

Senate Calendar

THURSDAY, JUNE 09, 2016

SENATE CONVENES AT: 10:00 A.M.

VETO SESSION

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ORDERS OF THE DAY

NOTICE CALENDAR

S. 230.

An act relating to improving the siting of energy projects.

Pending question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

(Rules suspension necessary in order to take up the vetoed bill.)

Text of Governor's Veto Message

The Governor has informed the Senate that on the sixth day of June, 2016, he returned a bill originating in the Senate of the following title without his signature and veto:

S. 230. An act relating to improving the siting of energy projects.

The Governor provided the following explanation:

"I have carefully reviewed S. 230, which is a bill designed to give communities more say as we plan for our renewable energy future together. The core of this bill is something I strongly support and desire to see move forward. S. 230 was finalized very late in the legislative session, and unintended changes were made at the last minute. After consulting with legal experts at the Public Service Department and the Public Service Board, I have determined that in a few critical instances the language in the bill does not match what I understand to be the intent of the Legislature.

"There are four issues with the bill that need to be fixed. First, in seeking temporary rules for new wind sound standards the bill unintentionally invokes a provision in 3 V.S.A. § 844(a) that would make Vermont the first state in the country to declare a public health emergency around wind energy, without peer-reviewed science backing that assertion up. Second, in setting a ceiling for new temporary wind sound standards, the bill unintentionally relies on a standard used in a small 150 kilowatt project as the standard for all wind, large and small, going forward. That standard, a complex and variable formula that would require no sound higher than 10 decibels above ambient background, could have the clearly unintended effect of pushing wind projects closer to homes where the background noise is higher. In addition to these two problems, a third concern is a provision in the bill requiring notice of certificates of public good to be filed with land records, which could create problems for residential solar customers when they go to sell their

home. Finally, \$300,000 in planning funds for communities was unintentionally left out of the bill.

“I believe that taken together, the emergency declaration and the restrictive sound standards will make it impossible to continue to sensibly site renewable wind power in Vermont.

“Through the policies passed by this Legislature, we have made great progress on building renewable energy. We have created 17,700 clean energy jobs which represents 6 percent of the Vermont workforce and makes us the highest per capita on clean energy jobs in the nation.

“Signing S. 230 as drafted would take us backwards and take an important renewable energy technology off the table. I cannot support that action, and therefore I am vetoing S. 230. I believe, however, the limited number of issues identified in the bill can and should be remedied by the Legislature during a veto session scheduled for June 9. My Administration will do whatever we can to assist the Legislature to make the fixes necessary to produce a bill that I can sign.”

June 6, 2016

SA/jd

Text of Bill As Passed by Senate and House

The text of the bill as passed by the Senate and House of Representatives is as follows:

S. 230. An act relating to improving the siting of energy projects.

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

* * * Designation * * *

Sec. 1. DESIGNATION OF ACT

This act shall be referred to as the Energy Development Improvement Act.

* * * Integration of Energy and Land Use Planning * * *

Sec. 2. 24 V.S.A. § 4302(c)(7) is amended to read:

(7) To ~~encourage the~~ make efficient use of energy and, provide for the development of renewable energy resources, and reduce emissions of greenhouse gases.

(A) General strategies for achieving these goals include increasing the energy efficiency of new and existing buildings; identifying areas suitable for renewable energy generation; encouraging the use and development of renewable or lower emission energy sources for electricity, heat, and

transportation; and reducing transportation energy demand and single occupancy vehicle use.

(B) Specific strategies and recommendations for achieving these goals are identified in the State energy plans prepared under 30 V.S.A. §§ 202 and 202b.

Sec. 3. 24 V.S.A. § 4345 is amended to read:

§ 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING COMMISSIONS

Any regional planning commission created under this chapter may:

* * *

(6) Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, ~~the conservation of energy and the development of renewable energy resources,~~ State capital investment plans, and wetland protection.

* * *

Sec. 4. 24 V.S.A. § 4345a is amended to read:

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

* * *

(14) With respect to proceedings under 30 V.S.A. § 248:

(A) have the right to appear and participate; and

(B) ~~Appear~~ appear before the Public Service Board to aid ~~the Board~~ in making determinations under ~~30 V.S.A. § 248~~ that statute when requested by the Board.

* * *

(19) Undertake studies and make recommendations on the conservation of energy and the development of renewable energy resources.

Sec. 5. 24 V.S.A. § 4348a(a)(3) is amended to read:

(3) An energy element, which may include an analysis of ~~energy~~ resources, needs, scarcities, costs, and problems within the region, across all energy sectors, including electric, thermal, and transportation; a statement of policy on the conservation and efficient use of energy and the development and

siting of renewable energy resources, and; a statement of policy on patterns and densities of land use and control devices likely to result in conservation of energy; and an identification of potential areas for the development and siting of renewable energy resources and areas that are unsuitable for siting those resources or particular categories or sizes of those resources.

