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ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 30, 2016

Third Reading

H. 622.

An act relating to obligations for reporting child abuse and neglect and cooperating in investigations of child abuse and neglect.

NEW BUSINESS

Third Reading

S. 230.

An act relating to improving the siting of energy projects.

**Amendment to S. 230 to be offered by Senators Bray, Campbell, and
Kitchel before Third Reading**

Senators Bray, Campbell, and Kitchel move to amend the bill as follows:

First: In Sec. 7, 24 V.S.A. § 4352, after subsection (d), by inserting a subsection (e) to read as follows:

(e) Appeal. A regional planning commission aggrieved by an act or decision of the Commissioner of Public Service under this section or a municipality aggrieved by an act or decision of a municipality under this section may appeal to a hearing officer. The hearing officer shall be one of five attorneys retained by the Commissioner for this purpose, none of whom shall be an employee of the Department of Public Service. The parties shall jointly select the hearing officer from among these retained attorneys. The hearing officer shall conduct a de novo hearing on the act or decision under appeal and shall proceed in accordance with the contested case requirements of the Vermont Administrative Procedure Act. The hearing officer shall have authority to decide the appeal. A hearing officer shall not conduct an appeal if the officer has a personal or pecuniary interest in the act or decision on appeal.

Second: In Sec. 8, 24 V.S.A. § 4382, in subsection (a), in the first sentence, by striking out “~~may shall~~” and inserting in lieu thereof: may

Third: In Sec. 12, 30 V.S.A. § 248(b), in subdivision (1), by striking out subdivision (C) in its entirety and inserting in lieu thereof a new subdivision (C) to read:

(C) The Board shall apply the land conservation measures and specific policies contained in a duly adopted municipal or regional plan to an application for an in-state electric generation facility as follows:

(i) For an application filed before March 1, 2017, the Board shall defer to such a measure or policy and apply it in accordance with its terms unless a preponderance of the evidence demonstrates that other factors affecting the general good of the State outweigh the application of the measure or policy.

(ii) For an application filed on or after March 1, 2017:

(I) If the plan has received a certificate of energy compliance under 24 V.S.A. § 4352, the Board shall defer to such a measure or policy and apply it in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy.

(II) If the plan has not received a certificate of energy compliance under 24 V.S.A. § 4352, the Board shall give due consideration to such a measure or policy.

Fourth: After Sec. 23d, by inserting a new Sec. 23e to read:

Sec. 23e. 30 V.S.A. § 248(y) is added to read:

(y) With respect to each in-state wind generation facility subject to a certificate of public good under this section, the Board shall retain a qualified acoustical engineer, at the cost of the certificate holder, to monitor continuously the sound produced by the facility and the facility's compliance with any requirements and conditions pertaining to sound generation included in the facility's certificate of public good. The engineer shall install equipment that allows such continuous monitoring. The engineer shall be responsible to the Board and independent of the certificate holder. The engineer shall report the monitoring results to the Board. Notwithstanding any contrary provision of 1 V.S.A. §§ 213 and 214, this subsection shall apply to all wind generation facilities subject to a certificate of public good under this section, regardless of the date on which the certificate was issued.

Fifth: By striking out Sec. 24 in its entirety and inserting in lieu thereof two new sections to be Secs. 24 and 24a to read:

Sec. 24. SOUND STANDARDS DOCKET; COMPLETION

(a) On or before October 1, 2016, the Public Service Board (the Board) shall issue a final decision in its pending Docket 8167, Investigation into the potential establishment of standards related to sound levels from the operation

of generation, transmission, and distribution equipment by entities subject to Public Service Board jurisdiction (the docket).

(b) Notwithstanding any contrary language in a prior Board order, the scope of this docket and the Board's final decision in the docket shall include the Board's recommendations on each of the following with respect to wind generation facilities and its plan for implementing those recommendations:

(1) The maximum allowable instantaneous audible sound levels for these facilities and the exterior and interior locations at which these levels should apply. In this section, "audible sound" refers to sound at frequencies from 20 hertz through 20 kilohertz.

(2) The maximum allowable average audible sound levels for these facilities, the period over which these levels should be measured, and the exterior and interior locations at which these levels should apply. In reviewing this question, the Board shall consider whether the measurement period should be less than one hour.

(3) The release of sound monitoring data to the public, including the timeliness of the release, the release of raw data, and the availability of the data online. In reviewing this question, the Board shall consider the existence and validity, if any, of assertions that such data is proprietary or confidential.

(4) A minimum setback requirement for each wind turbine, measured from the tower to the nearest property line of the tract on which the turbine is located.

