

S.30

Introduced by Senators Benning, Hartwell, Flory, Galbraith, Kitchel,
McAllister, Mullin, Rodgers, and Starr

Referred to Committee on

Date:

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

Statement of purpose: This bill proposes to impose a three-year moratorium
on wind electric generation plants in order to allow for a planning and
assessment process for the siting of these plants and the evaluation of whether
in-state development of these plants is the most appropriate and cost-effective
means to reduce Vermont's emissions of greenhouse gases. The bill also
proposes to move siting jurisdiction over all in-state electric generation plants,
except for net metering systems, from the Public Service Board to the district
environmental commissions and local land use authorities.

An act relating to siting of electric generation plants

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

Sec. 1. FINDINGS; DETERMINATIONS

(a) Findings. The General Assembly finds that:

1 (1) During the 1969–70 biennium, the General Assembly enacted
2 10 V.S.A. chapter 151 (Act 250) and 30 V.S.A. § 248 (Section 248). At that
3 time, the electric utility industry was highly integrated and most electric
4 generation facilities were constructed and owned by regulated utilities.

5 (A) Under Act 250, the district environmental commissions were to
6 perform state land use review of development proposals, with each such
7 proposal required to meet statutory criteria, including conformance with the
8 local plan.

9 (B) Under Section 248, the Public Service Board was to perform state
10 land use review of electric generation and transmission facilities and natural
11 gas transmission facilities, balancing statutory criteria and any other factors
12 affecting the general good of the State. In Section 248 proceedings, the
13 General Assembly required “due consideration” of local planning
14 recommendations rather than conformance with local plans. It also exempted
15 facilities subject to Section 248 from Act 250.

16 (2) In 1975, the Vermont Supreme Court ruled that a Public Service
17 Board approval under Section 248 preempts municipal zoning requirements.

18 (3) In 1988, the General Assembly revisited the issue of whether land
19 use review of electric generation facilities should remain with the Public
20 Service Board or be transferred to another entity such as the district
21 environmental commissions.

1 (A) The General Assembly determined to allow the Public Service
2 Board to retain siting jurisdiction over these facilities and amended Section
3 248 to require the board to give “due consideration” to most but not all of the
4 environmental criteria of Act 250.

5 (B) Three rationales were given in 1988 for the General Assembly’s
6 decision:

7 (i) The Public Service Board is the expert utility regulator that
8 financially regulates electric generation facilities.

9 (ii) Environmental and financial regulation of electric generation
10 facilities should be combined to avoid regulation by separate entities.

11 (iii) The State should be able to override local objections to
12 electric generation facility to ensure that the need for electric service is met.

13 (4) In 1996, the Federal Energy Regulatory Commission (FERC) issued
14 Order No. 888, the purpose and effect of which was to foster a competitive
15 wholesale market for electric energy and capacity. In New England, a
16 FERC-authorized regional transmission organization, the Independent System
17 Operator of New England (ISO-NE), now oversees a regional wholesale
18 electric market.

19 (5) Today when a Vermont distribution utility needs to meet the demand
20 for power, it may purchase supply from an electric generator selling on the
21 regional market. In this environment, so-called “merchant generators”

1 typically are the builders and owners of electric generation facilities, rather
2 than electric utilities. These merchant generators sell power on the wholesale
3 market to retail distribution utilities. For example, of approximately 15 large
4 wind projects built or proposed in Vermont, distribution utilities built or have
5 proposed only three.

6 (6) The Public Service Board does not financially regulate merchant
7 generators. They are not retail electric utilities.

8 (7) Within the last decade, FERC and the Public Service Board have
9 established standard interconnection requirements for generation facilities
10 seeking to interconnect to the grid. The Public Service Board's rules relate to
11 interconnections that are not subject to federal requirements. These rules do
12 not require an approval from the Board for the interconnection. Instead, the
13 interconnection process is between the interconnecting facility and utility and
14 disputes may be brought to the Board for resolution.

15 (8) Vermont currently encourages the in-state siting of renewable
16 electric generation projects, including wind generation, in order to contribute
17 to reductions in global climate change caused by emissions of greenhouse
18 gases such as carbon dioxide (CO₂).

19 (9) Significant controversy exists over whether in-state development of
20 renewable energy actually reduces Vermont's greenhouse gas emissions, since

1 these projects typically sell renewable energy credits to utilities in other states,
2 and those credits are netted against greenhouse gas emissions of those states.