Sec. 6. 24 V.S.A. § 4352 is added to read:

§ 4352. OPTIONAL DETERMINATION OF ENERGY COMPLIANCE;
ENHANCED ENERGY PLANNING

(a) Regional plan. A regional planning commission may submit its adopted regional plan to the Commissioner of Public Service appointed under 30 V.S.A. § 1 for a determination of energy compliance. The Commissioner shall issue an affirmative determination on finding that the regional plan meets the requirements of subsection (c) of this section and allows for the siting in the region of all types of renewable generation technologies.

(b) Municipal plan. If the Commissioner of Public Service has issued an affirmative determination of energy compliance for a regional plan that is in effect, a municipal legislative body within the region may submit its adopted municipal plan to the regional planning commission for issuance of a determination of energy compliance. The regional planning commission shall issue an affirmative determination, signed by the chair of the regional planning commission, on finding that the municipal plan meets the requirements of subsection (c) of this section and is consistent with the regional plan.

(c) Enhanced energy planning; requirements. To obtain an affirmative determination of energy compliance under this section, a plan must:

(1) in the case of a regional plan, include the energy element as described in subdivision 4348a(a)(3) of this title;

(2) in the case of a municipal plan, include an energy element that has the same components as described in subdivision 4348a(a)(3) of this title for a regional plan and be confirmed under section 4350 of this title;

(3) be consistent with the following, with consistency determined in the manner described under subdivision 4302(f)(1) of this title:

(A) Vermont's greenhouse gas reduction goals under 10 V.S.A. § 578(a);

(B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A. § 580;

(C) Vermont's building efficiency goals under 10 V.S.A. § 581;

(D) State energy policy under 30 V.S.A. § 202a and the recommendations for regional and municipal energy planning pertaining to the efficient use of energy and the siting and development of renewable energy resources contained in the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202b (State energy plans); and

(E) the distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard under 30 V.S.A. §§ 8004 and 8005; and

(4) meet the standards for issuing a determination of energy compliance included in the State energy plans.

(d) State energy plans; recommendations; standards.

(1) The State energy plans shall include the recommendations for regional and municipal energy planning and the standards for issuing a determination of energy compliance described in subdivision (c)(3) of this section.

(2) The recommendations shall provide strategies and options for regional planning commissions and municipalities to employ in meeting the goals and policies contained in statutes listed in subdivision (c)(3) of this section.

(3) The standards shall consist of a list of criteria for issuing a determination of energy compliance that ensure consistency with the goals and policies contained in the statutes listed in subdivision (c)(3) of this section and the recommendations developed pursuant to this subsection.

(4) In developing standards and recommendations under this subsection, the Commissioner of Public Service shall consult with all persons identified under 30 V.S.A. § 202(d)(1); the Secretaries of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation; and other affected persons.

(5) The Commissioner of Public Service shall provide the Commissioner of Housing and Community Development with a copy of the recommendations and standards developed under this subsection for inclusion in the planning and land use manual prepared pursuant to section 4304 of this title.

(e) Process for issuing determinations of energy compliance. Review of whether to issue a determination of energy compliance under this section shall include a public hearing noticed at least 15 days in advance by direct mail to the requesting regional planning commission or municipal legislative body, posting on the website of the entity from which the determination is requested,

and publication in a newspaper of general publication in the region or municipality affected. The Commissioner or regional planning commission shall issue the determination in writing within two months of the receipt of a request for a determination. If the determination is negative, the Commissioner or regional planning commission shall state the reasons for denial in writing and, if appropriate, suggest acceptable modifications. Submissions for a new determination that follow a negative determination shall receive a new determination within 45 days.

(f) Appeal. A regional planning commission aggrieved by an act or decision of the Commissioner of Public Service under this section may appeal to the Natural Resources Board established under 10 V.S.A. chapter 151 within 30 days of the act or decision. The provisions of 10 V.S.A. § 6024 regarding assistance to the Board from other departments and agencies of the State shall apply to this subsection. The Board 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 Board shall issue a final decision within 90 days of the filing of the appeal.

(g) Municipality; determination from DPS; time-limited option. Until July 1, 2018, a municipality whose plan has been confirmed under section 4350 of this title may seek issuance of a determination of energy compliance from the Commissioner of Public Service if it is a member of a regional planning commission whose regional plan has not received such a determination.

(1) The Commissioner shall issue an affirmative determination of energy compliance for the municipal plan on finding that the plan meets the requirements of subsection (c) of this section. The Commissioner's review of the municipal plan shall be for the purpose only of determining whether a determination of energy compliance should be issued because those requirements are met.

(2) A municipality aggrieved by an act or decision of the Commissioner under this subsection may appeal in accordance with the procedures of subsection (f) of this section.

(h) Determination; time period. An affirmative determination of energy compliance issued pursuant to this section shall remain in effect until the end of the period for expiration or readoption of the plan to which it applies.

(i) Commissioner; consultation. In the discharge of the duties assigned under this section, the Commissioner shall consult with and solicit the recommendations of the Secretaries of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation.

