

1 S.201

2 Introduced by Senator Hartwell

3 Referred to Committee on

4 Date:

5 Subject: Energy; natural resources; land use; public service; electric generation
6 and transmission; natural gas facilities; siting review; application fees

7 Statement of purpose of bill as introduced: This bill proposes various changes
8 to the statute that governs siting review by the Public Service Board of electric
9 generation and transmission and natural gas facilities. These changes include
10 revising the standards for obtaining party status, creating a “friend of the
11 Board” category of participants, assessing application fees for non-utility and
12 nongovernmental facilities, and requiring substantial deference to the
13 recommendations of local and regional bodies and to the local plan.

14 An act relating to siting review by the Public Service Board

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

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

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

19 (a) Certificate of public good; obligation and procedure.

1 (1) Electricity; out-of-state purchases and investments. No company, as
2 defined in section 201 of this title, may:

3 (A) in any way purchase electric capacity or energy from outside the
4 State:

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

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

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

16 (2) In-state electric generation and transmission facilities. Except for
17 the replacement of existing facilities with equivalent facilities in the usual
18 course of business, and except for electric generation facilities that are
19 operated solely for on-site electricity consumption by the owner of those
20 facilities:

1 (A) no company, as defined in section 201 of this title, and no person,
2 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or
3 construction of an electric generation facility or electric transmission facility
4 within the ~~state~~ State which is designed for immediate or eventual operation at
5 any voltage; and

6 (B) no such company may exercise the right of eminent domain in
7 connection with site preparation for or construction of any such transmission or
8 generation facility, unless the Public Service Board first finds that the same
9 will promote the general good of the State and issues a certificate to that effect.

10 (3) Natural gas facilities. No company, as defined in section 201 of this
11 title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin
12 site preparation for or commence construction of any natural gas facility,
13 except for the replacement of existing facilities with equivalent facilities in the
14 usual course of business, unless the Public Service Board first finds that the
15 same will promote the general good of the State and issues a certificate to that
16 effect pursuant to this section.

17 (A) ~~For the purposes of~~ In this section, the term “natural gas facility”
18 shall mean any natural gas transmission line, storage facility, manufactured-gas
19 facility, or other structure incident to any of the above. ~~For purposes of~~ In this
20 section, a “natural gas transmission line” shall include any feeder main or any
21 pipeline facility constructed to deliver natural gas in Vermont directly from a

1 natural gas pipeline facility that has been certified pursuant to the Natural Gas
2 Act, 15 U.S.C. § 717 et seq.

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

11 (C) The Public Service Board shall have the authority to, and may in
12 its discretion, conduct a proceeding, as set forth in subsection (h) of this
13 section, with respect to a natural gas facility proposed to be constructed in
14 Vermont by a “natural gas company” for the purpose of developing an opinion
15 in connection with federal certification or other federal approval proceedings.

16 (4) Procedure and participation.

17 (A) Hearings. With respect to a facility located in the State, the
18 Public Service Board shall hold a nontechnical public hearing on each petition
19 for such finding and certificate in at least one county in which any portion of
20 the construction of the facility is proposed to be located.

1 ~~(B)~~ The ~~Public Service~~ Board shall hold technical hearings at
2 locations which it selects.

3 ~~(C)~~(B) Notice.

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

14 ~~(D)~~(ii) Notice of the public hearing shall be published and maintained
15 on the Board's website for at least 12 days before the day appointed for the
16 hearing. Notice of the public hearing shall be published once in a newspaper
17 of general circulation in the county or counties in which the proposed facility
18 will be located, and the notice shall include an Internet address where more
19 information regarding the proposed facility may be viewed.

1 ~~(E)~~(C) Participation. In proceedings under this section:

2 (i) Each person identified in subdivision (B)(i) of this subdivision
3 (a)(4) as being entitled to receive a copy or notice of the application at the time
4 of filing shall have the right to appear as a party to the proceeding on the
5 application.

6 (ii) The Agency of Natural Resources shall appear as a party in
7 any proceedings held under this subsection section regarding an in-state
8 facility, shall provide evidence and recommendations concerning any findings
9 to be made under subdivision (b)(5) of this section, and may provide evidence
10 and recommendations concerning any other matters to be determined by the
11 Board in such a proceeding.