3 (10) In 2010, CO₂ and equivalent emissions from Vermont energy
4 consumption totaled approximately eight million metric tons (MMTCO₂). Of
5 this total, transportation fuel use accounted for approximately 3.5, nonelectric
6 fuel use by homes and businesses for approximately 2.5, and electric energy
7 use for approximately 0.04 MMTCO₂.

8 (11) Despite past attempts, Vermont has not developed and
9 implemented a comprehensive and coordinated strategy for reducing its
10 greenhouse gas emissions.

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

17 (13) Ridgeline wind generation plants have potential impacts on natural
18 resources, scenic beauty, and quality of life, including effects on endangered
19 and threatened species, wildlife habitat, and aesthetics and impacts from
20 blasting and turbine noise. Significant controversy has arisen over whether the

1 Public Service Board review process adequately protects ridgelines from
2 negative impacts caused by these projects.

3 (14) No statewide analysis and planning is performed to address the
4 environmental and land use impacts of siting wind generation projects and
5 meteorological stations in Vermont. Instead:

6 (A) The Public Service Board examines the environmental and land
7 use impacts on a case-by-case basis only.

8 (B) The Department of Public Service's 2011 comprehensive energy
9 plan, which recommends pursuing development of in-state renewable energy
10 generation, touches on the potential land use impacts of this development but
11 does not contain a statewide analysis that assesses those impacts and balances
12 them against the potential benefits of such generation or contain a plan to
13 address the generation's land use impacts.

14 (C) Under 10 V.S.A. § 127, the Agency of Natural Resources is to
15 complete a mapping project to identify natural resources throughout the state
16 that may be relevant to consideration of energy projects to be used in
17 individual cases concerning those projects.

18 (b) Determinations. Based on the foregoing, the General Assembly
19 determines as follows:

20 (1) There is no longer a compelling rationale for placing siting review of
21 energy generation projects under the Public Service Board.

1 (A) In the current wholesale market environment, the Public Service
2 Board's financial expertise does not apply to the permitting of electric
3 generation facilities in Vermont because most of those facilities are built by
4 entities that the Board does not financially regulate. If a rate-regulated utility
5 seeks to build a generation facility, the Board may and should address any
6 related financial issues in the proceedings concerning that utility's rates.

7 (B) Because the Public Service Board does not financially regulate
8 most of the entities building electric generation facilities, combining financial
9 and siting regulation gains no regulatory efficiency.

10 (C) The siting process for electric generation facilities need not
11 review the issue of interconnection with the utility grid because FERC and the
12 Public Service Board separately regulate the interconnection of those facilities
13 through administrative regulations and rules rather than case-by-case
14 approvals.

15 (D) There is no need today for the State to be able to override local
16 objections to an electric generation facility in order to meet electric demand
17 because that need is met by a competitive wholesale market.

18 (2) The district environmental commissions and local land use
19 authorities should perform the siting review of electric generation projects.

20 (A) The circumstances of developing an electric generation facility
21 today are similar to those of other development regulated by Act 250 and local

1 land use authorities, in which the market determines the need for a project
2 based on supply and demand.

3 (B) The necessary regulation for energy generation projects is to set
4 minimum environmental and land use standards that each generation project
5 must meet, the same as with other development.

6 (i) This area of regulation is not the primary expertise of the
7 Public Service Board. It is the area of the district environmental commissions
8 and local land use authorities.

9 (ii) The Agency of Natural Resources, as the primary
10 environmental agency of the State, must take an active role in this regulatory
11 process as an advocate to protect the environment and natural resources.

12 (C) Because a strong structure of state and local land use review
13 already exists, there is no need to create a new agency or panel for siting
14 review of energy generation projects.

15 (3) The General Assembly must act to ensure that case-by-case
16 regulation of wind generation projects and meteorological stations that collect
17 wind data does not result in substantial degradation of the state's ridgelines,
18 which form a substantial part of the State's scenic and natural beauty and
19 contain critical habitat and natural areas. The General Assembly therefore
20 enacts a three-year moratorium on the construction and permitting of wind
21 electric generation and wind meteorological stations so that a statewide

1 assessment can be made and a comprehensive policy developed to support
2 effective regulation that protects those ridgelines and assures that any electric
3 generation sited on ridgelines actually reduces Vermont's greenhouse gas
4 emissions and is the most appropriate and cost-effective means to reduce those
5 emissions.

6 * * * Moratorium; Wind Generation * * *

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

8 CHAPTER 4. MORATORIUM; WIND GENERATION

9 § 75. DEFINITIONS

10 In this chapter:

11 (1) "Person" shall have the same meaning as in 10 V.S.A. § 6001(14).

