

1 Introduced by Committee on Natural Resources and Energy

2 Date:

3 Subject: Energy; public service; natural resources; land use; siting; renewable  
4 generation; net metering

5 Statement of purpose of bill as introduced: This bill proposes various  
6 improvements to the siting of energy projects and the process for siting them.

7 An act relating to improving the siting of energy projects

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

9 \* \* \* Designation \* \* \*

10 Sec. 1. DESIGNATION OF ACT

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

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

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

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

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

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

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

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

7 § 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING  
8 COMMISSIONS

9 Any regional planning commission created under this chapter may:

10 \* \* \*

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

17 \* \* \*

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

19 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

20 A regional planning commission created under this chapter shall:

21 \* \* \*

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

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

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

6   \* \* \*

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

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

10           (3) An energy element, which may include an analysis of ~~energy~~  
11 resources, needs, scarcities, costs, and problems within the region; across all  
12 energy sectors, including electric, thermal, and transportation; a statement of  
13 policy on the conservation and efficient use of energy and the development and  
14 siting of renewable energy resources; ~~and;~~ a statement of policy on patterns  
15 and densities of land use ~~and control devices~~ likely to result in conservation of  
16 energy; and an identification of potential areas for the development and siting  
17 of renewable energy resources and areas that are unsuitable for siting those  
18 resources or particular categories or sizes of those resources.

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

20           § 4352. OPTIONAL DETERMINATION OF ENERGY

21                   COMPLIANCE; ENHANCED ENERGY PLANNING

1       (a) Regional plan. A regional planning commission may submit its adopted  
2       regional plan to the Commissioner of Public Service appointed under  
3       30 V.S.A. § 1 for a determination of energy compliance. The Commissioner  
4       shall issue an affirmative determination on finding that the regional plan meets  
5       the requirements of subsection (c) of this section and allows for the siting in  
6       the region of all types of renewable generation technologies.

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

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

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

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

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

3           (A) Vermont’s greenhouse gas reduction goals under 10 V.S.A.  
4 § 578(a);

5           (B) Vermont’s 25 by 25 goal for renewable energy under 10 V.S.A.  
6 § 580;

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

8           (D) State energy policy under 30 V.S.A. § 202a and the  
9 recommendations for regional and municipal energy planning pertaining to the  
10 efficient use of energy and the siting and development of renewable energy  
11 resources contained in the State energy plans adopted pursuant to 30 V.S.A.  
12  §§ 202 and 202b (State energy plans); and

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

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

18           (d) State energy plans; recommendations; standards.

19           (1) The State energy plans shall include the recommendations for  
20 regional and municipal energy planning and the standards for issuing a

1 determination of energy compliance described in subdivision (c)(3) of this  
2 section.

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

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

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

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

1       (e) Process for issuing determinations of energy compliance. Review of  
2       whether to issue a determination of energy compliance under this section shall  
3       include a public hearing noticed at least 15 days in advance by direct mail to  
4       the requesting regional planning commission or municipal legislative body,  
5       posting on the website of the entity from which the determination is requested,  
6       and publication in a newspaper of general publication in the region or  
7       municipality affected. The Commissioner or regional planning commission  
8       shall issue the determination in writing within two months of the receipt of a  
9       request for a determination. If the determination is negative, the  
10       Commissioner or regional planning commission shall state the reasons for  
11       denial in writing and, if appropriate, suggest acceptable modifications.  
12       Submissions for a new determination that follow a negative determination shall  
13       receive a new determination within 45 days.

14       (f) Appeal. A regional planning commission aggrieved by an act or  
15       decision of the Commissioner of Public Service under this section may appeal  
16       to the Natural Resources Board established under 10 V.S.A. chapter 151 within  
17       30 days of the act or decision. The provisions of 10 V.S.A. § 6024 regarding  
18       assistance to the Board from other departments and agencies of the State shall  
19       apply to this subsection. The Board shall conduct a de novo hearing on the act  
20       or decision under appeal and shall proceed in accordance with the contested

1 case requirements of the Vermont Administrative Procedure Act. The Board  
2 shall issue a final decision within 90 days of the filing of the appeal.

3 (g) Municipality; determination from DPS; time-limited option. Until  
4 July 1, 2018, a municipality whose plan has been confirmed under section  
5 4350 of this title may seek issuance of a determination of energy compliance  
6 from the Commissioner of Public Service if it is a member of a regional  
7 planning commission whose regional plan has not received such a  
8 determination.

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

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

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





1 succeeding six-year period, and long-term sustainable strategies for achieving  
2 and maintaining the lowest possible electric rates over the full 20-year  
3 planning horizon consistent with the goal of maintaining a financially stable  
4 electric utility industry in Vermont; and

5 (6) recommendations for regional and municipal energy planning and  
6 standards for issuing a determination of energy compliance pursuant to  
7 24 V.S.A. § 4352.

