

**S.201 – An Act Relating to Siting Review by the Public Service Board**

Aaron Adler, Legislative Counsel, Feb. 10, 2014

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Sec.	Bill as Introduced	Sec.	Proposed Amendment, Committee on Natural Resources and Energy
1	<p>This section would amend the Public Service Board’s (PSB) energy siting review process under 30 V.S.A. § 248 in three broad areas: (a) <i>participation</i> in the siting review process; (b) <i>fees</i> for applications; and (c) <i>greater weight</i> to local and regional plans and to the criteria under 10 V.S.A. chapter 151 (Act 250).</p> <p>As to <i>participation</i>, the bill would:</p> <ul style="list-style-type: none"> <li>• Clarify which state and local governmental agencies are parties by right so there is no need to file motions to intervene or for PSB deliberation or decision on the motions.</li> <li>• Align the “interest” category of parties with Act 250, thereby reducing the showing an adjoiner or near neighbor must make to establish a right to participate.</li> <li>• Establish a “Friend of the Board” category similar to the Friend of the Commission category in Act 250.</li> <li>• Direct the Board to post forms for citizens to complete to file motions to be a party or Friend of the Board.</li> <li>• Direct the Board to limit discovery to that which is needed for a full and fair determination, similar to a statute that applies to the Environmental Division.</li> <li>• Prohibit postcertification review for electric generation, thereby reducing the time, cost, and effort of party participation in after-the-fact project redesigns and reviews of permits from other agencies submitted by the applicant.</li> </ul> <p>As to <i>fees</i>, the bill would:</p> <ul style="list-style-type: none"> <li>• Require fees for § 248 applications to support the costs of the PSB, Department of Public Service and Agency of Natural Resources (ANR).</li> <li>• Use the Act 250 fee schedule, based on construction costs.</li> </ul>	1	<p>The committee amendment under discussion would include the original proposal with the following modifications:</p> <ul style="list-style-type: none"> <li>• A Friend of the Board would not be subject to discovery except to the extent the friend provides testimony or other evidence.</li> <li>• If a recommendation of the legislative body conflicts with the recommendation of a planning commission for the same municipality, the Board would apply its independent judgment to resolve the conflict.</li> <li>• If it amends its plan to obtain “conformance” status, a regional planning commission is to use information and digital resources available from the State and other sources, including resources that may assist the commission to identify areas that are likely candidates to site particular categories of generation technologies.</li> <li>• A proposed electric generation facility greater than 15 MW would have to file a public engagement plan eight months before submitting its application, and would have to implement this plan and include the results in the application.</li> <li>• In-state facilities subject to § 248 would have to submit a notice of intent six months in advance of filing the application that provides a reasonable description of the facility to be built, its size and location, and related infrastructure to be constructed. This requirement would not apply to facilities that qualify for “limited size and scope” treatment under § 248(j).</li> </ul>

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	<ul style="list-style-type: none"> <li>• Cap the fee for an individual project at \$750,000.</li> <li>• Exempt net metering systems, standard offer projects, and governmental and distribution utility projects.</li> </ul> <p>As to <i>greater weight</i> to local and regional recommendations and Act 250 criteria, the bill would:</p> <ul style="list-style-type: none"> <li>• Require “substantial deference” to local plans and the recommendations of local and regional planning commissions and the local legislative body and to the criteria of Act 250.</li> <li>• Based on Supreme Court case law, define “substantial deference” to require a clear and convincing demonstration that factors affecting the general good of the state outweigh the application of the plan provision, recommendation, or criterion.</li> <li>• Require that electric generation facilities conform to the regional plan if the plan is amended to identify appropriate areas for electric generation and options for the region to meet statutory energy goals.</li> </ul>		
2	<p>This section would direct that ANR’s portion of the § 248 application fees be deposited into ANR’s Environmental Permit Fund and used to support ANR’s participation in Section 248 proceedings.</p>	2	<p><i>No change.</i></p>
3	<p>This section would amend the statute on the elements of a regional plan to include provisions relating to obtaining “conformance” status in Section 248 proceedings, described in Sec. 1, above.</p>	3	<p><i>No change.</i></p>

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	<i>No corresponding section.</i>	4	This section would clarify that state agencies and regional planning commissions may consider the Comprehensive Energy Plan but are not required to use the Plan as a basis for decision-making unless and until approved by act of the General Assembly. The language makes an exception for current statutes that require electric generation and transmission projects and electric utility actions to be consistent with the electrical energy component of the plan unless there is good cause otherwise.
	<i>No corresponding section.</i>	5	This section would amend the statute on siting review of temporary meteorological stations to: <ul style="list-style-type: none"> <li>• Make the parties and right to participate the same as those proposed in Sec. 1, above, for § 248 applications.</li> <li>• Establish an application fee of \$20,000 or the amount calculated using the same fee schedule as proposed in the bill for § 248 applications, whichever is greater.</li> </ul>
	<i>No corresponding section.</i>	6	This section would amend the statute on bill-backs for PSB proceedings to clarify that bill-back is authorized for proceedings on temporary meteorological stations.
4	This section is technical and addresses matters such as inserting internal captions in 30 V.S.A. § 248.	7	<i>No change.</i>
5	The act would take effect on 6/1/14; PSB to issue forms required under Sec. 1 by 9/1/14.	8	<i>No change.</i>