12 (2) "Plant" and "plant capacity" shall have the same meaning as in
13 30 V.S.A. § 8002.

14 (3) "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 (4) "Wind meteorological station" means any tower, and associated guy
20 wires and attached instrumentation, constructed to collect and record wind
21 speed, wind direction, and atmospheric conditions.

1 § 76. MORATORIUM; WIND GENERATION PLANTS; WIND

2 METEOROLOGICAL STATIONS

3 Notwithstanding 1 V.S.A. §§ 213 and 214, Title 10, 24 V.S.A. chapter 117,
4 and Title 30, a person shall not commence or complete construction of any
5 wind generation plant or wind meteorological station, and an agency of the
6 State, including the Agency of Natural Resources, the district environmental
7 commissions, and the Public Service Board, shall not issue a land use, siting,
8 or environmental permit, certificate, or other approval or amendment thereto
9 authorizing the construction or operation of such a plant or station. This
10 section shall apply retroactively to construction of plants and stations receiving
11 permits and to applications filed before the section's effective date.

12 § 77. EXCEPTIONS

13 During the moratorium established under section 76 of this title, a person
14 may complete construction of a wind generation plant or wind meteorological
15 station if, as of the effective date of this chapter:

16 (1) the plant or station has received all required land use, siting, and
17 environmental permits, certificates, and approvals; and

18 (2) in the case of a wind generation plant, the person has commenced
19 construction on the plant.

20 § 78. REPEAL

21 This chapter shall be repealed three years from its effective date.

* * * Assessment and Policy Development * * *

Sec. 3. WIND GENERATION; ASSESSMENT; POLICY DEVELOPMENT;
REPORT

(a) General charge; definitions. The Agency of Natural Resources shall conduct, coordinate, and complete a process for assessment of and development of statewide policy for the siting of wind generation plants and wind meteorological stations in Vermont. In this process, the Agency shall consult with and be entitled to the assistance of the Natural Resources Board and the Department of Public Service. In this section:

(1) "Agency" means the Agency of Natural Resources.

(2) "Board" means the Natural Resources Board.

(3) "Department" means the Department of Public Service.

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

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

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

1 (7) “Wind meteorological station” means any tower, and associated guy
2 wires and attached instrumentation, constructed to collect and record wind
3 speed, wind direction, and atmospheric conditions.

4 (b) Assessment. Assisted by the Board and Department, the Agency shall
5 assess and analyze:

6 (1) the impacts on the environment, natural resources, and quality of life
7 of all wind generation plants and wind meteorological stations in Vermont in
8 existence or under construction as of the effective date of this section;

9 (2) the environmental costs and benefits of wind generation plants and
10 wind meteorological stations, including:

11 (A) the value of any ecosystem services affected by such plants and
12 towers; and

13 (B) the economic efficiency of investing in wind generation plants to
14 reduce Vermont’s greenhouse gas emissions in comparison to other measures
15 to reduce those emissions such as transportation fuel efficiency and thermal
16 energy efficiency;

17 (3) the economic costs and benefits of wind generation plants and wind
18 meteorological stations;

19 (4) the current policy and practice of selling renewable energy credits
20 from wind generation plants to utilities in other jurisdictions and the effect of
21 this policy and practice on reducing Vermont’s greenhouse gas emissions;

1 (5) the current manner in which state and local agencies and
2 departments coordinate and interact in the siting review of wind generation
3 plants and wind meteorological stations and options for improving this
4 coordination and interaction;

5 (6) any other issue related to the impacts and benefits of siting wind
6 generation plants and wind meteorological stations in Vermont that the Agency
7 considers relevant.

8 (c) Policy development. In consultation with the Board and the
9 Department, the Agency shall develop a comprehensive statewide policy with
10 respect to the siting of wind generation plants and wind meteorological stations
11 in Vermont for proposal to the General Assembly. In developing this proposal,
12 the Agency shall:

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

15 (2) determine whether the environmental benefits of in-state
16 development of wind generation plants and wind meteorological stations
17 outweigh the environmental costs of such development;

18 (3) determine whether the economic benefits of in-state development of
19 wind generation plants and wind meteorological stations, netted against the
20 economic costs, outweigh the environmental costs of such development;

1 (4) determine whether in-state development of wind generation plants is
2 the most appropriate and cost-effective means of reducing Vermont's
3 greenhouse gas emissions;

4 (5) recommend methods to improve the coordination and interaction
5 among state and local agencies and departments in the siting review of wind
6 generation plants and wind meteorological stations. These recommendations
7 shall include proposed statutory or rule revisions that are necessary to enact the
8 recommended methods;

9 (6) recommend standards applicable to all wind generation plants and
10 wind meteorological stations to address their impacts on the environment, land
11 use, and quality of life, including standards to protect natural areas and wildlife
12 habitat and address noise from such plants and towers. These
13 recommendations shall include proposed revisions to the substantive criteria
14 under which the siting of wind generation plants and wind meteorological
15 stations is reviewed that are necessary to enact the recommended standards.