Sec. 7. 30 V.S.A. § 202 is amended to read:

§ 202. ELECTRICAL ENERGY PLANNING

* * *

(b) The Department, through the Director, shall prepare an electrical energy plan for the State. The Plan shall be for a 20-year period and shall serve as a basis for State electrical energy policy. The Electric Energy Plan shall be based on the principles of “least cost integrated planning” set out in and developed under section 218c of this title. The Plan shall include at a minimum:

* * *

(4) a detailed exposition, including capital requirements and the estimated cost to consumers, of how such demand shall be met based on the assumptions made in subdivision (1) of this subsection and the policies set out in subsection (c) of this section; ~~and~~

(5) specific strategies for reducing electric rates to the greatest extent possible in Vermont over the most immediate six-year period, for the next succeeding six-year period, and long-term sustainable strategies for achieving and maintaining the lowest possible electric rates over the full 20-year planning horizon consistent with the goal of maintaining a financially stable electric utility industry in Vermont; and

(6) recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance pursuant to 24 V.S.A. § 4352.

(c) In developing the Plan, the Department shall take into account the protection of public health and safety; preservation of environmental quality; the relevant goals of 24 V.S.A. § 4302; the potential for reduction of rates paid by all retail electricity customers; the potential for reduction of electrical demand through conservation, including alternative utility rate structures; use of load management technologies; efficiency of electrical usage; utilization of waste heat from generation; and utility assistance to consumers in energy conservation.

(d) In establishing plans, the Director shall:

(1) Consult with:

(A) the public;

(B) Vermont municipal utilities and planning commissions;

(C) Vermont cooperative utilities;

- (D) Vermont investor-owned utilities;
- (E) Vermont electric transmission companies;
- (F) environmental and residential consumer advocacy groups active in electricity issues;
- (G) industrial customer representatives;
- (H) commercial customer representatives;
- (I) the Public Service Board;
- (J) an entity designated to meet the public's need for energy efficiency services under subdivision 218c(a)(2) of this title;
- (K) other interested State agencies; ~~and~~
- (L) other energy providers; and
- (M) the regional planning commissions.

* * *

(e) The Department shall conduct public hearings on the final draft and shall consider the evidence presented at such hearings in preparing the final Plan. The Plan shall be adopted no later than January 1, 2016 and readopted in accordance with this section by every sixth January ~~+~~ 15 thereafter, and shall be submitted to the General Assembly each time the plan is adopted or readopted. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to the submission to be made under this subsection.

* * *

(h) The Plans adopted under this section shall become the electrical energy portion of the State Energy Plan.

* * *

(j) For the purpose of assisting in the development of municipal and regional plans under 24 V.S.A. chapter 117, the Director shall, on request, provide municipal and regional planning commissions with publicly available information detailing the location of electric transmission and distribution infrastructure in the relevant municipality or region and the capacity of that infrastructure to accept additional electric generation facilities without modification. In providing this information, the Director shall be entitled to the assistance of the electric utilities that own electric transmission or distribution systems, or both, located in Vermont, including the ability to obtain from those utilities such publicly available data as the Director considers necessary to discharge his or her duties under this subsection.

Sec. 8. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

(a) The Department of Public Service, in conjunction with other State agencies designated by the Governor, shall prepare a State Comprehensive Energy Plan covering at least a 20-year period. The Plan shall seek to implement the State energy policy set forth in section 202a of this title and shall be consistent with the relevant goals of 24 V.S.A. § 4302. The Plan shall include:

(1) a comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont; ~~and~~

(2) recommendations for State implementation actions, regulation, legislation, and other public and private action to carry out the comprehensive energy plan; and

(3) recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance pursuant to 24 V.S.A. § 4352.

* * *

(c) The Department shall adopt a State Energy Plan on or before January 1, 2016 and shall readopt the Plan by every sixth January ~~+~~ 15 thereafter. On adoption or readoption, the Plan shall be submitted to the General Assembly. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to such submission.

* * *

Sec. 9. INITIAL IMPLEMENTATION; RECOMMENDATIONS;
STANDARDS

(a) On or before November 1, 2016, the Department of Public Service shall publish recommendations and standards in accordance with 24 V.S.A. § 4352 as enacted by Sec. 6 of this act. Prior to issuing these recommendations and standards, the Department shall perform each of the following:

(1) Consult with all persons identified under 30 V.S.A. § 202(d)(1); the Secretaries of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation; and other affected persons.

(2) Post on its website a draft set of initial recommendations and standards.

(3) Provide notice and an opportunity to comment and request a public hearing to all persons listed in 30 V.S.A. § 202(d)(1). The Commissioner may elect to hold one or more public hearings on the Commissioner's own initiative.