(c) Before issuing a final decision in the docket, the Board shall provide each of the following:

(1) Notice of the issues described in subsection (b) of this section in the same manner as the Board provided notice of its order opening the docket.

(2) Opportunity for the existing docket parties and members of the public to submit written information and request the conduct of a workshop on these issues. The Board shall hold such a workshop if requested and may hold one or more workshops on these issues on its own initiative.

Sec. 24a. INFRASOUND; REPORT

(a) On or before October 1, 2016, the Commissioner of Health shall submit a written report on whether there should be maximum allowable instantaneous or average levels, or both, for infrasound from wind generation and, if so, what they should be and how they should be measured. In this section, "infrasound" refers to sound at frequencies less than 20 hertz.

(b) The Commissioner shall submit this report to the House and Senate Committees on Natural Resources and Energy, the Senate Committee on Finance, and the Joint Energy Committee.

Sixth: In Sec. 27 (effective dates), after subdivision (5), by inserting a subdivision (6) to read:

(6) Secs. 12 (municipal and regional plans), 24 (sound standards docket; completion), and 24a (infrasound; report) shall take effect on passage.

Amendment to S. 230 to be offered by Senator Mullin before Third Reading

Senator Mullin moves to amend the bill in Sec. 11b, planning support, by inserting a new subsection (d) to read as follows:

(d) For three fiscal years commencing on July 1, 2016, the Public Service Board (the Board) shall assess a fee on applications filed under 30 V.S.A. § 248.

(1) This fee shall be in addition to the fee assessed on such applications pursuant to 30 V.S.A. § 248b.

(2) The amount of this additional fee shall be calculated as 40 percent of the amount of the fee assessed pursuant to 30 V.S.A. § 248b.

(3) The applicant shall pay this additional fee into the State Treasury at the time the application for a certificate of public good under 30 V.S.A. § 248 is filed with the Board. The fee shall be credited to a special fund that shall be established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5.

(4) The amounts in the fund created under subdivision (3) of this subsection shall be used during fiscal years 2018 and 2019 by the Commissioner of Public Service, in consultation with the Commissioner of Housing and Community Development, solely for disbursements to municipalities and regional planning commissions for one or more of the purposes listed in subdivisions (a)(1)–(4) of this section.

Amendment to S. 230 to be offered by Senator Rodgers before Third Reading

Senator Rodgers moves to amend the bill in Sec. 12, 30 V.S.A. § 248(b), after the final ellipsis, by inserting a new subdivision (12) to read:

(12) With respect to an in-state generation facility, will not curtail one or more existing renewable electric generation facilities because of existing transmission constraints.

**Amendment to S. 230 to be offered by Senators Bray and Campion before
Third Reading**

Senators Bray and Campion move to amend the bill as follows:

First: In Sec. 13, 30 V.S.A. § 8002(30), after subdivision (F), by inserting new subdivisions (G) and (H) to read:

(G) A site listed on the National Priorities List (NPL) established under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. chapter 103, if the U.S. Environmental Protection Agency or the Agency of Natural Resources confirms each of the following:

(i) The site is listed on the NPL.

(ii) Development of the plant on the site will not compromise or interfere with remedial action on the site.

(iii) The site is suitable for development of the plant.

(H) A new hydroelectric generation facility at a dam in existence as of January 1, 2016 or a hydroelectric generation facility that was in existence but not in service for a period of at least 10 years prior to January 1, 2016 and that will be redeveloped for electric generation, if the facility has received approval or a grant of exemption from the U.S. Federal Energy Regulatory Commission.

And by redesignating the existing subdivision (G) to be subdivision (I)

Second: In Sec. 17, 30 V.S.A. § 8010, after the final ellipsis, by inserting a new subsection (e) to read:

(e) This section does not confer authority to require a hydroelectric generation plant that is subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1, to obtain a certificate of public good under section 248 of this title.

Third: After Sec. 17, by inserting a new Sec. 17a to read:

Sec. 17a. 30 V.S.A. § 248(a)(2) is amended to read:

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation facilities that are operated solely for on-site electricity consumption by the owner of those facilities and for hydroelectric generation facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or

construction of an electric generation facility or electric transmission facility within the State which is designed for immediate or eventual operation at any voltage; and

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

Amendment to S. 230 to be offered by Senator Rodgers before Third Reading

Senator Rodgers moves to amend the bill in Sec. 17, 30 V.S.A. § 8010, after the final ellipsis, by adding a new subsection (e) to read:

(e) A retail electricity provider may propose a cost-based grid service fee, in dollars per kWh of energy produced from a net metering system, in accordance with this subsection. A provider shall propose such a fee and any subsequent changes to the fee pursuant to section 225 of this title. The Board may authorize such a fee only to the extent necessary to:

(1) recoup the provider's fixed costs necessary to support its infrastructure and its administrative costs associated with net metering; or

(2) reduce a shift in the provider's costs associated with a net metering program from net metering customers and non-net metering customers.