12 (iii) With respect to an application under this section for an
13 in-state facility, the Board shall allow as a party any adjoining property owner
14 or other person who demonstrates that the person has a particularized interest
15 protected under this section and there is a reasonable possibility that the
16 interest may be affected by an act or decision of the Board on the application.

17 (iv) The Board may allow any other person as a party as its rules
18 may provide.

19 (v) The Board may allow a person to participate as a friend of the
20 Board without being accorded party status. Participation may be limited to one
21 or more of the following: providing testimony or other evidence; engaging in

1 cross-examination; or the filing of legal memoranda, proposed findings of fact
2 and conclusions of law, or argument on legal issues. A motion to participate as
3 a friend of the Board shall identify the interest of the requestor and the desired
4 scope of participation and shall state the reasons why the participation of the
5 requestor will be beneficial to the Board. The Board may allow a person to
6 participate as a friend of the Board on its own motion. Unless the Board orders
7 otherwise, all friends of the Board shall submit their filings within the times
8 allowed the parties.

9 (vi) The Board shall adopt and make publicly available one or
10 more forms that a person may complete in order to move to participate as a
11 party or friend of the Board.

12 (vii) The Board shall limit discovery to that which is necessary for
13 a full and fair determination of the proceeding. In determining the allowed
14 discovery, the Board shall consider the relative resources of the parties and
15 friends of the Board and the need for disclosure by the applicant of relevant
16 information.

17 (D) Postcertification review. The Board may employ
18 postcertification review for an in-state electric transmission or natural gas
19 facility and shall not employ postcertification review for an in-state electric
20 generation facility. In this subdivision (D), “postcertification review” means a
21 procedure under which a certificate of public good is conditioned on

1 subsequent submission and consideration of other approvals issued for a
2 facility or of specific details or designs of a facility prior to its construction,
3 and does not include an application for an amendment to a certificate of public
4 good that is a new application under this section.

5 (E) "Person." In this subdivision (4), "person" shall have the same
6 meaning as in 1 V.S.A. § 128.

7 (5) Application fee. On filing an application under this section, an
8 applicant for an in-state facility shall pay a fee for the purpose of compensating
9 the State of Vermont for the direct and indirect costs incurred with respect to
10 the review of the application and the administration of the State programs
11 involved in this review.

12 (A) The fee shall be \$5.40 for each \$1,000.00 of the first
13 \$15,000,000.00 of construction costs and \$2.50 for each \$1,000.00 of
14 construction costs above \$15,000,000.00. In no event shall the fee exceed
15 \$750,000.00. The Board shall adjust the amounts contained in this subdivision
16 (A) annually commencing in 2015 for inflation since January 1, 2014 using the
17 Consumer Price Index for all urban consumers, designated as "CPI-U," in the
18 northeast region, as published by the U.S. Department of Labor, Bureau of
19 Labor Statistics.

20 (B) Eighty percent of the fee shall be deposited into the special fund
21 described in section 22 of this title and allocated between the Board and the

1 Department of Public Service in accordance with that section. Twenty percent
2 of the fee shall be deposited into the Environmental Permit Fund under
3 3 V.S.A. § 2805.

4 (C) The Board shall not require a fee for an application under this
5 section for a net metering system, a facility that will pay expenses allocated
6 pursuant to subsection 8005a(1) of this title, a facility to be undertaken and
7 owned by an agency of the State or a political subdivision of the State, or a
8 facility to be undertaken and owned by a Vermont retail electricity provider as
9 defined in section 8002 of this title or by a natural gas distribution company
10 subject to jurisdiction under section 203 of this title.

11 (D) Nothing in this subdivision (5) shall affect the authority of the
12 Board, the Department of Public Service, or the Agency of Natural Resources
13 to retain personnel and allocate costs under sections 20 and 21 of this title,
14 except that, if the costs of regular employees are allocated under section 21 of
15 this title to an applicant paying a fee under this subdivision, the allocated
16 amount shall be offset by the portion of the fee available to the allocating
17 agency.

