

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 201 entitled “An act relating to siting review by the Public
4 Service Board” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

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

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

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

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

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

19 (ii) for a period exceeding ten years, that represents more than ten
20 percent of its historic peak demand, if the purchase is from a plant as defined

1 in subdivision 8002(14) of this title that produces electricity from renewable
2 energy as defined under subdivision 8002(17); or

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

6 (2) In-state electric generation and transmission facilities. Except for
7 the replacement of existing facilities with equivalent facilities in the usual
8 course of business, and except for electric generation facilities that are
9 operated solely for on-site electricity consumption by the owner of those
10 facilities:

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

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

20 (3) Natural gas facilities. No company, as defined in section 201 of this
21 title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin

1 site preparation for or commence construction of any natural gas facility,
2 except for the replacement of existing facilities with equivalent facilities in the
3 usual course of business, unless the Public Service Board first finds that the
4 same will promote the general good of the State and issues a certificate to that
5 effect pursuant to this section.

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

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

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

6 (4) Procedure and participation.

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

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

13 ~~(C)~~(B) Notice.

14 (i) At the time of filing its application with the Board, copies shall
15 be given by the petitioner to the Attorney General and the Department of
16 Public Service, and, with respect to facilities within the State, the Department
17 of Health, Agency of Natural Resources, ~~historic preservation division~~
18 Division for Historic Preservation, Agency of Transportation, ~~the~~ and Agency
19 of Agriculture, Food and Markets and to the chairperson or director of the
20 municipal and regional planning commissions and the municipal legislative
21 body for each town and city in which the proposed facility will be located. At

1 the time of filing its application with the Board, the petitioner shall give the
2 Byways Advisory Council notice of the filing.

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

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

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

14 (ii) The Agency of Natural Resources shall appear as a party in
15 any proceedings held under this ~~subsection~~ section regarding an in-state
16 facility, shall provide evidence and recommendations concerning any findings
17 to be made under subdivision (b)(5) of this section, and may provide evidence
18 and recommendations concerning any other matters to be determined by the
19 Board in such a proceeding.

20 (iii) With respect to an application under this section for an
21 in-state facility, the Board shall allow as a party any adjoining property owner

1 or other person who demonstrates that the person has a particularized interest
2 protected under this section and there is a reasonable possibility that the
3 interest may be affected by an act or decision of the Board on the application.

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

6 (v) The Board may allow a person to participate as a friend of the
7 Board without being accorded party status. Participation may be limited to one
8 or more of the following: providing testimony or other evidence; engaging in
9 cross-examination; or the filing of legal memoranda, proposed findings of fact
10 and conclusions of law, or argument on legal issues. A motion to participate as
11 a friend of the Board shall identify the interest of the requestor and the desired
12 scope of participation and shall state the reasons why the participation of the
13 requestor will be beneficial to the Board. The Board may allow a person to
14 participate as a friend of the Board on its own motion. Unless the Board orders
15 otherwise, all friends of the Board shall submit their filings within the times
16 allowed the parties. A friend of the Board shall not be subject to discovery
17 except to the extent that the friend of the Board provides testimony or other
18 evidence.

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

1 (vii) The Board shall limit discovery to that which is necessary for
2 a full and fair determination of the proceeding. In determining the allowed
3 discovery, the Board shall consider the relative resources of the parties and
4 friends of the Board and the need for disclosure by the applicant of relevant
5 information.

6 (D) Postcertification review. The Board may employ
7 postcertification review for an in-state electric transmission or natural gas
8 facility and shall not employ postcertification review for an in-state electric
9 generation facility. In this subdivision (D), “postcertification review” means a
10 procedure under which a certificate of public good is conditioned on
11 subsequent submission and consideration of other approvals issued for a
12 facility or of specific details or designs of a facility prior to its construction,
13 and does not include an application for an amendment to a certificate of public
14 good that is a new application under this section.

15 (E) “Person.” In this subdivision (4), “person” shall have the same
16 meaning as in 1 V.S.A. § 128.

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

1 involved in this review and for the Board’s posting a copy of each transcript of
2 the proceeding online, available for download.

3 (A) The fee shall be \$5.40 for each \$1,000.00 of the first
4 \$15,000,000.00 of construction costs and \$2.50 for each \$1,000.00 of
5 construction costs above \$15,000,000.00. In no event shall the fee exceed
6 \$750,000.00. The Board shall adjust the amounts contained in this subdivision
7 (A) annually commencing in 2015 for inflation since January 1, 2014 using the
8 Consumer Price Index for all urban consumers, designated as “CPI-U,” in the
9 northeast region, as published by the U.S. Department of Labor, Bureau of
10 Labor Statistics.