(b) In addition to the requirements of Sec. 6 of this act, the standards developed under this section shall address the following elements in a manner consistent with the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202b:

(1) analysis of total current energy use across transportation, heating, and electric sectors;

(2) identification and mapping of existing electric generation and renewable resources;

(3) establishment of 2025, 2035, and 2050 targets for energy conservation, efficiency, fuel-switching, and use of renewable energy for transportation, heating, and electricity;

(4) analysis of amount of thermal-sector conservation, efficiency, and conversion to alternative heating fuels needed to achieve these targets;

(5) analysis of transportation system changes and land use strategies needed to achieve these targets;

(6) analysis of electric-sector conservation and efficiency needed to achieve these targets;

(7) pathways and recommended actions to achieve these targets, informed by this analysis;

(8) identification of potential areas for the development and siting of renewable energy resources and of the potential electric generation from such resources in the identified areas, taking into account factors including resource availability, environmental constraints, and the location and capacity of electric grid infrastructure; and

(9) identification of areas, if any, that are unsuitable for siting those resources or particular categories or sizes of those resources.

(c) On publication under subsection (a) of this section, the specific recommendations and standards shall be considered an appendix to the currently adopted plans under 30 V.S.A. §§ 202 and 202b. After this publication, the Department may revise these recommendations and standards in accordance with the procedures for adopting and revising plans under those statutes.

Sec. 10. TRAINING

Following publication of the recommendations and standards under Sec. 9(a) of this act, the Department of Public Service shall collaborate with the Vermont League of Cities and Towns and the Vermont Association of Planning and Development Agencies on the development and presentation of training sessions for municipal and regional planning commissions to assist them in the development of municipal and regional plans that are eligible to receive a determination of energy compliance under Sec. 6 of this act, 24 V.S.A. § 4352, with at least one such session to be held in the area of each regional planning commission after notice of the session to the regional planning commission and its member municipalities.

* * * Siting Process; Criteria; Conditions * * *

Sec. 11. 30 V.S.A. § 248 is amended to read:

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

(a)(1) No company, as defined in section 201 of this title, may:

* * *

(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.

* * *

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

* * *

(C) At the time of filing its application with the Board, copies shall be given by the petitioner to the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health, Agency of Natural Resources, Historic Preservation Division, Agency of Transportation, Agency of Agriculture, Food and Markets, and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

* * *

(E) The Agency of Natural Resources shall appear as a party in any proceedings held under this subsection, shall provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section, and may provide evidence and recommendations concerning any other matters to be determined by the Board in such a proceeding.

(F) The following shall apply to the participation of the Agency of Agriculture, Food and Markets in proceedings held under this subsection:

(i) In any proceeding regarding an electric generation facility that will have a capacity greater than 500 kilowatts and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001, the Agency shall appear as a party and provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section on those soils, and may provide evidence and recommendations concerning any other matters to be determined by the Board in such a proceeding.

(ii) In a proceeding other than one described in subdivision (i) of this subsection (4)(F), the Agency shall have the right to appear and participate.

(G) The regional planning commission for the region in which the facility is located shall have the right to appear as a party in any proceedings held under this subsection. The regional planning commission of an adjacent region shall have the same right if the distance of the facility's nearest component to the boundary of that planning commission is 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(H) The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection. The legislative body and planning commission of an adjacent municipality shall have the same right if the distance of the facility's nearest component to the boundary of that

adjacent municipality is 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(I) When a person has the right to appear as a party in a proceeding before the Board under this chapter, the person may exercise this right by filing a letter with the Board stating that the person appears through the person's duly authorized representative, signed by that representative.

(J) This subdivision (J) applies to an application for an electric generation facility with a capacity that is greater than 50 kilowatts, unless the facility is located on a new or existing structure the primary purpose of which is not the generation of electricity. In addition to any other information required by the Board, the application for such a facility shall include information that delineates:

(i) the full limits of physical disturbance due to the construction and operation of the facility and related infrastructure, including areas disturbed due to the creation or modification of access roads and utility lines and the clearing or management of vegetation;

(ii) the presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the facility, the amount of those soils to be disturbed, and any other proposed impacts to those soils;

(iii) all visible infrastructure associated with the facility; and

(iv) all impacts of the facility's construction and operation under subdivision (b)(5) of this section, including impacts due to the creation or modification of access roads and utility lines and the clearing or management of vegetation.

(5) The Board shall adopt rules regarding standard conditions on postconstruction inspection and maintenance of aesthetic mitigation and on decommissioning to be included in certificates of public good for in-state facilities approved under this section. The purpose of these standard conditions shall be to ensure that all required aesthetic mitigation is performed and maintained and that facilities are removed once they are no longer in service.

(6) In any certificate of public good issued under this section for an in-state plant as defined in section 8002 of this title that generates electricity from wind, the Board shall require the plant to install radar-controlled obstruction lights on all wind turbines for which the Federal Aviation Administration (FAA) requires obstruction lights, if the plant includes four or more wind turbines and the FAA allows the use of radar-controlled lighting technology.

(A) Nothing in this subdivision shall allow the Board to approve obstruction lights that do not meet FAA standards.