18 (b) Criteria. Before the Public Service Board issues a certificate of public
19 good as required under subsection (a) of this section, it shall find that the
20 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~~ substantial deference
3 having been given to the recommendations of the municipal and regional
4 planning commissions, the recommendations of the municipal legislative
5 bodies, and the land conservation measures contained in the plan of any
6 affected municipality. In this subdivision (1), “substantial deference” means
7 that a recommendation or land conservation measure shall be applied in
8 accordance with its terms unless there is a clear and convincing demonstration
9 that other factors affecting the general good of the State outweigh application
10 of the recommendation or measure. However;

11 (A) with respect to a natural gas transmission line subject to Board
12 review, the line shall be in conformance with any applicable provisions
13 concerning such lines contained in the duly adopted regional plan; and, in
14 addition, upon application of any party, the Board shall condition any
15 certificate of public good for a natural gas transmission line issued under this
16 section so as to prohibit service connections that would not be in conformance
17 with the adopted municipal plan in any municipality in which the line is
18 located; and

19 (B) with respect to an electric generation facility subject to Board
20 review, the facility shall conform with any provisions of the regional plan that

1 are specific to electric generation facilities if the regional plan meets the
2 requirements of this subdivision (B).

3 (i) The conformance requirement of this subdivision (B) shall
4 apply only to a regional plan that is amended under 24 V.S.A. § 4348 after the
5 effective date of this subdivision to:

6 (I) identify the areas within the region that are suitable and are
7 not suitable for siting electric generation facilities;

8 (II) analyze the options available to the region and recommend
9 the actions and measures that the region should undertake in order to
10 contribute to meeting the goals of 10 V.S.A. §§ 578 (greenhouse gas
11 reduction), 580 (25 by 25), and 581 (building efficiency) and the goals and
12 policies of sections 202a (state energy policy), 8001 (renewable energy), and
13 8005 (SPEED; total renewables targets) of this title; and

14 (III) state the basis for each provision that is specific to electric
15 generation facilities.

16 (ii) This subdivision (B) shall not require a region to establish a
17 numerical amount or capacity of electric generation facilities to be sited within
18 the region.

19 (iii) In any proceeding involving the application of a regional plan
20 that has been amended under this subdivision (B), the Board shall presume that
21 the regional plan complies with the requirements of subdivision (b)(1)(B)(i) of

1 this section unless there is a clear and convincing demonstration that the
2 regional plan does not meet one or more of those requirements or that there is
3 no rational basis for a challenged provision of the regional plan;

4 * * *

5 (5) with respect to an in-state facility, will not have an undue adverse
6 effect on esthetics, historic sites, air and water purity, the natural environment,
7 the use of natural resources, and the public health and safety, with due
8 consideration having been given to greenhouse gas impacts and to the criteria
9 specified in 10 V.S.A. §§ § 1424a(d) and substantial deference having been
10 given to the criteria specified in 10 V.S.A. § 6086(a)(1) through (8) and (9)(K)
11 and greenhouse gas impacts. In this subdivision (5), “substantial deference” to
12 a criterion of 10 V.S.A. § 6086 means that the Board shall:

13 (A) apply the criterion to the facts in the same manner that the
14 criterion is applied under 10 V.S.A. chapter 151; and

15 (B) if the outcome under the criterion is negative, deny the
16 application unless there is a clear and convincing demonstration that other
17 factors affecting the general good of the State outweigh denial;

18 * * *

19 (f) Pre-application plans. ~~However, plans~~ Plans for the construction of
20 such a facility within the State ~~must~~ shall be submitted by the petitioner to the
21 municipal and regional planning commissions no less than 45 days prior to an

1 application for a certificate of public good under this section, unless the
2 municipal and regional planning commissions shall waive such requirement.
3 Such municipal or regional planning commission may hold a public hearing on
4 the proposed plans. Such commissions shall make recommendations, if any, to
5 the Public Service Board and to the petitioner at least seven days prior to filing
6 of the petition with the Public Service Board.