16 (d) Public notice and participation.

17 (1) The Agency shall give widespread public notice of the assessment
18 and policy development process required by this section and shall maintain on
19 its website a prominent page concerning this process that provides notice of all
20 public meetings held and posts relevant information and all documents
21 submitted and developed as part of the process.

1 (2) In performing the assessment required by subsection (b) of this
2 section, the Agency shall provide an opportunity for members of the public to
3 submit relevant factual information and analysis and recommendations on how
4 the Agency should proceed. This opportunity shall include meetings
5 conducted by the Agency at locations that are geographically distributed
6 around the state to receive such information, analysis, and recommendations.

7 (3) The Agency shall provide members of the public with an opportunity
8 to comment on a draft of the policy developed under subsection (c) of this
9 section prior to its submission to the General Assembly under subsection (e) of
10 this section. This opportunity shall include the submission of written
11 comments and a second set of meetings conducted by the Agency at locations
12 that are geographically distributed around the State, this time to obtain
13 comments on the draft policy.

14 (e) Report. On or before December 15, 2015, the Agency shall submit a
15 report to the General Assembly. The Agency shall prepare the report in
16 consultation with the Board and the Department. The report shall:

17 (1) detail the assessment conducted under subsection (b) of this section
18 and state the conclusions drawn from that assessment and the reasons for those
19 conclusions;

20 (2) provide the proposed policy required by subsection (c) of this
21 section, including the recommendations required by subdivisions (c)(5)

1 (coordination methods) and (6) (substantive criteria) of this section. The
2 report shall state the reasons for the proposed policy and recommendations;

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

6 Sec. 4. APPROPRIATION

7 For fiscal year 2014, the sum of \$200,000.00 is appropriated to the Agency
8 of Natural Resources from the General Fund for the purpose of Sec. 3 of this
9 act (wind generation; assessment; policy development; report).

10 * * * State Agencies; Wind Projects;

11 Information to Municipalities * * *

12 Sec. 5. 3 V.S.A. § 2841 is added to read:

13 § 2841. WIND ENERGY GENERATION; INFORMATION TO REGIONS
14 AND MUNICIPALITIES

15 (a) When the Agency, the Department of Public Service, or the Natural
16 Resources Board or an employee of one of these entities learns of the proposal
17 of a wind generation plant, whether from the developer of such a proposed
18 plant or from another source:

19 (1) The state entity subject to this section that first learns of the
20 proposed plant promptly shall notify the affected regional planning
21 commissions and municipalities of the proposed plant by e-mail.

1 (2) With respect to the proposed plant, the Agency, Department of
2 Public Service, and Natural Resources Board shall notify the affected regional
3 planning commissions and municipalities in advance of all meetings and shall
4 copy those commissions and municipalities on all correspondence.

5 (3) The Agency, Department of Public Service, and Natural Resources
6 Board shall keep minutes of all meetings concerning the proposed plant and
7 post copies of those minutes and all correspondence on a web page maintained
8 by the Agency for this purpose. The web page will identify each proposed
9 wind generation plant and its developer and shall associate the minutes and
10 correspondence relevant to the plant with this identification.

11 (b) The Agency, Department of Public Service, and Natural Resources
12 Board may enter into a memorandum of understanding to implement and
13 coordinate their duties under this section.

14 (c) In this section, "plant" shall have the same meaning as in 30 V.S.A.
15 § 8002(14).

16 * * * Electric Generation Siting Jurisdiction;

17 Removal from Public Service Board * * *

18 Sec. 6. REPEAL

19 30 V.S.A. § 246 (temporary siting of meteorological stations) is repealed.

1 Sec. 7. 30 V.S.A. § 248 is amended to read:

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

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

5 (A) in any way purchase electric capacity or energy from outside the
6 ~~state~~ State:

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

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

15 (B) invest in an electric generation or transmission facility located
16 outside this ~~state~~ State unless the ~~public service board~~ Public Service Board
17 first finds that the same will promote the general good of the ~~state~~ State and
18 issues a certificate to that effect.