(B) The purpose of this subdivision is to reduce the visual impact of wind turbine obstruction lights on the environment and nearby properties. The General Assembly finds that wind turbine obstruction lights that remain illuminated through the night create light pollution. Radar-controlled obstruction lights are only illuminated when aircraft are detected in the area, and therefore the use of these lights will reduce the negative environmental impacts of obstruction lights.

(7) When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation facility, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Board, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Board. The recording under this subsection shall be indexed as though the certificate holder were the grantor of a deed. The prescribed form shall not exceed one page and shall require identification of the land on which the facility is to be located by reference to the conveyance to the current landowner, the number of the certificate, and the name of each person to which the certificate was issued, and shall include information on how to contact the Board to view the certificate and supporting documents.

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

(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However:

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

(B) ~~with~~ With respect to a ground-mounted solar electric generation facility, the facility shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Board finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

(C) With respect to an in-state electric generation facility, the Board shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. In this subdivision (C), "substantial deference" means that a land conservation measure or specific policy shall be applied 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. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative under 24 V.S.A. § 4352.

* * *

(5) With respect to an in-state facility, will not have an undue adverse effect on ~~esthetics~~ aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.

* * *

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement.

(1) Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions shall make recommendations, if any, to the Public Service Board and to the petitioner at least seven days prior to filing of the petition with the Public Service Board.

(2) The petitioner's application shall address the substantive written comments related to the criteria of subsection (b) of this section received by the petitioner within 45 days of the submittal made under this subsection and

the substantive oral comments related to those criteria made at a public hearing under subdivision (1) of this subsection.

* * *

(t) Notwithstanding any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric generation facility approved under this section shall remain classified as such soils, and the review of any change in use of the site subsequent to the construction of the facility shall treat the soils as if the facility had never been constructed. Each certificate of public good issued by the Board for a ground-mounted solar generation facility shall state the contents of this subsection.

Sec. 11a. RULES; PETITION

(a) On or before November 1, 2016, the Department of Public Service shall file a petition for rulemaking with the Public Service Board containing proposed rules to implement 30 V.S.A. § 248(a)(5) (postconstruction inspection of aesthetic mitigation; decommissioning) as enacted by Sec. 11 of this act.

(b) On or before December 15, 2016, the Public Service Board shall file proposed rules to implement 30 V.S.A. § 248(a)(5) with the Secretary of State under 3 V.S.A. § 838. The Board shall finally adopt such rules on or before August 15, 2017, unless such deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

* * * Sound Standards; Wind Generation Facilities * * *

Sec. 12. SOUND STANDARDS; WIND GENERATION

(a) On or before July 1, 2017, the Public Service Board (the Board) shall finally adopt rules under 3 V.S.A. chapter 25 regarding sound from wind generation facilities approved under 30 V.S.A. § 248, unless such deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c). In developing these rules, the Board shall consider:

(1) standards that apply to all wind generation facilities;

(2) a methodology for determining sound levels and measurement locations for each such facility on a case-by-case basis; or

(3) standards that apply to one or more categories of wind generation facilities, with a methodology for determining sound levels and measurement locations for other such facilities on a case-by-case basis.

(b) On or before 45 days after the effective date of this section, the Board shall adopt temporary rules on sound levels from wind generation facilities

using the process under 3 V.S.A. § 844. The rules shall be effective on adoption and shall apply to applications for such facilities under 30 V.S.A. § 248 filed on or after the effective date of this section. Until the Board adopts temporary rules pursuant to this subsection (b), the Board shall not issue a certificate of public good for a wind generation facility for which an application is filed on or after the effective date of this section.

(1) Rules issued pursuant to this subsection (b) shall be deemed to meet the standard under 3 V.S.A. § 844(a).

(2) With respect to sound levels from wind generation facilities, these rules shall state:

(A) standards that apply to all such facilities;

(B) a methodology for determining sound levels and measurement locations for each such facility on a case-by-case basis; or

(C) standards that apply to one or more categories of such facilities, with a methodology for determining sound levels and measurement locations for other such facilities on a case-by-case basis.

(3) These rules shall not allow sound levels that exceed the lowest maximum decibel levels authorized in any certificate of public good that contains limits on decibel levels issued by the Board for a wind generation facility before the effective date of this section.

(4) Notwithstanding 3 V.S.A. § 844(b), rules adopted pursuant to this subsection (b) shall remain in effect until the earlier of the following:

(A) the effective date of permanent rules finally adopted under subsection (a) of this section; or

(B) the July 1, 2017 deadline stated in subsection (a), as it may be extended pursuant to that subsection.

* * * Preferred Location Pilot; Standard Offer * * *

Sec. 12a. 30 V.S.A. § 8005a is amended to read:

§ 8005a. STANDARD OFFER PROGRAM

* * *

(c) Cumulative capacity. In accordance with this subsection, the Board shall issue standard offers to new standard offer plants until a cumulative plant capacity amount of 127.5 MW is reached.