11 (B) Eighty percent of the fee shall be deposited into the special fund
12 described in section 22 of this title and allocated between the Board and the
13 Department of Public Service in accordance with that section. Twenty percent
14 of the fee shall be deposited into the Environmental Permit Fund under
15 3 V.S.A. § 2805.

16 (C) The Board shall not require a fee for an application under this
17 section for a net metering system, a facility that will pay expenses allocated
18 pursuant to subsection 8005a(1) of this title, or a facility to be undertaken and
19 owned by an agency of the State or a political subdivision of the State.

20 (D) Nothing in this subdivision (5) shall affect the authority of the
21 Board, the Department of Public Service, or the Agency of Natural Resources

1 to retain personnel and allocate costs under sections 20 and 21 of this title,
2 except that, if the costs of regular employees are allocated under section 21 of
3 this title to an applicant paying a fee under this subdivision, the allocated
4 amount shall be offset by the portion of the fee available to the allocating
5 agency.

6 (b) Criteria. Before the Public Service Board issues a certificate of public
7 good as required under subsection (a) of this section, it shall find that the
8 purchase, investment, or construction:

9 (1) with respect to an in-state facility, will not unduly interfere with the
10 orderly development of the region with ~~due consideration~~ substantial deference
11 having been given to the recommendations of the municipal and regional
12 planning commissions, the recommendations of the municipal legislative
13 bodies, and the land conservation measures contained in the plan of any
14 affected municipality. In this subdivision (1), “substantial deference” means
15 that a recommendation or land conservation measure shall be applied in
16 accordance with its terms unless there is a clear and convincing demonstration
17 that other factors affecting the general good of the State outweigh application
18 of the recommendation or measure. However, if a recommendation of a
19 municipal legislative body and a recommendation of the planning commission
20 of the same municipality conflict, the Board shall apply its independent
21 judgment to resolve the conflict. In addition:

1 (A) with respect to a natural gas transmission line subject to Board
2 review, the line shall be in conformance with any applicable provisions
3 concerning such lines contained in the duly adopted regional plan; and, in
4 addition, upon application of any party, the Board shall condition any
5 certificate of public good for a natural gas transmission line issued under this
6 section so as to prohibit service connections that would not be in conformance
7 with the adopted municipal plan in any municipality in which the line is
8 located; and

9 (B) with respect to an electric generation facility subject to Board
10 review, the facility shall conform with any provisions of the regional plan that
11 are specific to electric generation facilities if the regional plan meets the
12 requirements of this subdivision (B).

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

16 (I) state the basis for each provision that is specific to electric
17 generation facilities;

18 (II) identify the areas within the region that are suitable and are
19 not suitable for siting electric generation facilities; and

20 (III) analyze the options available to the region and recommend
21 the actions and measures that the region should undertake in order to

1 contribute to meeting the goals of 10 V.S.A. §§ 578 (greenhouse gas
2 reduction), 580 (25 by 25), and 581 (building efficiency) and the goals and
3 policies of sections 202a (state energy policy), 8001 (renewable energy), and
4 8005 (SPEED; total renewables targets) of this title.

5 (ii) In amending a regional plan under this subdivision (B), the
6 regional planning commission shall use data, information, and digital resources
7 available from the State and other sources, including resources that may assist
8 the regional planning commission to identify areas that are likely candidates to
9 site particular categories of generation technologies.

10 (iii) This subdivision (B) shall not require a region to establish a
11 numerical amount or capacity of electric generation facilities to be sited within
12 the region.

13 (iv) In any proceeding involving the application of a regional plan
14 that has been amended under this subdivision (B), the Board shall presume that
15 the regional plan complies with the requirements of subdivision (b)(1)(B)(i) of
16 this section unless there is a clear and convincing demonstration that the
17 regional plan does not meet one or more of those requirements or that there is
18 no rational basis for a challenged provision of the regional plan;

19 * * *

20 (5) with respect to an in-state facility, will not have an undue adverse effect
21 on esthetics, historic sites, air and water purity, the natural environment, the

1 use of natural resources, and the public health and safety, with due
2 consideration having been given to greenhouse gas impacts and to the criteria
3 specified in 10 V.S.A. §§ § 1424a(d) and substantial deference having been
4 given to the criteria specified in 10 V.S.A. § 6086(a)(1) through (8) and (9)(K)
5 and greenhouse gas impacts. In this subdivision (5), “substantial deference” to
6 a criterion of 10 V.S.A. § 6086 means that the Board shall:

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

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

12 * * *

13 (f) ~~However, the:~~ Public engagement plan; notice of intent; preapplication
14 plans.