7 (g) Pre-application plans; transmission line relocation. ~~However,~~
8 ~~notwithstanding the above~~ Notwithstanding subsection (f) of this section, plans
9 involving the relocation of an existing transmission line within the State ~~must~~
10 shall be submitted to the municipal and regional planning commissions no less
11 than 21 days prior to application for a certificate of public good under this
12 section.

13 * * *

14 (j) Facilities of limited size and scope.

15 (1) The Board may, subject to such conditions as it may otherwise
16 lawfully impose, issue a certificate of public good in accordance with the
17 provisions of this subsection and without the notice and hearings otherwise
18 required by this chapter if the Board finds that:

19 (A) approval is sought for construction of facilities described in
20 subdivision (a)(2) or (3) of this section;

21 (B) such facilities will be of limited size and scope;

1 (C) the petition does not raise a significant issue with respect to the
2 substantive criteria of this section; and

3 (D) the public interest is satisfied by the procedures authorized by
4 this subsection.

5 (2) Any party seeking to proceed under the procedures authorized by
6 this subsection shall file a proposed certificate of public good and proposed
7 findings of fact with its petition. The Board shall give written notice of the
8 proposed certificate to the parties specified in subdivision (a)(4)~~(C)~~(B)(i) of
9 this section, to any public interest organization that has in writing requested
10 notice of applications to proceed under this subsection and to any other person
11 found by the Board to have a substantial interest in the matter. Such notice
12 shall be published on the Board's website and shall request comment within
13 the Board's website and shall request comment within 28 days of the initial
14 publication on the question of whether the petition raises a significant issue
15 with respect to the substantive criteria of this section. If the Board finds that
16 the petition raises a significant issue with respect to the substantive criteria of
17 this section, the Board shall hear evidence on any such issue.

18 * * *

19 (k) Waiver.

20 (1) Notwithstanding any other provisions of this section, the Board may
21 waive, for a specified and limited time, the prohibitions contained in this

1 section upon site preparation for or construction of an electric transmission
2 facility or a generation facility necessary to assure the stability or reliability of
3 the electric system or a natural gas facility, pending full review under this
4 section.

5 (2) A person seeking a waiver under this subsection shall file a petition
6 with the Board and shall provide copies to the Department of Public Service
7 and the Agency of Natural Resources. Upon receiving the petition, the Board
8 shall conduct an expedited preliminary hearing, upon such notice to the
9 governmental bodies listed in subdivision (a)(4)~~(C)~~(B)(i) of this section as the
10 ~~board~~ Board may require.

11 * * *

12 Sec. 2. 3 V.S.A. § 2805 is amended to read:

13 § 2805. ENVIRONMENTAL PERMIT FUND

14 (a) There is ~~hereby~~ established a special fund to be known as the
15 Environmental Permit Fund. Within the ~~fund~~ Fund, there shall be two
16 accounts: the Environmental Permit Account and the Air Pollution Control
17 Account. Unless otherwise specified, fees collected in accordance with
18 subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and
19 appropriations shall be deposited in the Environmental Permit Account. Fees
20 transferred in accordance with 30 V.S.A. § 248(a) shall be deposited in the
21 Environmental Permit Account. Fees collected in accordance with subsections

1 2822(j)(1), (k), (l), and (m) of this title shall be deposited in the ~~air pollution~~
2 ~~control account~~ Air Pollution Control Account. The Environmental Permit
3 Fund shall be used to implement the programs specified under section 2822 of
4 this title. The Secretary of Natural Resources shall be responsible for the Fund
5 and shall account for the revenues and expenditures of the Agency of ~~Natural~~
6 ~~Resources~~. The Environmental Permit Fund shall be subject to the provisions
7 of 32 V.S.A. chapter 7, subchapter 5. The Environmental Permit Fund shall be
8 used to cover a portion of the costs of administering the Environmental
9 Division established under 4 V.S.A. chapter 27. The amount of \$143,000.00
10 per fiscal year shall be disbursed for this purpose. Fees transferred in
11 accordance with 30 V.S.A. § 248(a) shall be used first to support the Agency's
12 participation in proceedings under 30 V.S.A. § 248 and next for the other
13 purposes authorized in this section.