19 (2) Except for the replacement of existing facilities with equivalent
20 facilities in the usual course of business, and except for electric generation

1 facilities that are operated solely for on-site electricity consumption by the
2 owner of those facilities:

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

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

14 * * *

15 * * * Electric Generation Siting Jurisdiction;

16 District Environmental Commissions * * *

17 Sec. 8. 10 V.S.A. § 6001 is amended to read:

18 ~~When used in~~ In this chapter:

19 (1) "Board" means the ~~natural resources board~~ Natural Resources
20 Board.

21 * * *

1 (3)(A) “Development” means each of the following:

2 (i) ~~The~~ the construction of improvements on a tract or tracts of
3 land, owned or controlled by a person, involving more than 10 acres of land
4 within a radius of five miles of any point on any involved land, for commercial
5 or industrial purposes in a municipality that has adopted permanent zoning and
6 subdivision bylaws;

7 (ii) ~~The~~ the construction of improvements for commercial or
8 industrial purposes on more than one acre of land within a municipality that
9 has not adopted permanent zoning and subdivision bylaws;

10 (iii) ~~The~~ the construction of improvements for commercial or
11 industrial purposes on a tract or tracts of land, owned or controlled by a person,
12 involving more than one acre of land within a municipality that has adopted
13 permanent zoning and subdivision bylaws, if the municipality in which the
14 proposed project is located has elected by ordinance, adopted under 24 V.S.A.
15 chapter 59 ~~of Title 24~~, to have this jurisdiction apply;

16 (iv) ~~The~~ the construction of housing projects such as cooperatives,
17 condominiums, or dwellings, or construction or maintenance of mobile homes
18 or trailer parks, with 10 or more units, constructed or maintained on a tract or
19 tracts of land, owned or controlled by a person, within a radius of five miles of
20 any point on any involved land, and within any continuous period of
21 five years;

1 (v) ~~The~~ the construction of improvements on a tract of land
2 involving more than 10 acres that is to be used for municipal, county, or state
3 purposes. In computing the amount of land involved, land shall be included
4 that is incident to the use such as lawns, parking areas, roadways, leaching
5 fields, and accessory buildings;

6 (vi) ~~The~~ the construction of improvements for commercial,
7 industrial, or residential use above the elevation of 2,500 feet;

8 (vii) ~~Exploration~~ the exploration for fissionable source materials
9 beyond the reconnaissance phase or the extraction or processing of fissionable
10 source material;

11 (viii) ~~The~~ the drilling of an oil and gas well;

12 (ix) the construction of improvements for the purpose of
13 generating electricity, except as provided in subdivisions 6001(3)(D)(ii) and
14 (iii) of this title;

15 (x) the construction of a tower, and associated guy wires and
16 attached instrumentation, for the purpose of collecting and recording wind
17 speed, wind direction, and atmospheric conditions.

18 * * *

19 (D) The word “development” does not include:

20 (i) ~~The~~ the construction of improvements for farming, logging, or
21 forestry purposes below the elevation of 2,500 feet;

* * *

(1) ~~The~~ the applicant's name, address, and the address of each of the applicant's offices in this ~~state~~ State, and, where the applicant is not an individual, municipality or state agency, the form, date, and place of formation of the applicant;

1 (2) ~~Four~~ four copies of a plan of the proposed development or
2 subdivision showing the intended use of the land, the proposed improvements,
3 the details of the project, and any other information required by this chapter, or
4 the rules adopted under this chapter;

5 (3) ~~The~~ the fee prescribed by section 6083a of this title;

6 (4) ~~Certification~~ certification of filing of notice as set forth in 6084 of
7 this title;

8 (5) in the case of an application for approval to construct a tower to
9 record wind data, full disclosure of the applicant's long-term plans associated
10 with the tower and the data to be collected, including any plans to construct
11 improvements for the purpose of generating electricity from wind and the
12 likely number and capacity of any wind towers and turbines to be constructed.

13 (b) An applicant or petitioner shall grant the appropriate panel of the ~~board~~
14 Board or district commission, or their agents, permission to enter upon the
15 applicant's or petitioner's land for these purposes.

