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 is amended to read:

§ 4302. PURPOSE; GOALS

* * *

(c) In addition, this chapter shall be used to further the following specific goals:

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, employed to revitalize existing village and urban centers, or both, and should be encouraged in growth centers designated under chapter 76A of this title.

(C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.

(D) Development should be undertaken in accordance with smart growth principles as defined in subdivision 2791(13) of this title.

(2) To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.

* * *

(4) To provide for safe, convenient, economic, and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.

~~(A)~~ Highways, air, rail, and other means of transportation should be mutually supportive, balanced, and integrated.

(5) To identify, protect, and preserve important natural and historic features of the Vermont landscape, including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands, and wetlands;

(C) significant scenic roads, waterways, and views;

(D) important historic structures, sites, or districts, archaeological sites, and archaeologically sensitive areas.

(6) To maintain and improve the quality of air, water, wildlife, and land resources.

(A) Vermont's air, water, wildlife, mineral, and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.

(7) To encourage the efficient use of energy and the development of renewable energy resources, consistent with the following:

(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 specific recommendations identified in the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202b pertaining to the efficient use of energy and the siting and development of renewable energy resources; 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.

* * *

(9) To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.

(B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.

(C) The use of locally-grown food products should be encouraged.

(D) Sound forest and agricultural management practices should be encouraged.

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

* * *

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. [Deleted.]

Sec. 6. 24 V.S.A. § 4348a is amended to read:

§ 4348a. ELEMENTS OF A REGIONAL PLAN

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include the following:

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

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

(A) indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses, open spaces, and areas identified by the State, regional planning commissions or municipalities, which require special consideration for aquifer protection, wetland protection, or for other conservation purposes;

(B) indicating those areas within the region that are likely candidates for designation under sections 2793 (downtown development districts), 2793a (village centers), 2793b (new town centers), and 2793c (growth centers) of this title;

(C) indicating locations proposed for developments with a potential for regional impact, as determined by the regional planning commission,

including flood control projects, surface water supply projects, industrial parks, office parks, shopping centers and shopping malls, airports, tourist attractions, recreational facilities, private schools, public or private colleges, and residential developments or subdivisions;

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

(E) indicating those areas that have the potential to sustain agriculture and recommendations for maintaining them which may include transfer of development rights, acquisition of development rights, or farmer assistance programs.

(3) An energy element, which may include ~~an~~ a comprehensive 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 distributed and utility-scale 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 a statement of policy on and identification of potential areas for the development and siting of

renewable energy resources and areas that are inappropriate for siting those resources or particular categories or sizes of those resources.

(4) A transportation element, which may consist of a statement of present and prospective transportation and circulation facilities, and a map showing existing and proposed highways, including limited access highways, and streets by type and character of improvement, and where pertinent, anticipated points of congestion, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads and port facilities, and other similar facilities or uses, and recommendations to meet future needs for such facilities, with indications of priorities of need, costs, and method of financing.

* * *

Sec. 7. 24 V.S.A. § 4352 is added to read:

§ 4352. CERTIFICATION OF ENERGY COMPLIANCE; REGIONAL AND MUNICIPAL PLANS

(a) Regional plan certification. 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 certification of energy compliance. The Commissioner shall issue such a certification on finding that the regional plan is consistent with the statutes, goals, and policies listed in subdivision 4302(c)(7) of this title.

(b) Municipal plan certification. If the Commissioner of Public Service has certified 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 a certification of energy compliance. Such a submission may be made separately from or at the same time as a request for review and approval of the municipal plan under section 4350 of this title. The regional planning commission shall issue such a certification on finding that the municipal plan is consistent with the statutes, goals, and policies listed in subdivision 4302(c)(7) of this title and the portions of the regional plan that implement those statutes, goals, and policies.

(c) Standards. In determining whether to issue a certification of energy compliance under this section, the Commissioner or regional planning commission shall employ the standards for issuing such a certification developed pursuant to 30 V.S.A. §§ 202(b)(6) and 202b(a)(3).