15 (1) With respect to a proposed in-state electric generation facility with a
16 capacity exceeding 15 MW, at least eight months before filing an application
17 under this section, the petitioner shall submit a public engagement plan to the
18 Public Service Board. The Department of Public Service shall develop and
19 publish guidelines that shall be the basis for each public engagement plan
20 submitted under this subdivision (1). The petitioner shall implement the public

1 engagement plan and its petition to the Board shall identify and respond to the
2 issues raised during the public engagement process conducted under the plan.

3 (2) The petitioner shall submit a notice of intent to construct ~~such a~~
4 facility within the State an in-state facility requiring a certificate of public good
5 under this section to the municipal and regional planning commissions at least
6 six months prior to an application for a certificate of public good under this
7 section. The Board shall specify by rule the content of such a notice of intent,
8 which shall be designed to provide a reasonable description of the facility to be
9 built, its size and location, and related infrastructure to be constructed. A
10 notice of intent under this subdivision (2) shall not be required for a facility
11 that the Board determines to be eligible for treatment under subsection (j)
12 (facilities of limited size and scope) of this section.

13 (3) The petitioner shall submit plans for the construction of such a
14 facility within the state ~~must be submitted by the petitioner~~ State to the
15 municipal and regional planning commissions no less than 45 days prior to
16 application for a certificate of public good under this section, unless the
17 municipal and regional planning commissions shall waive such requirement.
18 Such municipal or regional planning commission may hold a public hearing on
19 the proposed plans. Such commissions ~~shall~~ may make recommendations, ~~if~~
20 ~~any,~~ to the ~~public service board~~ Public Service Board and to the petitioner ~~at~~

1 ~~least seven days prior to filing of the petition~~ within 21 days after the date the
2 petition is filed with the ~~public service board~~ Board.

3 (g) Preapplication plans; transmission line relocation. ~~However,~~
4 ~~notwithstanding the above~~ Notwithstanding subdivision (f)(3) of this section,
5 plans involving the relocation of an existing transmission line within the State
6 ~~must~~ shall be submitted to the municipal and regional planning commissions
7 no less than 21 days prior to application for a certificate of public good under
8 this section.

9 * * *

10 (j) Facilities of limited size and scope.

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

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

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

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

20 (D) the public interest is satisfied by the procedures authorized by
21 this subsection.

1 and shall account for the revenues and expenditures of the Agency of Natural
2 Resources. The Environmental Permit Fund shall be subject to the provisions
3 of 32 V.S.A. chapter 7, subchapter 5. The Environmental Permit Fund shall be
4 used to cover a portion of the costs of administering the Environmental
5 Division established under 4 V.S.A. chapter 27. The amount of \$143,000.00
6 per fiscal year shall be disbursed for this purpose. Fees transferred in
7 accordance with 30 V.S.A. § 248(a) shall be used first to support the Agency's
8 participation in proceedings under 30 V.S.A. § 248 and next for the other
9 purposes authorized in this section.

10 * * *

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

12 § 4348a. ELEMENTS OF A REGIONAL PLAN

13 (a) A regional plan shall be consistent with the goals established in section
14 4302 of this title and shall include ~~but need not be limited to~~ the following:

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

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

20 (A) indicating those areas proposed for forests, recreation, agriculture
21 (using the agricultural lands identification process established in 6 V.S.A. § 8),

1 residence, commerce, industry, public, and semi-public uses, open spaces, and
2 areas identified by the State, regional planning commissions or municipalities,
3 ~~which~~ that require special consideration for aquifer protection, wetland
4 protection, or for other conservation purposes;

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

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

15 (D) indicating those areas that have the potential to sustain
16 agriculture and recommendations for maintaining them which may include
17 transfer of development rights, acquisition of development rights, or farmer
18 assistance programs;

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

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

Sec. 4. 30 V.S.A. § 202b(e) is added to read:

(e) Except as provided under sections 202(f) (consistency with electrical energy plan) and 248(b)(7) (consistency with electric energy plan) of this title, a State agency and a regional planning commission may consider the Comprehensive Energy Plan ~~shall not serve as~~ but shall not be required to use the Plan a basis for decision making unless and until it is approved by act of the General Assembly.

