



**House Natural Resources and Energy Committee
Public Service Board Section 248 Permit Process
Friday April 8, 2016**

Thank you for the opportunity to testify on S. 230.

On January 20, local officials testified to your committee and the Senate Natural Resources Committees on the issue of siting renewable energy facilities and changes that should be made in the law to assure that municipalities are restored a significant voice in the Public Service Board (PSB) siting process. I remind you of those local officials to give an understanding of the statewide nature of the current frustration with the PSB process.

Jared Cadwell, President VLCT and Fayston Selectboard
Russell Hodgkins, Town Administrator, Westminster
Stephen Marx, Strafford Selectboard
Larry Labor, Morgan Selectboard
Brian Fecher, Irasburg Selectboard
Joel Clark, Swanton Selectboard

Mary Boyer, Windham Selectboard
Chris Violette, Barre Town Zoning Administrator and Fire Chief
Joel Cope, Brighton, Town Administrator
Jamieson Heins, Shelburne Planning Commission
Don Chioffi, Rutland Town Selectboard
Brian Fecher, Irasburg Selectboard Chair

In addition, approximately 118 municipalities have now signed the resolution calling for a more significant say in siting of renewable energy facilities. I focus my comments today on municipal and regional planning and the standing of municipalities in the PSB siting process.

We were disappointed in S. 230 as it was eventually passed by the Senate. The planning sections are more complex and do less to assure that the PSB addresses municipal issues than we hoped.

Municipal Plans and Standing in the Certificate of Public Good (CPG) Process

The municipal planning statutes state:

24 V.S.A. Chapter 117 § 4302 Purpose, goals

(a) General purposes.

(b) It is the intent and purpose of this chapter to ***encourage*** the appropriate development of all lands in this State by the action of its constituent municipalities and regions, with the ***aid and assistance of the State***, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience efficiency, economy and general welfare; to enable the mitigation

of the burden of property taxes on agricultural, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this State to plan for the prevention, minimization, and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate. In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property.

The same section of statute establishes eighteen goals. In 2013 economic growth in designated growth centers was added as was avoiding development in identified flood hazard, fluvial erosion and river corridor protection areas. In 2014, public investments, including construction or expansion of infrastructure, and development in accordance with smart growth principles were added. In 2015 maintaining and improving Vermont's water quality according to the policies and actions developed in the basin plans was added. This year, the legislature will add managing forestlands to maintain and improve forest blocks and habitat connectors. Municipalities are encouraged and regional commissions are required to meet the planning goals.

S. 230 would expand the energy element of municipal and regional plans to incorporate a comprehensive analysis across all energy sectors, statement of policy on conservation and efficient use of energy and development and siting of distributed and utility scale energy resources, and a statement of policy on and identification of potential areas for renewable energy resources and areas inappropriate for siting those resources or categories or sizes of those resources.

State and Regional Plan Guidance, Recommendations, Standards

The Vermont Comprehensive Energy Plan would need to include guidance and standards that contained specific recommendations on the conservation and efficient use of electric energy and development and siting of renewable electric generation; and a list of standards for determining whether municipal and regional plans should receive a certificate of energy compliance from the department. As well the Department of Public Service would need to provide municipalities and regions with information on location and capacity of the electric grid infrastructure. All that work is to be completed by October 1, 2016.

We support the expanded energy element that would be incorporated in municipal and regional plans as well as the guidance that would be provided in the Comprehensive Energy Plan. However language that requires the Public Service Department to establish standards for certification and "certify" regional plans, and then regional commissions to certify municipal plans, stands the tradition of locally based planning on its head.

We are concerned that unless a municipal plan essentially mimicked the Comprehensive Energy Plan and regional plan, it would not receive a certification. And if the municipal plan is no more than a copy of the regional and Comprehensive Energy Plan, there is essentially no need for it. We believe that the Comprehensive Energy Plan should express policy – much as it does now – and the regional plan should provide a general assessment of the status of renewable energy facilities in the region,

the goals for renewable energy projects and land use generally, and general areas that are reasonable for renewable energy facilities because of proximity to transmission lines or like infrastructure. The municipal plan is the level at which policies and siting attributes are established within the context of the complete municipal plan. The \$300,000 at Section 11b would provide welcome technical assistance and training to help develop those plan elements, although it is not allocated between regional commissions and municipalities, which is somewhat unusual.

The current statutory process for developing, adopting and securing approval of a municipal plan or plan element is one that works well now and is familiar to local volunteer planning commissions. We believe that with the expanded energy element requirements in S. 230 and the expanded Comprehensive Energy Plan guidance, the current adoption and approval process is robust. Those plans that address the expanded energy element and are approved by the regional commission should receive substantial deference in the Certificate of Public Good permit process.

As passed, S. 230 deletes the obligation of the PSB to give substantial deference to regional and municipal plans that have been certified. That deletion was made on the Senate floor.

We believe that it is essential that substantial deference be included in the law along with the definition of substantial deference and direction to the PSB about how they are to apply substantial deference to municipal and regional plans. We recommend restoration of that language and further recommend that the law contain a clarification that a municipality may base its decision on a bylaw inasmuch as bylaws implement plans.

30 VSA section 248(b)

(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 instate facility, will not unduly interfere with the orderly development of the region with ~~due consideration~~ substantial deference 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. In this subdivision (1), "substantial deference" means that a recommendation or land conservation measure shall be presumed valid, correct and reasonable and shall be applied in accordance with its terms unless there is a clear and convincing demonstration that it lacks a rational basis or that other factors affecting the general good of the State outweigh application of the recommendation or measure. In its decision, the Board shall explain in detail the reasons for its determination that the general good of the State outweighs the recommendation or measure.

(A) Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on a bylaw adopted under 24 V.S.A. Chapter 117 by the municipality in which the facility is located.

We also believe that the PSB needs specific direction regarding holding hearings in affected municipalities and how they should handle the comments they receive. We would welcome the advice of the legislative council as to the most appropriate location in statute for the following language.

The Public Service Board shall hold hearings in the municipality in which the facility is located. When a facility is located in or will affect more than one municipality, the Board shall hold hearings

at one of more locations readily accessible to residents of each municipality. The Board shall formulate areas of inquiry with respect to the application based on concerns raised in the local hearing process.

Preferred Sites, Parties, CPG Conditions

We believe the language regarding preferred sites will be helpful. (Secs. 13 and 14)

We likewise support the language that provides for the Agency of Agriculture, Food and Markets, municipalities within 500 feet of a project, and regional commissions to be parties by right before the PSB. (Sec. 20)

We support the language establishing requirements for mitigation, documentation and maintenance of vegetation to screen facilities and decommissioning. (Sec. 22)

Municipal Land Records

We proposed language to provide for recording notice of CPGs in the land records which will make it far easier for people to find CPGs and conditions attached to them. (Sec. 23)

We are happy to work with the committee on S. 230. Thank you for the opportunity to testify.

*Karen Horn, Director
Public Policy & Advocacy*