14 * * *

15 Sec. 3. 24 V.S.A. § 4348a is amended to read:

16 § 4348a. ELEMENTS OF A REGIONAL PLAN

17 (a) A regional plan shall be consistent with the goals established in section
18 4302 of this title and shall include ~~but need not be limited to~~ the following:

19 (1) A statement of basic policies of the region to guide the future growth
20 and development of land and of public services and facilities, and to protect the
21 environment;

1 (2) A land use element, which shall consist of a map and statement of
2 present and prospective land uses:

3 (A) indicating those areas proposed for forests, recreation, agriculture
4 (using the agricultural lands identification process established in 6 V.S.A. § 8),
5 residence, commerce, industry, public, and semi-public uses, open spaces, and
6 areas identified by the State, regional planning commissions or municipalities,
7 ~~which~~ that require special consideration for aquifer protection, wetland
8 protection, or for other conservation purposes;

9 (B) indicating locations proposed for developments with a potential
10 for regional impact, as determined by the regional planning commission,
11 including flood control projects, surface water supply projects, industrial parks,
12 office parks, shopping centers and shopping malls, airports, tourist attractions,
13 recreational facilities, private schools, public or private colleges, and
14 residential developments or subdivisions;

15 (C) setting forth the present and prospective location, amount,
16 intensity, and character of such land uses and the appropriate timing or
17 sequence of land development activities in relation to the provision of
18 necessary community facilities and services;

19 (D) indicating those areas that have the potential to sustain
20 agriculture and recommendations for maintaining them which may include

1 transfer of development rights, acquisition of development rights, or farmer
2 assistance programs;

3 (E) indicating those areas that are suitable and are not suitable for the
4 siting of electric generation facilities;

5 (3) An energy element, which may include an analysis of energy
6 resources, needs, scarcities, costs, and problems within the region; a statement
7 of policy on the conservation of energy and the development of renewable
8 energy resources, ~~and~~; a statement of policy on patterns and densities of land
9 use and control devices likely to result in conservation of energy; and an
10 analysis of the options available to the region and recommendations of the
11 actions and measures that the region should undertake in order to contribute to
12 meeting the goals of 10 V.S.A. §§ 578 (greenhouse gas reduction), 580 (25 by
13 25), and 581 (building efficiency) and the goals and policies of 30 V.S.A.
14 §§ 202a (State energy policy), 8001 (renewable energy), and 8005 (SPEED;
15 total renewables targets);

16 * * *

17 (5) A utility and facility element, consisting of a map and statement of
18 present and prospective local and regional community facilities and public
19 utilities, whether publicly or privately owned, showing existing and proposed
20 educational, recreational and other public sites, buildings, and facilities,
21 including public schools, ~~state~~ State office buildings, hospitals, libraries, power

1 generating plants and transmission lines, wireless telecommunications facilities
2 and ancillary improvements, water supply, sewage disposal, refuse disposal,
3 storm drainage, and other similar facilities and activities, and recommendations
4 to meet future needs for those facilities, with indications of priority of need;

5 * * *

6 (b) The various elements and statements shall be correlated with the land
7 use element and with each other. The maps called for by this section may be
8 incorporated on one or more maps, and may be referred to in each separate
9 statement called for by this section.

10 Sec. 4. STATUTORY REVISION

11 In its statutory revision capacity under 2 V.S.A. § 424, the Office of
12 Legislative Council shall:

13 (1) insert an internal caption in each subsection of 30 V.S.A. § 248 not
14 amended by Sec. 1 of this act that reflects the subsection's subject matter; and

15 (2) replace the phrase "the effective date of this subdivision" where it
16 appears in Sec. 1, 30 V.S.A. § 248(b)(1)(B)(i) with the actual effective date of
17 Sec. 1.

18 Sec. 5. EFFECTIVE DATE; ADOPTION OF FORMS

19 (a) This act shall take effect on June 1, 2014.

20 (b) On or before September 1, 2014, the Board shall adopt the forms
21 required by Sec. 1, 30 V.S.A. § 248(a)(4)(C) (participation).