Amendment to S. 230 to be offered by Senator Rodgers before Third Reading

Senator Rodgers moves to amend the bill after Sec. 19, by inserting a Sec. 19a to read:

Sec. 19a. 30 V.S.A. § 11 is amended to read:

§ 11. PLEADINGS; RULES OF PRACTICE; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Board shall be prescribed by it. The Board shall adopt rules which include, among other things, provisions that:

(1) A utility whose rates are suspended under the provisions of section 226 of this title shall, within 30 days from the date of the suspension order, file with the Board all exhibits it intends to use in the hearing thereon together with the names of witnesses it intends to produce in its direct case and a short statement of the purposes of the testimony of each witness. Except in the discretion of the Board, a utility shall not be permitted to introduce into evidence in its direct case exhibits which are not filed in accordance with this rule.

(2) A prehearing conference shall be ordered in every contested rate case. At such conference it may require the ~~state~~ State or any person opposing such rate increase to specify what items shown by the filed exhibits are conceded. Further proof of conceded items shall not be required.

(3) The Board shall have discretion to determine who may appear before the Board on behalf of any party to a proceeding in addition to those lawyers licensed in the State of Vermont to do so. The Board shall not exercise this discretion unreasonably or in a discriminatory manner. A grant of permission to represent a party under this subdivision shall not relieve a party or its representative from any obligation under the Board's rules or the Board's orders in the proceeding. This representation shall not be considered the unauthorized practice of law.

(b) The Board shall hear all matters within its jurisdiction, and make its findings of fact. It shall state its rulings of law when they are excepted to. Upon appeal to the Supreme Court, its findings of fact shall be accepted unless clearly erroneous.

Amendment to S. 230 to be offered by Senators Sirotkin, Ashe, Ayer, Bray, Lyons, MacDonald, and Westman before Third Reading

Senators Sirotkin, Ashe, Ayer, Bray, Lyons, MacDonald, and Westman move to amend the bill by striking out Secs. 18 and 19 in their entirety and inserting in lieu thereof three new sections to be Secs. 18, 18a, and 19 to read:

Sec. 18. 30 V.S.A. § 3 is amended to read:

§ 3. PUBLIC SERVICE BOARD

(a) The ~~public service board~~ Public Service Board shall consist of a ~~chairperson~~ chair and two members. The ~~chairperson~~ Chair and each member shall not be required to be admitted to the practice of law in this ~~state~~ State.

* * *

(g) The ~~chairperson~~ Chair shall have general charge of the offices and employees of the ~~board~~ Board.

(h) The Board shall employ a Public Assistance Officer (PAO) in accordance with this subsection.

(1) The PAO shall facilitate citizen participation in and provide guidance to and answer questions from parties and members of the public on all matters under this title concerning the siting and construction of facilities in the State that generate or transmit electricity, constitute a meteorological station as defined in section 246 of this title, or constitute a natural gas facility as defined in subdivision 248(a)(3) of this title. As used in this section:

(A) “Contested case” has the same meaning as in 3 V.S.A. § 801.

(B) “Matter” means any proceeding before or by the Board, including an application for a certificate of public good, a petition for condemnation, rulemaking, and the issuance of guidance or procedures.

(2) Guidance and information to be provided by the PAO shall include the following:

(A) An explanation of the proceeding, including its purpose; its type, such as rulemaking or contested case; and the restrictions or lack of restrictions applicable to the type of proceeding, such as whether ex parte communications are prohibited.

(B) Answers to procedural questions and direction to the statutes and rules applicable to the proceeding.

(C) How to participate in the proceeding including, if necessary for participation, how to file to a motion to intervene and how to submit prefiled testimony. The Board shall create forms and templates for motions to intervene, prefiled testimony, and other types of documents commonly filed with the Board, which the PAO shall provide to a person on request. The Board shall post these forms and templates on the Board’s website.

(D) The responsibilities of intervenors and other parties.

(E) The status of the proceeding. Examples of a proceeding’s status include: a petition has been filed; the proceeding awaits scheduling a prehearing conference or hearing; parties are conducting discovery or submitting prefiled testimony; hearings are concluded and parties are preparing briefs; and the proceeding is under submission to the Board and awaits a decision. For each proceeding in which the next action constitutes the issuance of an order, decision, or proposal for decision by the Board or a hearing officer, the Chair or assigned hearing officer shall provide the PAO with an expected date of issuance and the PAO shall provide this expected date to requesting parties or members of the public.