16 (c) Where an application concerns the extraction or processing of
17 fissionable source material, before the application is considered the district
18 commission shall obtain the express approval of the ~~general assembly~~ General
19 Assembly by act of legislation stating that extraction or processing of
20 fissionable source material will promote the general welfare. The district
21 commission shall advise the ~~general assembly~~ General Assembly of any

1 application for extraction or processing of fissionable source material by
2 delivering written notice to the ~~speaker of the house of representatives~~ Speaker
3 of the House of Representatives and to the ~~president~~ President Pro Tempore of
4 the ~~senate~~ Senate, and shall make available all relevant material. The
5 procedural requirements and deadlines applicable to permit applications under
6 this chapter shall be suspended until the approval is granted. Approval by the
7 ~~general assembly~~ General Assembly under this subsection shall not be
8 construed as approval of any particular application or proposal for
9 development.

10 (d) The panels of the ~~board~~ Board and the district commissions shall make
11 all practical efforts to process matters before the ~~board~~ Board and permits in a
12 prompt manner. The land use panel shall establish time limits for the
13 processing of land use permits issued under section 6086 of this title as well as
14 procedures and time periods within which to notify applicants whether an
15 application is complete. All such efforts and time limits shall be consistent
16 with section 6084 (notice of applications, hearings, commencement of review)
17 of this title. The land use panel shall report annually by February 15 to the
18 ~~general assembly~~ General Assembly by electronic submission. The annual
19 report shall assess the performance of the ~~board~~ Board and commissions in
20 meeting the limits; identify areas which hinder effective performance; list fees
21 collected for each permit; summarize changes made to improve performance;

1 and describe staffing needs for the coming year. The annual report shall list
2 the number of enforcement actions taken by the land use panel, the disposition
3 of such cases, and the amount of penalties collected. The provisions of
4 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to
5 be made under this subsection.

6 * * *

7 Sec. 10. 10 V.S.A. § 6084 is amended to read:

8 § 6084. NOTICE OF APPLICATION; HEARINGS, COMMENCEMENT OF
9 REVIEW

10 (a) On or before the date of filing of an application with the district
11 commission, the applicant shall send notice and a copy of the initial application
12 to the owner of the land if the applicant is not the owner; the municipality in
13 which the land is located; the municipal and regional planning commissions for
14 the municipality in which the land is located; the Vermont ~~agency of natural~~
15 ~~resources~~ Agency of Natural Resources; any adjacent Vermont municipality
16 and municipal and regional planning commission if the land is located on a
17 municipal or regional boundary or the application seeks approval to construct
18 improvements the highest point of which will be more than 150 feet above
19 grade. The applicant shall furnish to the district commission the names of
20 those furnished notice by affidavit, and shall post a copy of the notice in the
21 town clerk's office of the town or towns wherein the project lies. The

1 applicant shall also provide a list of adjoining landowners to the district
2 commission. Upon request and for good cause, the district commission may
3 authorize the applicant to provide a partial list of adjoining landowners in
4 accordance with ~~board~~ Board rules.

5 (b) Upon an application being ruled complete, the district commission shall
6 determine whether to process the application as a major application with a
7 required public hearing or process the application as a minor application with
8 the potential for a public hearing in accordance with ~~board~~ Board rules.

9 (1) For major applications, the district commission shall provide notice
10 not less than ten days prior to any scheduled hearing or prehearing conference
11 to: the applicant; the owner of the land if the applicant is not the owner; the
12 municipality in which the land is located; the municipal and regional planning
13 commissions for the municipality in which the land is located; any adjacent
14 Vermont municipality and municipal and regional planning commission if the
15 land is located on a municipal or regional boundary or the application seeks
16 approval to construct improvements the highest point of which will be more
17 than 150 feet above grade; adjoining landowners as deemed appropriate by the
18 district commission pursuant to the rules of the ~~board~~ Board, and any other
19 person the district commission deems appropriate. If the major application
20 seeks approval to construct improvements for the purpose of generating

1 electricity, the notice required by this subdivision shall be not less than 30 days
2 prior to any scheduled hearing or prehearing conference.

3 (2) For minor applications, the district commission shall provide notice
4 of the commencement of application review to the persons listed in subdivision
5 (1) of this subsection.

6 (3) For both major and minor applications, the district commission shall
7 also provide such notice and a copy of the application to: the ~~board~~ Board and
8 any affected state agency; the solid waste management district in which the
9 land is located, if the development or subdivision constitutes a facility pursuant
10 to subdivision 6602(10) of this title; and any other municipality, state agency,
11 or person the district commission deems appropriate.