(d) Process. Review of whether to issue a certification 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 certification is requested, and publication in a newspaper of general publication in the region or municipality affected. The Commissioner or regional planning commission shall grant or deny certification within two months of the receipt of a request

for certification. If certification is denied, the Commissioner or regional planning commission shall state the reasons for denial in writing and, if appropriate, suggest acceptable modifications. Submissions for certification that follow a denial shall receive a grant or denial of certification within 45 days.

(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 regional planning commission under this section may appeal to a hearing officer within 30 days of the act or decision. 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. Within 15 days of the filing of the appeal, 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 and shall issue a final decision within 90 days of the filing of 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.

Sec. 8. 24 V.S.A. § 4382 is amended to read:

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

(1) A statement of objectives, policies, and programs of the municipality to guide the future growth and development of land, public services, and facilities, and to protect the environment.

(2) A land use plan:

(A) consisting of a map and statement of present and prospective land uses, indicating those areas proposed for forests, recreation, agriculture (using the agricultural lands identification process established in 6 V.S.A. § 8), residence, commerce, industry, public, and semi-public uses and open spaces reserved for flood plain, wetland protection, or other conservation purposes;

(B) setting forth the present and prospective location, amount, intensity, and character of such land uses and the appropriate timing or sequence of land development activities in relation to the provision of necessary community facilities and service; and

(C) identifying those areas, if any, proposed for designation under chapter 76A of this title, together with, for each area proposed for designation,

an explanation of how the designation would further the plan's goals and the goals of section 4302 of this title, and how the area meets the requirements for the type of designation to be sought.

(3) A transportation plan, consisting of a map and statement of present and prospective transportation and circulation facilities showing existing and proposed highways and streets by type and character of improvement, and where pertinent, parking facilities, transit routes, terminals, bicycle paths and trails, scenic roads, airports, railroads, and port facilities, and other similar facilities or uses, with indications of priority of need.

(4) A utility and facility plan, consisting of a map and statement of present and prospective community facilities and public utilities showing existing and proposed educational, recreational and other public sites, buildings and facilities, including hospitals, libraries, power generating plants and transmission lines, water supply, sewage disposal, refuse disposal, storm drainage, and other similar facilities and activities, and recommendations to meet future needs for community facilities and services, with indications of priority of need, costs and method of financing.

(5) A statement of policies on the preservation of rare and irreplaceable natural areas~~,~~ and scenic and historic features and resources.

* * *

(9) An energy plan, including ~~an~~ a comprehensive analysis of energy resources, needs, scarcities, costs, and problems within the municipality~~,~~ across all energy sectors, including electric, thermal, and transportation; a statement of policy on the conservation and efficient use of energy, including programs, such as thermal integrity standards for buildings, to implement that policy~~,~~; a statement of policy on the development and siting of distributed and utility-scale renewable energy resources~~,~~; a statement of policy on patterns and densities of land use likely to result in conservation of energy and a statement of policy on and identification of potential areas for the development and siting of renewable energy resources and areas that are inappropriate for siting those resources or particular categories or sizes of those resources.

* * *

Sec. 9. 30 V.S.A. § 202 is amended to read:

§ 202. ELECTRICAL ENERGY PLANNING

(a) The Department of Public Service, through the Director for Regulated Utility Planning, shall constitute the responsible utility planning agency of the State for the purpose of obtaining for all consumers in the State proper utility service at minimum cost under efficient and economical management consistent with other public policy of the State. The Director shall be responsible for the provision of plans for meeting emerging trends related to electrical energy demand, supply, safety, and conservation.

(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:

(1) an overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for electrical energy, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, modifications in housing types, and design, conservation, and other trends and factors which, as determined by the Director, will significantly affect State electrical energy policy and programs;

(2) an assessment of all energy resources available to the State for electrical generation or to supply electrical power, including, among others, fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy and strategies for minimizing the economic and environmental costs of energy supply, including the production of pollutants, by means of efficiency and emission improvements, fuel shifting, and other appropriate means;

(3) estimates of the projected level of electrical energy demand;

(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) the following for use as guidance to municipal and regional planning commissions in preparing municipal and regional plans under 24 V.S.A. chapter 117 that are consistent with the statutes listed in 24 V.S.A. § 4302(c)(7) and with the Plan and in obtaining a certification of energy compliance under that chapter:

(A) specific recommendations on the conservation and efficient use of electric energy and the development and siting of renewable electric generation, developed in accordance with 24 V.S.A. § 4302(c)(7); and

(B) based on 24 V.S.A. § 4302(c)(7) and the recommendations developed under subdivision (A) of this subdivision (6), a list of standards for use in determining whether municipal and regional plans should receive a certificate of energy compliance under 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 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.