(3) With respect to citizens representing themselves in proceedings within the scope of subdivision (1) of this subsection, the PAO shall:

(A) Provide neutral advice and assistance on process and procedures.

(B) Be available for in-person meetings.

(C) Assist them in obtaining access to and use of all files, records, and data of the Board and the Department of Public Service that would be available to an attorney representing a party in the proceeding. The PAO shall have the right to such access and use.

(4) The PAO shall conduct educational programs and produce educational materials to facilitate citizen participation in proceedings within the scope of subdivision (1) of this subsection.

(5) For each proceeding within the scope of subdivision (1) of this subsection, the Board shall post, on its website, electronic copies of all filings and submissions to the Board and all orders of the Board.

(6) The Board shall adopt rules or procedures to ensure that the communications of the PAO with the Board's members and other employees concerning contested cases do not contravene the requirements of the Administrative Procedure Act applicable to such cases.

(7) The PAO shall have a duty to provide requesting parties and members of the public with information that is accurate to the best of the PAO's ability. The Board and its other employees shall have a duty to transmit accurate information to the PAO. However, the Board and any assigned hearing officer shall not be bound by statements of the PAO.

(8) The PAO shall not be an advocate for any person before the Board and shall not have a duty to assist a person in the actual formation of the person's substantive position or arguments before the Board or the actions necessary to advance the person's position or arguments such as the actual preparation of motions, memoranda, or prefiled testimony.

(9) The Board may assign secondary duties to the PAO that do not conflict with the PAO's execution of his or her duties under this subsection.

Sec. 18a. PUBLIC ASSISTANCE OFFICER; REPORT

On or before January 1, 2018, the Public Assistance Officer (PAO) shall submit a written report to the House and Senate Committees on Natural Resources and Energy and the Senate Committee on Finance detailing the implementation of Sec. 18 of this act, including the number of persons assisted and the types of assistance rendered, the PAO's evaluation of the impact of this implementation on the ability of the persons assisted to participate effectively in Board proceedings, and the PAO's recommendations for future action to improve the ease of citizen participation in Board proceedings.

Sec. 19. POSITION; APPROPRIATION

The following classified position is created in the Public Service Board— one limited service, full-time Public Assistance Officer—for the purpose of Sec. 18 of this act. The position shall exist for two years following the date on which the Officer commences employment or until July 1, 2018, whichever is later. There is appropriated to the Public Service Board for fiscal year 2017

from the special fund described in 30 V.S.A. § 22 the amount of \$100,000.00 for the purpose of this position.

S. 243.

An act relating to combating opioid abuse in Vermont.

S.R. 9.

Senate resolution relating to the proposed Trans-Pacific Partnership Agreement.

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 531.

An act relating to aboveground storage tanks.

Reported favorably with recommendation of proposal of amendment by Senator MacDonald for the Committee on Natural Resources & Energy.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 1929a (c)(4), after the semicolon by striking out the word “and” and in subdivision (5), by striking out the period at the end of the subdivision and inserting in lieu thereof the following: ; and and by adding a new subdivision (6) to read as follows:

(6) requirements for the reuse of an aboveground storage tank removed under the requirement of subsection (g) of this section.

Second: In Sec. 1, 10 V.S.A. § 1929a, by striking out subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

(g) If the owner of any aboveground storage tank that serves a structure converts the type of fuel used for the structure from fuel oil or kerosene to natural gas so that the structure is no longer served for any purpose by the aboveground storage tank, the owner shall have the aboveground storage tank used to store fuel oil or kerosene and any fill pipes removed at the same time as the conversion. As used in this subsection, “structure” means any assembly of materials that is intended for occupancy or use by a person and that has at least three walls and a roof.

(Committee vote: 4-0-0)

(For House amendments, see House Journal for March 16, 2016, page 424 and March 17, 2016, page 486)

CONCURRENT RESOLUTIONS FOR NOTICE

S.C.R. 41 (For text of Resolution, see Addendum to Senate Calendar for March 31, 2016)

H.C.R. 302-315 (For text of Resolutions, see Addendum to House Calendar for March 31, 2016)

PUBLIC HEARINGS

SENATE APPROPRIATIONS COMMITTEE

H.875 (FY 2017 Budget)

ADVOCATES TESTIMONY

On **Tuesday, April 5, 2016** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2017 Budget (H.875) in Room 10 of the State House. To schedule time before the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street; phone: 828-5969 or via email at: rbuck@leg.state.vt.us

FOR INFORMATION ONLY

CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 11, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 18, 2016**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).