Sec. 5. 30 V.S.A. § 246 is amended to read:

§ 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

(a) As used in this section, a “meteorological station” consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The Public Service Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A

1 meteorological station shall be deemed to promote the public good of the State
2 if it is in compliance with the criteria of this section and the Board rules or
3 orders. An applicant for a certificate of public good for a meteorological
4 station shall be exempt from the requirements of subsection 202(f) of this title.
5 Subdivision 248(a)(4)(C) (participation) of this title shall govern participation
6 in proceedings under this section.

7 (c) In developing rules or orders, the Board:

8 (1) Shall develop a simple application form and shall require that
9 completed applications be filed with the Board, ~~the Department of Public~~
10 ~~Service, the Agency of Natural Resources, the Agency of Transportation, and~~
11 ~~the municipality in which the meteorological station is proposed to be located~~
12 and the same State, regional, and municipal entities entitled to receive notice of
13 an application under subsection 248(a) of this title.

14 (2) Shall require that if no objections are filed within 30 days of the
15 Board's receipt of a complete application and the Board determines that the
16 applicant has met all of the requirements of section 248 of this title, the
17 certificate of public good shall be issued for a period that the Board finds
18 reasonable, but in no event for more than five years. Upon request of an
19 applicant, the Board may renew a certificate of public good. Upon expiration
20 of the certificate, the meteorological station and all associated structures and

1 material shall be removed, and the site shall be restored substantially to its
2 preconstruction condition.

3 (3) May waive the requirements of section 248 of this title that are not
4 applicable to meteorological stations, including criteria that are generally
5 applicable to public service companies as defined in this title. The Board shall
6 not waive review regarding whether construction will have an undue adverse
7 effect on esthetics, historic sites, air and water purity, the natural environment,
8 and the public health and safety.

9 (4) Shall seek to simplify the application and review process, as
10 appropriate, in conformance with this section.

11 (5) Shall require an applicant for a certificate of public good for a
12 meteorological station to pay an application fee for the purpose of
13 compensating the State of Vermont for the direct and indirect costs incurred
14 with respect to the review of the application and the administration of the State
15 programs involved in this review. This fee shall be \$20,000.00 or the amount
16 calculated in accordance with the requirements for an application fee under
17 subsection 248(a) of this title, whichever is greater. The fee shall be deposited
18 and allocated in the same manner as the application fee under subsection
19 248(a) of this title.

20 (d) A proposal for decision shall be issued within five months of when the
21 Board receives a completed application for a certificate of public good for the

1 temporary installation of one or more meteorological stations under the
2 provisions of section 248 of this title.

3 Sec. 6. 30 V.S.A. § 20 is amended to read:

4 § 20. PARTICULAR PROCEEDINGS; PERSONNEL

5 (a)(1) The Board or Department may authorize or retain legal counsel,
6 official stenographers, expert witnesses, advisors, temporary employees, and
7 other research services:

8 (i) to assist the Board or Department in any proceeding listed in
9 subsection (b) of this section;

10 (ii) to monitor compliance with any formal opinion or order of the
11 Board;

12 (iii) in proceedings under section 246 or 248 of this title, to assist
13 other State agencies that are named parties to the proceeding where the Board
14 or Department determines that they are essential to a full consideration of the
15 petition, or for the purpose of monitoring compliance with an order resulting
16 from such a petition;

17 * * *

18 (2) The Agency of Natural Resources may authorize or retain legal
19 counsel, official stenographers, expert witnesses, advisors, temporary
20 employees, other research, scientific, or engineering services to:

1 (A) assist the Agency of Natural Resources in any proceeding under
2 section 246 or 248 of this title;

3 (B) monitor compliance with an order issued under section 246 or
4 248 of this title;

5 * * *

6 (b) Proceedings, including appeals therefrom, for which additional
7 personnel may be retained are:

8 * * *

9 (4) hearings resulting from a petition for a certificate of public good;

10 * * *

11 Sec. 7. STATUTORY REVISION

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

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

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

19 Sec. 8. EFFECTIVE DATE; ADOPTION OF FORMS

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

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

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7 (Committee vote: _____)

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Senator [surname]

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FOR THE COMMITTEE