* * *

(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 land use plans under 24 V.S.A. chapter 117, the Director shall, on request, provide municipal and regional planning commissions with publically 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 data as the Director considers necessary to discharge his or her duties under this subsection.

Sec. 10. 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 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) the following for use as guidance to municipal and regional planning commissions in preparing municipal and regional plans under 24 V.S.A. chapter 117 that are consistent with the statutes listed in 24 V.S.A. § 4302(c)(7) and with the Plan and in obtaining a certification of energy compliance under that chapter:

(A) specific recommendations on the conservation and efficient use of energy and the development and siting of energy facilities, developed in accordance with 24 V.S.A. § 4302(c)(7); and

(B) based on 24 V.S.A. § 4302(c)(7) and the policies developed under subdivision (A) of this subdivision (3), a list of standards for use in determining whether municipal and regional plans should receive a certificate of energy compliance under 24 V.S.A. § 4352.

(b) In developing or updating the Plan's recommendations, the Department of Public Service shall seek public comment by holding public hearings in at least five different geographic regions of the State on at least three different dates, and by providing notice through publication once a week and at least seven days apart for two or more successive weeks in a newspaper or newspapers of general circulation in the regions where the hearings will be held, and by delivering notices to all licensed commercial radio and television stations with transmitting facilities within the State, plus Vermont Public Radio and Vermont Educational Television.

(c) The Department shall adopt a State Energy Plan on or before January 1, 2016 and shall readopt the Plan by every sixth January 1 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.

(1) Upon adoption of the Plan, analytical portions of the Plan may be updated and published biennially.

(2) Every fourth year after the adoption or readoption of a Plan under this section, the Department shall publish the manner in which the Department will engage the public in the process of readopting the Plan under this section.

(3) The publication requirements of subdivisions (1) and (2) of this subsection may be met by inclusion of the subject matter in the Department's biennial report.

(4) The Plan's implementation recommendations shall be updated by the Department no less frequently than every six years. These recommendations shall be updated prior to the expiration of six years if the General Assembly passes a joint resolution making a request to that effect. If the Department proposes or the General Assembly requests the revision of implementation recommendations, the Department shall hold public hearings on the proposed revisions.

(d) Distribution of the Plan to members of the General Assembly shall be in accordance with the provisions of 2 V.S.A. § 20(a)-(c).

Sec. 11. INITIAL IMPLEMENTATION; CERTIFICATION STANDARDS

(a) On or before October 1, 2016, the Department of Public Service shall publish specific recommendations and standards in accordance with 30 V.S.A. §§ 202(b)(6) and 202b(a)(3) as enacted by Secs. 8 and 10 of this act. Prior to issuing these recommendations and standards, the Department shall post on its

website a draft set of initial recommendations and standards and 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) 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. 11a. TRAINING

Following publication of the recommendations and standards under Sec. 11(a) of this act, the Department of Public Service shall conduct a series of training sessions in locations across the State for municipal and regional planning commissions to assist them in the development of land use plans that are eligible for certification under Sec. 7 of this act, 24 V.S.A. § 4352. The Department shall develop and present these workshops in collaboration with the Vermont League of Cities and Towns and the Vermont Association of Planning and Development Agencies. The Department shall ensure that all municipal and regional planning commissions receive prior notice of the workshops.

Sec. 11b. PLANNING SUPPORT; ALLOCATION OF COSTS

(a) During fiscal year 2017, the Commissioner of Public Service, in consultation with the Commissioner of Housing and Community Development, shall disburse an amount not to exceed $300,000.00 to regional planning commissions established under 24 V.S.A. chapter 117 and to municipalities for one or more of the following purposes:

(1) implementation of Secs. 2 (purpose; goals); 6 (elements of a regional plan), 7 (certification of energy compliance), and 8 (the plan for a municipality) of this act;

(2) the implementation by a regional planning commission of 24 V.S.A. § 4345a (studies and recommendations on energy);

(3) participation in the development of recommendations and standards pursuant to Secs. 9 (electrical energy plan), 10 (comprehensive energy plan), and 11 (initial implementation; certification standards) of this act; and

(4) assistance by a regional planning commission to the Department of Public Service (the Department) in providing training under Sec. 11a (training) of this act or to municipalities in the implementation of this act.