(1) Pace. Annually commencing April 1, 2013, the Board shall increase the cumulative plant capacity of the standard offer program (the annual

increase) until the 127.5-MW cumulative plant capacity of this subsection is reached.

* * *

(D) Pilot project; preferred locations. For one year commencing on January 1, 2017, the Board shall allocate one-sixth of the annual increase to new standard offer plants that will be wholly located in one or more preferred locations other than parking lots or parking lot canopies and, separately, one-sixth of the annual increase of the annual increase to new standard offer plants that will be wholly located over parking lots or on parking lot canopies.

(i) To qualify for these allocations, the plant shall not require the construction of a new substation by the interconnecting retail electricity provider or by increasing the capacity of one or more of the provider's existing facilities. To qualify for the allocation to plants wholly located over parking lots or on parking lot canopies, the location shall remain in use as a parking lot.

(ii) These allocations shall apply proportionally to the independent developer block and provider block.

(iii) If an allocation under this pilot project is not fully subscribed, the Board in 2017 shall allocate the unsubscribed capacity to new standard offer plants outside the pilot project.

(iv) As used in this subdivision (D), "preferred location" means a site within the State on which a renewable energy plant will be located that is one of the following:

(I) A new or existing structure whose primary use is not the generation of electricity or providing support for the placement of equipment that generates electricity.

(II) A parking lot canopy over a paved parking lot, provided that the location remains in use as a parking lot.

(III) A tract previously developed for a use other than siting a plant on which a structure or impervious surface was lawfully in existence and use prior to July 1 of the year preceding the year in which an application for a certificate of public good under section 248 of this title for the plant is filed or in which the plant seeks an award of a contract under the standard offer program under this section, whichever is earlier. To qualify under this subdivision (III), the limits of disturbance of a proposed renewable energy plant must include either the existing structure or impervious surface and shall not include any headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forestlands, and primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

(IV) Land certified by the Secretary of Natural Resources to be a brownfield site as defined under 10 V.S.A. § 6642.

(V) A sanitary landfill as defined in 10 V.S.A. § 6602, provided that the Secretary of Natural Resources certifies that the land constitutes such a landfill and is suitable for the development of the plant.

(VI) The disturbed portion of a gravel pit, quarry, or similar site for the extraction of a mineral resource, provided that all activities pertaining to site reclamation required by applicable law or permit condition are satisfied prior to the installation of the plant.

(VII) A specific location designated in a duly adopted municipal plan under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or specific type or size of renewable energy plant, provided that the plant meets any siting criteria recommended in the plan for the location.

(VIII) 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:

(aa) The site is listed on the NPL.

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

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

(IX) 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.

* * *

(f) Price. The categories of renewable energy for which the Board shall set standard offer prices shall include at least each of the categories established pursuant to subdivision (c)(2) of this section. The Board by order shall determine and set the price paid to a plant owner for each kWh generated under a standard offer required by this section, with a goal of ensuring timely development at the lowest feasible cost. The Board shall not be required to make this determination as a contested case under 3 V.S.A. chapter 25.

* * *

(5) Price; preferred location pilots. For the period during which the Board allocates capacity to new standard offer plants that will be wholly located in one or more preferred locations as set forth in subdivision (c)(1)(D) of this section, the following shall apply to the price paid to such a plant:

(A) If the Board uses a market-based mechanism under subdivision (1) of this subsection (f) to determine this price for one or both of the two allocations of capacity, the Board shall compare only the proposals of plants that qualify for the allocation.

(B) If the Board uses avoided costs under subdivision (2) of this subsection (f) to determine this price for one or both of the two allocations of capacity, the Board shall apply the definition of “avoided costs” as set forth in subdivision (2)(B) of this subsection with the modification that the avoided energy or capacity shall be from distributed renewable generation that is sited on a location that qualifies for the allocation.

(C) With respect to the allocation to the new standard offer plants that will be wholly located over parking lots or on parking lot canopies, if the Board receives only one application or multiple applications for plants owned or controlled by the same person as defined in 10 V.S.A. § 6001, the Board shall investigate each application and shall have discretion to reduce the price to be consistent with the standard offer price for plants outside the pilot project using the same generation technology.

* * *

Sec. 12b. STANDARD OFFER PILOT; REPORT

On or before January 15, 2018, the Public Service Board shall file a report with the House Committee on Commerce and Economic Development, the Senate Committee on Finance, and the House and Senate Committees on Natural Resources and Energy on the standard offer pilot project on preferred locations authorized in Sec. 12a of this act. This report shall itemize the size, type of preferred location, generation technology, and cost per kilowatt hour of each application received under the pilot project and shall identify each generation facility approved under the pilot and the price awarded to each such facility.

* * * Net Metering * * *

Sec. 13. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

* * *

(c) In accordance with this section, the Board shall adopt and implement rules that govern the installation and operation of net metering systems.