12 (c) Anyone required to receive notice of commencement of minor
13 application review pursuant to subsection (b) of this section may request a
14 hearing by filing a request within the public comment period specified in the
15 notice pursuant to ~~board~~ Board rules. The district commission, on its own
16 motion, may order a hearing within 20 days of notice of commencement of
17 minor application review. However, if the application seeks approval to
18 construct improvements for the purpose of generating electricity, the district
19 commission on its own motion may order a hearing within 60 days of notice of
20 commencement of minor application review.

1 (d) Any hearing or prehearing conference for a major application shall be
2 held within 40 days of receipt of a complete application; or within 20 days of
3 the end of the public comment period specified in the notice of minor
4 application review if the district commission determines that it is appropriate to
5 hold a hearing for a minor application. However, if the application seeks
6 approval to construct improvements for the purpose of generating electricity,
7 then if the application is major, the hearing or prehearing conference shall be
8 held within 120 days of receipt of a complete application, and if the application
9 is minor, the hearing or prehearing conference shall be held within 60 days of
10 the end of the public comment period.

11 (e) Any notice for a major or minor application, as required by this section,
12 shall also be published by the district commission in a local newspaper
13 generally circulating in the area where the development or subdivision is
14 located not more than ten days after receipt of a complete application.

15 (1) Notice of any hearing for a major application shall be published, as
16 required by this section, not less than ten days before the hearing or prehearing
17 conference, except that, if the major application seeks approval to construct
18 improvements for the purpose of generating electricity, the notice required by
19 this subdivision shall be not less than 30 days before the hearing or prehearing
20 conference.

1 (2) If the district commission determines that it is appropriate to hold a
2 hearing for an application that was originally noticed as a minor application,
3 then the application shall be renoticed as a major application in accordance
4 with the requirements of this section and board rules, except that there shall be
5 no requirement to publish the second notice in a local newspaper. Direct
6 notice of the hearing to all persons listed in subdivisions (b)(1) and (3) of this
7 section shall be deemed sufficient.

8 (f) In proceedings on applications to construct improvements for the
9 purpose of generating electricity, the district commissions shall ensure that all
10 parties have full information concerning the proposed project and sufficient
11 time to fully participate.

12 Sec. 11. 10 V.S.A. § 6085(c)(1) is amended to read:

13 (1) Party status. In proceedings before the district commissions, the
14 following persons shall be entitled to party status:

15 (A) ~~The~~ the applicant;

16 (B) ~~The~~ the landowner, if the applicant is not the landowner;

17 (C) ~~The~~ the municipality in which the project site is located, and the
18 municipal and regional planning commissions for that municipality; if the
19 project site is located on a boundary, any Vermont municipality adjacent to
20 that border and the municipal and regional planning commissions for that
21 municipality; and the solid waste management district in which the land is

1 located, if the development or subdivision constitutes a facility pursuant to
2 subdivision 6602(10) of this title;

3 (D) ~~Any~~ any state agency affected by the proposed project;

4 (E) ~~Any~~ any adjoining property owner or other person who has a
5 particularized interest protected by this chapter that may be affected by an act
6 or decision by a district commission;

7 (F) if the application seeks approval to construct improvements the
8 highest point of which will be more than 150 feet above grade, any Vermont
9 municipality adjacent to the municipality in which the improvements will be
10 located and the municipal and regional planning commissions for that
11 municipality; provided, however, that the district commission may disqualify a
12 municipality or municipal or regional planning commission from party status
13 under this subdivision (F) if the applicant demonstrates that the municipality or
14 commission has no particularized interest protected by this chapter that will be
15 affected by an act or decision of the district commission.

16 Sec. 12. 10 V.S.A. § 6086 is amended to read:

17 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

18 (a) Before granting a permit, the district commission shall find that the
19 subdivision or development:

20 * * *

* * *

§ 6086b. WIND GENERATION; SETBACKS

(b) Setbacks. At a minimum, a wind tower and turbine shall be set back:

(3) One-third of a mile from any public highway or right-of-way and from any above-ground utility line or facility. However, this subdivision shall not apply to an electric line that directly connects a wind tower and turbine to a substation or other utility facility.

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1 stringent than the requirements of subdivision (b) of this section. Following
2 adoption of any such rule, no land use permit shall be issued for a development
3 that includes the generation of electricity from wind unless the applicant
4 demonstrates that the development will comply with the rule. If the adopted
5 rule does not address all of the subject matter of subsection (b) of this section,
6 then compliance with subsection (b) shall remain required for the subject
7 matter not addressed in the rule.