(b) In disbursing funds under this section, the Commissioners shall consider the need and size of a municipality or region and the availability, if any, of other assistance, expertise, or funds to a municipality or region to implement this act.

(c) The Commissioner of Public Service shall allocate costs under subsection (a) of this section to the electric distribution utilities subject to its supervision under Title 30 of the Vermont Statutes Annotated based on their pro rata share of total Vermont retail kilowatt-hour sales for the previous fiscal year. Each of these utilities shall pay its allocation into the State Treasury at such time and in such manner as the Commissioner may direct.

Sec. 12. 30 V.S.A. § 248(b) is amended to read:

(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) 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.

* * *

(5) With respect to an in-state facility, will not have an undue adverse effect on esthetics, 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)(B), (9)(C), and (9)(K), impacts to forest health and integrity, and greenhouse gas impacts.

* * *

* * * Regulatory and Financial Incentives; Preferred Locations * * *

Sec. 13. 30 V.S.A. § 8002(30) is added to read:

(30) "Preferred location" means a site within the State on which a renewable energy plant will be located that is one of the following:

(A) A new or existing structure, including a commercial or residential building, a parking lot, or parking lot canopy, whose primary use is not the generation of electricity or providing support for the placement of equipment that generates electricity.

(B) 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 January 1 of 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 section 8005a of this title, whichever is earlier. To qualify under this subdivision (B), 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.

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

(D) 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.

(E) 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.

(F) 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. On or after January 1, 2019, to qualify under this subdivision (F), the plan must be certified under 24 V.S.A. § 4352.

(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.

(I) If the plant constitutes a net metering system, then in addition to subdivisions (A) through (F) of this subdivision (30), a site designated by Board rule as a preferred location.

Sec. 14. [Deleted.]

Sec. 15. 30 V.S.A. § 8005a is amended to read:

§ 8005a. STANDARD OFFER PROGRAM

(a) Establishment. A standard offer program is established. To achieve the goals of section 8001 of this title, the Board shall issue standard offers for renewable energy plants that meet the eligibility requirements of this section. The Board shall implement these standard offers by rule, order, or contract and shall appoint a Standard Offer Facilitator to assist in this implementation. For the purpose of this section, the Board and the Standard Offer Facilitator constitute instrumentalities of the State.

(b) Eligibility. To be eligible for a standard offer under this section, a plant must constitute a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under section 219a of this title, and must be a new standard offer plant. In this section, "new standard offer plant" means a renewable energy plant that is

located in Vermont, that has a plant capacity of 2.2 MW or less, and that is commissioned on or after September 30, 2009.

(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.

(A) Annual amounts. The amount of the annual increase shall be five MW for the three years commencing April 1, 2013, 7.5 MW for the three years commencing April 1, 2016, and 10 MW commencing April 1, 2019.

(B) Blocks. Each year, a portion of the annual increase shall be reserved for new standard offer plants proposed by Vermont retail electricity providers (the provider block), and the remainder shall be reserved for new standard offer plants proposed by persons who are not providers (the independent developer block).

(i) The portion of the annual increase reserved for the provider block shall be 10 percent for the three years commencing April 1, 2013, 15 percent for the three years commencing April 1, 2016, and 20 percent commencing April 1, 2019.

(ii) If the provider block for a given year is not fully subscribed, any unsubscribed capacity within that block shall be added to the annual increase for each following year until that capacity is subscribed and shall be made available to new standard offer plants proposed by persons who are not providers.

(iii) If the independent developer block for a given year is not fully subscribed, any unsubscribed capacity within that block shall be added to the annual increase for each following year until that capacity is subscribed and:

(I) shall be made available to new standard offer plants proposed by persons who are not providers; and

(II) may be made available to a provider following a written request and specific proposal submitted to and approved by the Board.