* * *

(3) The rules shall establish standards and procedures governing application for and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. In establishing these standards and procedures, ~~the rules~~:

(A) The rules may waive the requirements of section 248 of this title that are not applicable to net metering systems, including criteria that are generally applicable to public service companies as defined in this title;

(B) The rules may modify notice and hearing requirements of this title as the Board considers appropriate;

(C) The rules shall seek to simplify the application and review process as appropriate; ~~and, including simplifying the application and review process to encourage group net metering systems when the system is at least 50 percent owned by the customers who receive the bill credits for the electricity generated by the system.~~

(D) ~~with~~ With respect to net metering systems that exceed 150 kW in plant capacity, shall apply the so-called “Quechee” test for aesthetic impact as described by the Vermont Supreme Court in the case of *In re Halnon*, 174 Vt. 515 (2002) (mem.). The rules and application form shall state the components of this test.

(E) The rules shall not waive or include provisions that are less stringent than the requirements of subdivision 248(a)(4)(J) (required information) of this title.

(F) This subdivision (F) applies to an application for a net metering system with a capacity that is greater than 15 kilowatts, unless the system is located on a new or existing structure the primary purpose of which is not the generation of electricity. With respect to such a system, the rules shall not waive or include provisions that are less stringent than each of the following:

(i) the requirement of subdivision 248(a)(4)(C) of this title to provide a copy of the application to the Agencies of Agriculture, Food and Markets and of Natural Resources; the Department of Public Service; the Division for Historic Preservation; the municipal legislative body; and the municipal and regional planning commissions; and

(ii) the requirements of subsection 248(f) (preapplication submittal) of this title.

* * *

(e) If a hydroelectric generation plant seeking approval as a net metering system is subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1, the Board shall require the plant to obtain such approval through means other than by application for a certificate of public good under section 248 of this title.

* * * Municipal Electric Utilities; Hydro Facilities;
Renewable Energy Standard * * *

Sec. 14. 30 V.S.A. § 8005(a)(1) is amended to read:

(1) Total renewable energy.

(A) Purpose; establishment. To encourage the economic and environmental benefits of renewable energy, this subdivision establishes, for the RES, minimum total amounts of renewable energy within the supply portfolio of each retail electricity provider. To satisfy this requirement, a provider may use renewable energy with environmental attributes attached or any class of tradeable renewable energy credits generated by any renewable energy plant whose energy is capable of delivery in New England.

(B) Required amounts. The amounts of total renewable energy required by this subsection shall be 55 percent of each retail electricity provider's annual retail electric sales during the year beginning on January 1, 2017, increasing by an additional four percent each third January 1 thereafter, until reaching 75 percent on and after January 1, 2032.

* * *

(D) Municipal providers; petition. On petition by a provider that is a municipal electric utility serving not more than 6,000 customers, the Board may reduce the provider's required amount under this subdivision (1) for a period of up to three years. The Board may approve one such period only for a municipal provider. The Board may reduce this required amount if it finds that:

(i) the terms or conditions of an environmental permit or certification necessitate a reduction in the electrical energy generated by an in-state hydroelectric facility that the provider owns and that this reduction will require the provider to purchase other renewable energy with environmental attributes attached or tradeable renewable energy credits in order to meet this required amount; and

(ii) this purchase will:

(I) cause the provider to increase significantly its retail rates; or
(II) materially impair the provider's ability to meet the public's need for energy services after safety concerns are addressed, in the manner set forth in subdivision 218c(a)(1)(least cost integrated planning) of this title;

* * * Access to Public Service Board Process * * *

Sec. 15. ACCESS TO PUBLIC SERVICE BOARD WORKING GROUP: REPORT

(a) Creation. There is created an Access to Public Service Board Working Group (the Working Group) to be composed of the following five members:

(1) One member of the Public Service Board (PSB), appointed by the Chair of the PSB.

(2) The Commissioner of Public Service or designee.

(3) A judicial officer of the State, appointed by the Chief Justice of the Supreme Court.

(4) A House member of the Joint Energy Committee established under 2 V.S.A. chapter 17, appointed by the Speaker of the House; and

(5) A Senate member of the Joint Energy Committee established under 2 V.S.A. chapter 17, appointed by the Committee on Committees.

(b) Powers and duties; term.

(1) The Working Group shall review the current processes for citizen participation in PSB proceedings and shall make recommendations to promote increased ease of citizen participation in those proceedings.

(2) On or before December 15, 2016, the Working Group shall submit its written recommendations to the House and Senate Committees on Natural Resources and Energy, the Senate Committee on Finance, and the Joint Energy Committee.

(3) The Working Group shall have the administrative, technical, and legal assistance of the staff of the PSB.

(4) The appointed member of the PSB shall call the first meeting of the Working Group to occur on or before July 1, 2016. At the first meeting, the Working Group shall elect a chair from among its members.

(5) The Working Group shall cease to exist on February 1, 2017.

