretary of Natural Resources,
2 except that with respect to a natural gas or electric transmission facility, the
3 facility does not have an undue adverse effect on those outstanding resource
4 waters;

5 (9) with respect to a waste to energy facility, is included in a solid waste
6 management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent
7 with the state solid waste management plan;

8 (10) except as to a natural gas facility that is not part of or incidental to
9 an electric generating facility, can be served economically by existing or
10 planned transmission facilities without undue adverse effect on Vermont
11 utilities or customers;

12 (11) with respect to an in-state generation facility that produces electric
13 energy using woody biomass, will:

14 (A) comply with the applicable air pollution control requirements
15 under the federal Clean Air Act, 42 U.S.C. § 7401 et seq.;

16 (B) incorporate commercially available and feasible designs to
17 achieve a reasonable design system efficiency for the type and design of the
18 proposed facility; and

19 (C) comply with harvesting guidelines and procurement standards
20 that are consistent with the guidelines and standards developed by the ~~secretary~~

1 ~~of natural resources~~ Secretary of Natural Resources pursuant to 10 V.S.A.
2 § 2750 (harvesting guidelines and procurement standards);
3 (12) in the case of a tower or turbine to be constructed for the generation
4 of electricity by wind at an elevation higher than 1,500 feet, has been approved
5 by the municipality in which the tower or turbine will be located, by each
6 adjoining municipality from which the tower will be visible, and by each other
7 municipality whose interest will be affected under the criteria of this
8 subsection (b), through the legislative body of the municipality or a duly
9 warned town meeting.

10 * * *

11 Sec. 5. EFFECTIVE DATE

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