(C) Adjustment; greenhouse gas reduction credits. The Board shall adjust the annual increase to account for greenhouse gas reduction credits by multiplying the annual increase by one minus the ratio of the prior year's greenhouse gas reduction credits to that year's statewide retail electric sales.

(i) The amount of the prior year's greenhouse gas reduction credits shall be determined in accordance with subdivision 8006a(a) of this title.

(ii) The adjustment in the annual increase shall be applied proportionally to the independent developer block and the provider block.

(iii) Greenhouse gas reduction credits used to diminish a provider's obligation under section 8004 of this title may be used to adjust the annual increase under this subsection (c).

(D) Pilot project; preferred locations. For a period of three years commencing on January 1, 2017:

(i) The Board shall allocate the following portions 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:

(I) one-sixth of the annual increase, during the first year;

(II) one-quarter of the annual increase, during the second year; and

(III) one-third of the annual increase, during the third year.

(ii) The Board separately shall allocate the following portions of the annual increase to new standard offer plants that will be wholly located on parking lots or parking lot canopies:

(I) one-sixth of the annual increase, during the first year;

(II) one-quarter of the annual increase, during the second year; and

(III) one-third of the annual increase, during the third year.

(iii) 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 on parking lots or parking lot canopies, the location shall remain in use as a parking lot.

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

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

(2) Technology allocations. The Board shall allocate the 127.5-MW cumulative plant capacity of this subsection among different categories of renewable energy technologies. These categories shall include at least each of the following: methane derived from a landfill; solar power; wind power with a plant capacity of 100 kW or less; wind power with a plant capacity greater than 100 kW; hydroelectric power; and biomass power using a fuel other than methane derived from an agricultural operation or landfill.

* * *

(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.

(1) Market-based mechanisms. For new standard offer projects, the Board shall use a market-based mechanism, such as a reverse auction or other procurement tool, to obtain up to the authorized amount of a category of renewable energy, if it first finds that use of the mechanism is consistent with:

(A) applicable federal law; and

(B) the goal of timely development at the lowest feasible cost.

(2) Avoided cost.

(A) The price paid for each category of renewable energy shall be the avoided cost of the Vermont composite electric utility system if the Board finds either of the following:

(i) Use of the pricing mechanism described in subdivision (1)(market-based mechanisms) of this subsection (f) is inconsistent with applicable federal law.

(ii) Use of the pricing mechanism described in subdivision (1)(market-based mechanisms) of this subsection (f) is reasonably likely to result in prices higher than the prices that would apply under this subdivision (2).

(B) ~~For the purpose of~~ As used in this subsection (f), the term "avoided cost" means the incremental cost to retail electricity providers of electric energy or capacity or both, which, but for the purchase through the standard offer, such providers would obtain from distributed renewable generation that uses the same generation technology as the category of renewable energy for which the Board is setting the price. ~~For the purpose of~~ As used in this subsection (f), the term "avoided cost" also includes the Board's consideration of each of the following:

(i) The relevant cost data of the Vermont composite electric utility system.

(ii) The terms of the contract, including the duration of the obligation.

(iii) The availability, during the system's daily and seasonal peak periods, of capacity or energy purchased through the standard offer, and the estimated savings from mitigating peak load.

(iv) The relationship of the availability of energy or capacity purchased through the standard offer to the ability of the Vermont composite electric utility system or a portion thereof to avoid costs.

(v) The costs or savings resulting from variations in line losses and other impacts to the transmission or distribution system from those that would have existed in the absence of purchases through the standard offer.

(vi) The supply and cost characteristics of plants eligible to receive the standard offer.

* * *

(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) In using a market-based mechanism such as a reverse auction to determine this price for each of the two allocations of capacity, the Board shall compare only the proposals of plants that qualify for the allocation.

(B) In using avoided costs to determine this price for each of the two allocations of capacity, the Board shall derive the incremental cost from distributed renewable generation that is sited on a location that qualifies for the allocation and uses the same generation technology as the category of renewable energy for which the Board is setting the price.

(C) With respect to the allocation to the new standard offer plants that will be wholly located on parking lots or parking lot canopies, if in a given year 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. 16. 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 progress of the standard offer pilot project on preferred locations authorized in Sec. 15 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 bill credit per kilowatt hour awarded to each such facility.