* * * Regulated Energy Utility Expansion Funds * * *

Sec. 15a . 30 V.S.A. § 218d(d) is amended to read:

(d) Alternative regulation may include such changes or additions to, waivers of, or alternatives to, traditional rate-making procedures, standards, and mechanisms, including substantive changes to rate base-rate of return rate setting, as the ~~board~~ Board finds will promote the public good and will support the required findings in subsection (a) of this section. In addition, the Board shall not allow a company to set aside funds collected from ratepayers for the purpose of supporting a future expansion or upgrade of its transmission or distribution network except after notice and opportunity for hearing and only if all of the following apply:

(1) There is a cost estimate for the expansion or upgrade that the company demonstrates is consistent with the principles of least cost integrated planning as defined in section 218c of this title.

(2) The amount of such funds does not exceed 20 percent of the estimated cost of the expansion or upgrade.

(3) Interest earned on the funds is credited to the ratepayers.

(4) The funds are not disbursed to the company until after expansion or upgrade is in service.

(5) The funds are not used to defray any portion of the costs of expansion or upgrade in excess of the cost estimate described in subdivision (1) of this subsection.

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except that:

(1) This section and Secs. 9 (initial implementation; recommendations; standards), 11 (30 V.S.A. § 248), 11a (rules; petition), 12 (sound standards; wind generation) and 15 (Access to Public Service Board Working Group) shall take effect on passage. Sec. 6 (optional determination of energy compliance) shall apply on passage to the activities of the Department of Public Service under Sec. 9.

(2) Sec. 13 (net metering) shall take effect on January 2, 2017, and shall amend 30 V.S.A. § 8010 as amended by 2015 Acts and Resolves No. 56, Sec. 12. Notwithstanding any contrary provision of 1 V.S.A. § 214, Sec. 13 shall apply to the Public Service Board process under 2014 Acts and Resolves No. 99, Sec. 5.

For Information

In the event that the House overrides the Governor's veto and messages the bill to the Senate, upon suspension of the Senate Rules the bill may be taken up.

The question to be decided by call of the roll is: Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

(Rules suspension necessary in order to take up the vetoed bill.)

H. 518.

An act relating to the membership of the Clean Water Fund Board.

Text of Governor's Veto Message

The Governor has informed the House that on the twentieth day of May, 2016, he returned a bill originating in the House of the following title without his signature and veto:

H.518 An act relating to the membership of the Clean Water Fund Board.

The Governor provided the following explanation:

“I have reviewed **H. 518** and consulted with my Secretaries of Administration and Natural Resources. Both have raised concerns about this measure and its potential negative effects on our efforts to ensure clean water statewide. In enacting the most comprehensive clean water legislation in Vermont's history last year, we took an important step towards cleaning up Vermont's lakes and waterways, which have been neglected for too long.

“An important part of that is the Clean Water Board, which is responsible for taking public comment and steering funding to targeted projects that achieve the goals of the law. The makeup of that Board was a known and negotiated part of the overall bill that I signed. The Board was constituted to be an entity with the ability to act thoughtfully and expeditiously to move us towards cleaner water in Vermont. The Board has been in existence for less than a year, and I believe we should give it time to work before we contemplate making any changes. Therefore, I have decided to veto this bill.”

May 20, 2016

SA/jd

Text of Bill As Passed by Senate and House

The text of the bill as passed by the Senate and House of Representatives is as follows:

H. 518. An act relating to the membership of the Clean Water Fund Board.

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

Sec. 1. 10 V.S.A. § 1389 is amended to read:

§ 1389. CLEAN WATER FUND BOARD

(a) Creation. There is created a Clean Water Fund Board which shall recommend to the Secretary of Administration expenditures from the Clean Water Fund. The Clean Water Fund Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Fund Board shall be composed of:

(1) ~~the~~ The Secretary of Administration or designee;

(2) ~~the~~ The Secretary of Natural Resources or designee;

(3) ~~the~~ The Secretary of Agriculture, Food and Markets or designee;

(4) ~~the~~ The Secretary of Commerce and Community Development or designee; ~~and,~~

(5) ~~the~~ The Secretary of Transportation or designee.

(6) Two members of the public or of the House of Representatives appointed by the Speaker of the House, each of whom shall be from a separate major watershed of the State. One of the members appointed under this subdivision shall be a municipal official.

(7) Two members of the public or of the Senate appointed by the Committee on Committees, each of whom shall be from a separate major watershed of the State. One of the members appointed under this subdivision shall be a municipal official.

(c) Terms; public members. Members of the Clean Water Fund Board shall be appointed for terms of three years, except initially, appointments shall be made such that one member appointed by the Speaker shall be appointed for a term of two years, and one member appointed by the Committee on Committees shall be appointed for a term of one year. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments.

(d) Officers; committees; rules; reimbursement.

(1) The Clean Water Fund Board shall annually elect a chair from its members. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.

(2) Members of the Board who are not employees of the State of Vermont, who are not legislators, and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board. Legislative members of the Board shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.