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H.107

Introduced by Representatives Sharpe of Bristol and Jewett of Ripton

Referred to Committee on

Date:

Subject: Energy; public utilities; facility siting; advocacy; office of the
landowner advocate

Statement of purpose of bill as introduced: This bill proposes to establish an
Office of the Landowner Advocate to ensure landowners have representation
during siting and condemnation proceedings for energy facilities to be
constructed by public utilities and in easement negotiations with those utilities.

An act relating to the creation of the Office of the Landowner Advocate

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

Sec. 1. 30 V.S.A. chapter 15 is added to read:

CHAPTER 15. OFFICE OF LANDOWNER ADVOCATE

§ 651. OFFICE OF THE LANDOWNER ADVOCATE; COMPOSITION

(a) The Agency of Administration shall establish the Office of the
Landowner Advocate by contract with any nonprofit organization.

(b) The Office shall be administered by the Chief Landowner Advocate,
who shall be an individual:

1 (1) with expertise and experience in the fields of land use, utilities,
2 and advocacy;

3 (2) who is an attorney admitted to practice in Vermont; and

4 (3) who does not have a conflict of interest under section 656 of
5 this chapter.

6 (c) The Advocate may employ legal counsel, administrative staff, and other
7 employees and contractors as needed to carry out the duties of the Office.

8 § 652. DEFINITIONS

9 As used in this chapter:

10 (1) “Advocate” means the Chief Landowner Advocate established under
11 this chapter.

12 (2) “Board” means the Public Service Board created under section 3 of
13 this title.

14 (3) “Department” means the Department of Public Service established
15 under 3 V.S.A. § 212 and section 1 of this title.

16 (4) “Landowner” means a person who owns land in fee simple.

17 (5) “Office” means the Office of the Landowner Advocate created under
18 this chapter.

19 (6) “Public utility” means a company subject to the jurisdiction of the
20 Public Service Board under subdivisions 203(1) or (2) of this title.

1 (7) “Siting and condemnation proceedings” means proceedings for
2 construction of in-state facilities under section 248 of this title and
3 condemnation proceedings under sections 110–124 of this title.

4 § 653. DUTIES AND AUTHORITY

5 (a) The Office shall:

6 (1) provide legal representation to landowners in the negotiation of
7 easements with public utilities and in siting and condemnation proceedings;

8 (2) assist landowners in understanding their rights and responsibilities in
9 siting and condemnation proceedings and when negotiating easements with
10 public utilities;

11 (3) provide information to the public, agencies, members of the General
12 Assembly, and others regarding problems and concerns of landowners
13 involved in siting and condemnation proceedings or public utility easement
14 negotiations, as well as recommendations for resolving these problems and
15 concerns;

16 (4) identify, investigate, and resolve complaints relating to siting and
17 condemnation proceedings and public utility easement negotiations on behalf
18 of individual landowners, and assist those landowners with filing and pursuit
19 of such complaints and appeals;

20 (5) ensure that individual landowners have timely access to the services
21 provided by the Office; and

1 (6) submit to the General Assembly and the Governor on or before
2 January 1 of each year a report on the activities, performance, and fiscal
3 accounts of the Office during the preceding year.

4 (b) The Office may:

5 (1) pursue administrative, judicial, and other remedies on behalf of any
6 individual landowner or group of landowners regarding siting and
7 condemnation proceedings or public utility easements;

8 (2) adopt policies and procedures necessary to carry out the provisions
9 of this chapter;

10 (3) establish eligibility criteria and resource allocation for parties
11 seeking representation by the Office;

12 (4) allocate resources in order to fulfill the purposes of the Office and
13 this chapter;

14 (5) adopt policies and procedures for managing situations where the
15 same facility or project affects multiple landowners represented by the

16 Office; and

17 (6) take any other action necessary to fulfill the purposes of this chapter.

18 (c) The Advocate shall have the powers necessary to carry out the duties of
19 his or her office, including the following specific powers:

20 (1) to appear as the representative of an individual landowner or group
21 of landowners before other State agencies, federal agencies, and State and

1 federal courts in connection with siting and condemnation proceedings and
2 public utility easements.

3 (2) to have access to and use all files, records, and data of the Board
4 available to any other attorney representing a party in siting and condemnation
5 proceedings;

6 (3) to use all forms of discovery available to attorneys in civil actions
7 generally;

8 (4) in any proceeding in which he or she has represented a landowner
9 under the authority of this chapter, to seek review of any determination,
10 finding, or order of the Board, or of any hearing officer designated by the
11 Board, in the name of the landowner;

12 (5) to enter on lands to conduct inspections, investigations,
13 examinations, tests, or site evaluations relevant to siting and condemnation
14 proceedings or public utility easement negotiations; and

15 (6) to establish a mechanism for receiving, tracking, and, if possible,
16 resolving landowner complaints and disputes with public utilities regarding
17 condemnation, easements, and the siting process under section 248 of this title.

18 (d) The Office shall be able to speak on behalf of the interests of
19 landowners and to carry out all duties prescribed in this chapter without being
20 subject to any retaliatory action; provided, however, that nothing in this

1 subsection shall limit the authority of the Agency of Administration to enforce
2 the terms of the contract.

3 § 654. RECEIPT OF PLEADINGS

4 The Board shall furnish the Advocate with copies of the initial pleadings in
5 siting and condemnation proceedings.

6 § 655. DUTIES OF STATE AGENCIES

7 All State agencies shall comply with reasonable requests from the Office for
8 information and assistance. The Agency of Administration may adopt rules
9 necessary to ensure the cooperation of State agencies under this section.

10 § 656. CONFLICTS OF INTEREST

11 (a) The Office, its employees, and its contractors shall not have any conflict
12 of interest relating to the performance of their responsibilities under this
13 chapter. In this chapter, a conflict of interest exists whenever the Office, its
14 employees, or its contractors, or a person affiliated with the Office, its
15 employees, or its contractors:

16 (1) has a direct ownership interest or investment interest in a
17 public utility;

18 (2) is employed by or participating in the management of a
19 public utility;

20 (3) receives or has the right to receive, directly or indirectly,
21 remuneration under a compensation arrangement with a public utility; or

1 (4) is a member of the Board or an employee of the Board or
2 Department.

3 (b) It shall not be a conflict of interest for the Office to represent multiple
4 landowners on matters relating to the same public utility facility or project.

5 § 657. FUNDING

6 (a) The Office shall specify in its annual report filed pursuant to this
7 chapter the sums expended by the Office in carrying out its duties.

8 (b) The Office may allocate the portion of the expenses it incurs or
9 authorizes in carrying out the duties of this chapter to the petitioner involved in
10 the siting and condemnation proceedings at issue. Upon application by the
11 petitioner to which the Office has proposed to allocate costs, the Board shall
12 review and determine, after opportunity for hearing, the necessity and
13 reasonableness of these costs, and may amend or revise the allocations.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2015.