Sec. 17. 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.

(1) The rules shall establish and maintain a net metering program that:

* * *

(G) accounts for changes over time in the cost of technology; ~~and~~

(H) allows a customer to retain ownership of the environmental attributes of energy generated by the customer's net metering system and of any associated tradeable renewable energy credits or to transfer those attributes and credits to the interconnecting retail provider, and:

(i) if the customer retains the attributes, reduces the value of the credit provided under this section for electricity generated by the customer's net metering system by an appropriate amount; and

(ii) if the customer transfers the attributes to the interconnecting provider, requires the provider to retain them for application toward compliance with sections 8004 and 8005 of this title; and

(I) promotes the siting of net metering systems in preferred locations.

* * *

(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~~.

(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) With respect to a net metering system exceeding 15 kW in plant capacity, the rules shall not waive or include provisions that are less stringent than the following, notwithstanding any contrary provision of law:

(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 municipality and regional planning commissions; and

(ii) the requirements of subdivision 248(a)(4)(J) (required information) and subsections 248(f) (preapplication submittal) and (t) (aesthetic mitigation) and, with respect to a net metering system exceeding 150 kW in plant capacity, of subsection (u) (decommissioning) of this title.

* * *

(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.

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.

* * * Regulatory Process; Public Assistance Officer * * *

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.

Sec. 20. 30 V.S.A. § 248(a)(4) is amended to read:

(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.

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

(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.

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

(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 150 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 facility is located within 500 feet of the boundary of that planning commission.

(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 facility is located within 500 feet of the boundary of that adjacent municipality.

(I) When a person has the right to appear and participate in a proceeding before the Board under this chapter, the person may activate 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) With respect to an application for an electric generation facility with a capacity that is greater than 15 kilowatts, and in addition to any other information required by the Board, the application 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 and the amount of those soils to be disturbed;

(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.

Sec. 21. 30 V.S.A. § 248(f) is amended to read:

(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.

* * * CPG Conditions: Aesthetics Mitigation and Decommissioning * * *

Sec. 22. 30 V.S.A. § 248(t) is added to read:

(t) The Board shall adopt rules applicable to in-state facilities approved under this section.

(1) With respect to all measures required to be undertaken to mitigate the impacts of such a facility on aesthetics and scenic beauty, the rules shall:

(A) ensure that there is postconstruction inspection to determine whether all required mitigation measures have been undertaken and required plantings have been installed, including such inspection of facilities approved prior to the effective date of this subsection;

(B) ensure that the holder of a certificate for such a facility has an enforceable right to install and maintain all required plantings and manage all vegetation used to demonstrate the facility will not have an undue adverse effect on aesthetics;

(C) after installation of all required plantings, require annual submission for a period to be determined by the Board of documentation that the plantings have been maintained in accordance with the approved plans; and

(D) ensure that the holder of a certificate for such a facility has an ongoing duty to maintain the plantings in accordance with the approved plans and replace dead or diseased plantings as soon as seasonably possible.

(2) With respect to decommissioning of electric generation facilities, the rules:

(A) shall ensure that all such facilities with a plant capacity as defined in section 8002 of this title greater than 150 kilowatts are subject to a decommissioning plan approved by the Board;

(B) shall ensure that all such facilities above a plant capacity to be determined by the Board post a bond or offer other security or financial assurance acceptable to the Board that is sufficient to finance the decommissioning activities in full; and

(C) may allow net metering systems as defined in this title to pool or otherwise aggregate the provision of security or other financial assurance to finance those decommissioning activities.

Sec. 22a. RULES; PETITION

(a) On or before August 1, 2016, the Department of Public Service shall file a petition for rulemaking with the Public Service Board containing proposed rules to implement Sec. 22 of this act, 30 V.S.A. § 248(t).