8 Sec. 14. 10 V.S.A. § 6088 is amended to read:

9 § 6088. BURDEN OF PROOF

10 (a) The burden shall be on the applicant with respect to subdivisions
11 6086(a)(1), (2), (3), (4), (9), and (10) of this title.

12 (b) The burden shall be on any party opposing the applicant with respect to
13 subdivisions 6086(a)(5) through (8) of this title to show an unreasonable or
14 adverse effect, except that in the case of an application for approval to
15 construct improvements for the purpose of generating electricity, the burden
16 with respect to these subdivisions shall be on the applicant.

* * * Electric Generation Siting Jurisdiction;

Local Land Use Bylaws * * *

Sec. 15. 24 V.S.A. § 4411 is amended to read:

§ 4411. ZONING BYLAWS

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

(1) ~~Specific~~ specific uses of land and shoreland facilities;

(2) ~~Dimensions~~ dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;

(3) ~~Areas~~ area and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;

(4) ~~Timing~~ timing or sequence of growth, density of population, and intensity of use;

(5) ~~Uses~~ uses within a river corridor and buffer, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

1 (b) All zoning bylaws shall apply to all lands within the municipality other
2 than as specifically limited or exempted in accordance with specific standards
3 included within those bylaws and in accordance with the provisions of this
4 chapter. The provisions of those bylaws may be classified so that different
5 provisions may be applied to different classes of situations, uses, and structures
6 and to different and separate districts of the municipality as may be described
7 by a zoning map made part of the bylaws. The land use map required pursuant
8 to subdivision 4382(a)(2) of this title of any municipality may be designated as
9 the zoning map except in cases in which districts are not deemed by the
10 planning commission to be described in sufficient accuracy or detail by the
11 municipal plan land use map. All provisions shall be uniform for each class of
12 use or structure within each district, except that additional classifications may
13 be made within any district for any or all of the following:

14 (1) ~~To~~ to make transitional provisions at and near the boundaries of
15 districts;

16 (2) ~~To~~ to regulate the expansion, reduction, or elimination of certain
17 nonconforming uses, structures, lots, or parcels;

18 (3) ~~To~~ to regulate, restrict, or prohibit uses or structures at or near any of
19 the following:

20 (A) ~~Major~~ major thoroughfares, their intersections and interchanges,
21 and transportation arteries;

1 (B) ~~Natural~~ natural or artificial bodies of water;:

2 (C) ~~Places~~ places of relatively steep slope or grade;:

3 (D) ~~Public~~ public buildings and public grounds;:

4 (E) ~~Aircraft~~ aircraft and helicopter facilities;:

5 (F) ~~Places~~ places having unique patriotic, ecological, historical,
6 archaeological, or community interest or value, or located within scenic or
7 design control districts;:

8 (G) ~~Flood~~ flood or other hazard areas and other places having a
9 special character or use affecting or affected by their surroundings;:

10 (H) ~~River~~ river corridors, river corridor protection areas, and buffers,
11 as the term “buffer” is defined in 10 V.S.A. § 1422;:

12 (4) ~~To~~ to regulate, restrict, or prohibit uses or structures in overlay
13 districts, as set forth in subdivision 4414(2) of this title;

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

17 Sec. 16. 24 V.S.A. § 4412 is amended to read:

18 § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

19 Notwithstanding any existing bylaw, the following land development
20 provisions shall apply in every municipality:

21 * * *

* * *

* * *

* * *

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

* * * Transition; Effective Dates * * *

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

(1) custody of all pending applications seeking a certificate of public good under 30 V.S.A. § 246 for a meteorological station or under 30 V.S.A.

1 § 248 for a wind electric generation facility that is not a net metering system,
2 and all files and documents associated with such pending applications;

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

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

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

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

16 (3) custody of all certificates of public good issued under 30 V.S.A.
17 § 246 for meteorological stations and 30 V.S.A. § 248 for electric generation
18 facilities that are in operation as of this section's effective date and are not net
19 metering systems, and all files and documents associated with such certificates.

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

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

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

20 (f) The Public Service Board shall retain jurisdiction to complete
21 proceedings on a pending application under 30 V.S.A. § 248 described in

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

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

14 Sec. 19. EFFECTIVE DATES

15 (a) This section and Secs. 1 (findings; determinations), 2 (moratorium;
16 wind generation; meteorological stations); and 3 (wind generation; assessment;
17 policy development; report) of this act shall take effect on passage.

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