(b) On or before October 15, 2016, the Public Service Board shall file proposed rules to implement Sec. 22 of this act with the Secretary of State under 3 V.S.A. § 838. The Board shall finally adopt such rules on or before June 15, 2017, unless such deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

* * * Greenhouse Gases; Life Cycle Analysis * * *

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

(u) A petition under this section for an in-state facility that is not a net metering system as defined in this title shall include a life cycle analysis of the greenhouse gas impacts of the facility that the Board shall consider in issuing findings under subdivisions (b)(2) and (5) of this section. In this subsection, "facility" includes all generating equipment, poles, wires, substations, structures, roads, and infrastructure, and all other associated land development. This analysis shall include:

(1) emissions embodied in all facility components;

(2) emissions associated with the transportation of all such components to the site or sites at which they will be installed;

(3) emissions associated with site preparation, including the clearing of forested areas and reductions in future carbon sequestration potential from the facility site or sites;

(4) emissions associated with the construction of all facility components;

(5) emissions associated with the operation of the facility;

(6) emissions associated with the decommissioning of the facility; and

(7) for facilities that employ renewable energy as defined under section 8002 of this title, the reduction in greenhouse gas emissions achieved by the facility as compared to alternative generation facilities that do not employ renewable energy.

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

(v) 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. 23b. 30 V.S.A. § 248(w) is added to read:

(w)(1) The Board shall require any in-state wind electric generation facility receiving a certificate of public good to install radar-controlled obstruction lights on all wind turbines for which the Federal Aviation Administration (FAA) requires obstruction lights, provided the FAA allows the use of radar-controlled lighting technology. Nothing in this subdivision shall allow the Board to approve obstruction lights that do not meet FAA standards.

(2) The purpose of this subsection 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, and may attract birds and bats. 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.

Sec. 23c. EXISTING WIND FACILITIES; RADAR-CONTROLLED LIGHTING

The Department of Public Service shall actively encourage the installation of radar-controlled obstruction lights that meet the standards of the Federal Aviation Administration (FAA) at each wind generation facility in existence as

of the effective date of this section for which the FAA requires obstruction lighting. The Department shall work directly with the owner and operator of each such facility to encourage this installation.

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

(x) 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.

* * * Sound Standards Docket; Energy Facilities * * *

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). On issuance, the Board shall provide a copy of this final decision to the House and Senate Committees on Natural Resources and Energy, the Senate Committee on Finance, and the Joint Energy Committee.

(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.

(5) 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.

(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 conducting 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.

* * * Allocation of AAFM Costs * * *

Sec. 25. 30 V.S.A. §§ 20 and 21 are amended to read:

§ 20. PARTICULAR PROCEEDINGS; PERSONNEL

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

* * *

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

(A) Assist the Agency of Natural Resources in any proceeding under section 248 of this title.

(B) Monitor compliance with an order issued under section 248 of this title.

(C) Assist the Board or Department in any proceedings described in subdivisions (b)(9) (Federal Energy Regulatory Commission) and (11) (Nuclear Regulatory Commission) of this section. Allocation of Agency of Natural Resources costs under this subdivision (C) shall be in the same manner as provided under subdivisions (b)(9) and (11) of this section. The Agency of Natural Resources shall report annually to the Joint Fiscal Committee all costs incurred and expenditures charged under the authority of this subsection with

respect to proceedings under subdivision (b)(9) of this section and the purpose for which such costs were incurred and expenditures made.

(3) The Agency of Agriculture, Food and Markets may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, other research, scientific, or engineering services to:

(A) assist the Agency of Agriculture, Food and Markets in any proceeding under section 248 of this title; or

(B) monitor compliance with an order issued under section 248 of this title.

(4) The personnel authorized by this section shall be in addition to the regular personnel of the Board or Department or other State agencies; and in the case of the Department or other State agencies may be retained only with the approval of the Governor and after notice to the applicant or the public service company or companies. The Board or Department shall fix the amount of compensation and expenses to be paid such additional personnel, except that the Agency of Natural Resources or of Agriculture, Food and Markets, respectively, shall fix the amount of compensation and expenses to be paid to additional personnel that it retains under subdivision (2) of this subsection.

* * *

§ 21. PARTICULAR PROCEEDINGS; ASSESSMENT OF COSTS

(a) ~~The Board, the Department, or the Agency of Natural Resources~~ An agency may allocate the portion of the expense incurred or authorized by it in retaining additional personnel ~~for the particular proceedings authorized in~~ pursuant to section 20 of this title to the applicant or the public service company or companies involved ~~in those proceedings~~. As used in this section, "agency" means an agency, board, or department of the State enabled to authorize or retain personnel under section 20 of this title.

(1) The Board shall upon petition of an applicant or public service company to which costs are proposed to be allocated, review and determine, after opportunity for hearing, having due regard for the size and complexity of the project, the necessity and reasonableness of such costs, and may amend or revise such allocations. Nothing in this section shall confer authority on the Board to select or decide the personnel, the expenses of whom are being allocated, unless such personnel are retained by the Board. Prior to allocating costs, the Board shall make a determination of the purpose and use of the funds to be raised hereunder, identify the recipient of the funds, provide for allocation of costs among companies to be assessed, indicate an estimated duration of the proceedings, and estimate the total costs to be imposed. With the approval of the Board, such estimates may be revised as necessary. From time to time during the progress of the work of such additional personnel, the

~~Board, the Department, or the Agency of Natural Resources~~ agency retaining the personnel shall render to the company detailed statements showing the amount of money expended or contracted for in the work of such personnel, which statements shall be paid by the applicant or the public service company into the State Treasury at such time and in such manner as the ~~Board, the Department, or the Agency of Natural Resources~~ agency may reasonably direct.

(2) In any proceeding under section 248 of this title, the Agency of Natural Resources may allocate the portion of the expense incurred in retaining additional staff authorized in subsection 21(a) of this title only if the following apply:

(A) the Agency does not have the expertise and the retention of such expertise is required to fulfill the Agency's statutory obligations in the proceeding; and

(B) the Agency allocates only that portion of the cost for such expertise that exceeds the fee paid by the applicant under section 248b of this title.

(b) When regular employees of ~~the Board, the Department, or the Agency of Natural Resources~~ an agency are employed in the particular proceedings described in section 20 of this title, the ~~Board, the Department, or the Agency of Natural Resources~~ agency may also allocate the portion of their costs and

expenses to the applicant or the public service company or companies involved in the proceedings. The costs of regular employees shall be computed on the basis of working days within the salary period. The manner of assessment and of making payments shall otherwise be as provided for additional personnel in subsection (a) of this section. However, with respect to proceedings under section 248 of this title, the Agency of Natural Resources shall not allocate the costs of regular employees.

* * *

(d) The Agency of Natural Resources may allocate expenses under this section only for costs in excess of the amount specified in 3 V.S.A. § 2809(d)(1)(A).

(e) ~~On~~ Annually on or before January 15~~, 2011, and annually thereafter,~~ the Agency of Natural Resources and of Agriculture, Food and Markets each shall report to the Senate and House Committees on Natural Resources and Energy, the Senate Committee on Agriculture, and the House Committee on Agriculture and Forests Products the total amount of expenses allocated under this section during the previous fiscal year. The report shall include the name of each applicant or public service company to whom expenses were allocated and the amount allocated to each applicant or company.

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* * * Regulated Energy Utility Expansion Funds * * *

Sec. 26. 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 10 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.

* * * Municipal Electric Utilities; Hydro Facilities;

Renewable Energy Standard * * *

Sec. 26a. 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. 26b. 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. 17, appointed by the Speaker of the House; and

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

(c) 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.

* * * Effective Dates * * *

Sec. 27. EFFECTIVE DATES

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

(1) This section and Sec. 11 (initial implementation; certification standards) shall take effect on passage. The following in Secs. 2, 9, and 10 shall apply on passage to the activities of the Department of Public Service under Sec. 11: 24 V.S.A. § 4302(c) and 30 V.S.A. §§ 202(b)(6) and 202b(a)(3).

(2) Sec. 17 (net metering systems) 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.

(3) Sec. 22a (rules; petition) shall take effect on passage and Sec. 22 (rules) shall apply to the implementation of Sec. 22a.

(4) Secs. 23b (wind generation; obstruction lighting), 23c (existing facilities; obstruction lighting), and 26b (Access to Public Service Board Working Group) shall take effect on passage.

(5) In Sec. 18, 30 V.S.A. § 3(h)(3) (posting online; filings and orders) shall take effect on July 1, 2017.

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