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

16 (d) In establishing plans, the Director shall:

17 (1) Consult with:

18 (A) the public;

19 (B) Vermont municipal utilities and planning commissions;

20 (C) Vermont cooperative utilities;

21 (D) Vermont investor-owned utilities;

1 (E) Vermont electric transmission companies;

2 (F) environmental and residential consumer advocacy groups active  
3 in electricity issues;

4 (G) industrial customer representatives;

5 (H) commercial customer representatives;

6 (I) the Public Service Board;

7 (J) an entity designated to meet the public's need for energy  
8 efficiency services under subdivision 218c(a)(2) of this title;

9 (K) other interested State agencies; ~~and~~

10 (L) other energy providers; and

11 (M) the regional planning commissions.

12 \* \* \*

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

20 \* \* \*

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

3 \* \* \*

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

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

16 § 202b. STATE COMPREHENSIVE ENERGY PLAN

17 (a) The Department of Public Service, in conjunction with other State  
18 agencies designated by the Governor, shall prepare a State Comprehensive  
19 Energy Plan covering at least a 20-year period. The Plan shall seek to  
20 implement the State energy policy set forth in section 202a of this title and

1 shall be consistent with the relevant goals of 24 V.S.A. § 4302. The Plan shall  
2 include:

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

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

9 (3) recommendations for regional and municipal energy planning and  
10 standards for issuing a determination of energy compliance pursuant to  
11 24 V.S.A. § 4352.

12 \* \* \*

13 (c) The Department shall adopt a State Energy Plan on or before January 1,  
14 2016 and shall readopt the Plan by every sixth January ~~±~~ 15 thereafter. On  
15 adoption or readoption, the Plan shall be submitted to the General Assembly.  
16 The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not  
17 apply to such submission.

18 \* \* \*

1       Sec. 9. INITIAL IMPLEMENTATION; RECOMMENDATIONS;  
2                       STANDARDS

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

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

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

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

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

- 1           (1) analysis of total current energy use across transportation, heating,  
2           and electric sectors;
- 3           (2) identification and mapping of existing electric generation and  
4           renewable resources;
- 5           (3) establishment of 2025, 2035, and 2050 targets for energy  
6           conservation, efficiency, fuel-switching, and use of renewable energy for  
7           transportation, heating, and electricity;
- 8           (4) analysis of amount of thermal-sector conservation, efficiency, and  
9           conversion to alternative heating fuels needed to achieve these targets;
- 10           (5) analysis of transportation system changes and land use strategies  
11           needed to achieve these targets;
- 12           (6) analysis of electric-sector conservation and efficiency needed to  
13           achieve these targets;
- 14           (7) pathways and recommended actions to achieve these targets,  
15           informed by this analysis;
- 16           (8) identification of potential areas for the development and siting of  
17           renewable energy resources and of the potential electric generation from such  
18           resources in the identified areas, taking into account factors including resource  
19           availability, environmental constraints, and the location and capacity of electric  
20           grid infrastructure; and

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

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

9           Sec. 10. TRAINING

10           Following publication of the recommendations and standards under  
11           Sec. 9(a) of this act, the Department of Public Service shall collaborate with  
12           the Vermont League of Cities and Towns and the Vermont Association of  
13           Planning and Development Agencies on the development and presentation of  
14           training sessions for municipal and regional planning commissions to assist  
15           them in the development of municipal and regional plans that are eligible to  
16           receive a determination of energy compliance under Sec. 6 of this act,  
17           24 V.S.A. § 4352, with at least one such session to be held in the area of each  
18           regional planning commission after notice of the session to the regional  
19           planning commission and its member municipalities.



1       Sec. 10a. PLANNING SUPPORT; ALLOCATION OF COSTS

2           (a) During fiscal year 2017, the Commissioner of Public Service, in  
3           consultation with the Commissioner of Housing and Community  
4           Development, shall award the amount of \$300,000.00 to regional planning  
5           commissions established under 24 V.S.A. chapter 117 and to municipalities for  
6           the purpose of providing training under Sec. 10 (training) of this act or  
7           assisting municipalities in the implementation of this act.

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

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

18                           \* \* \* Siting Process; Criteria; Conditions \* \* \*

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

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

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

2 \* \* \*

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

9 (A) no company, as defined in section 201 of this title, and no person,  
10 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or  
11 construction of an electric generation facility or electric transmission facility  
12 within the State which is designed for immediate or eventual operation at any  
13 voltage; and

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

18 \* \* \*

19 (4)(A) With respect to a facility located in the State, the Public Service  
20 Board shall hold a nontechnical public hearing on each petition for such

1 finding and certificate in at least one county in which any portion of the  
2 construction of the facility is proposed to be located.

3 \* \* \*

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

12 \* \* \*

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

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

20 (i) In any proceeding regarding an electric generation facility that  
21 will have a capacity greater than 500 kilowatts and will be sited on a tract

1 containing primary agricultural soils as defined in 10 V.S.A. § 6001, the  
2 Agency shall appear as a party and provide evidence and recommendations  
3 concerning any findings to be made under subdivision (b)(5) of this section on  
4 those soils, and may provide evidence and recommendations concerning any  
5 other matters to be determined by the Board in such a proceeding.

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

9 (G) The regional planning commission for the region in which the  
10 facility is located shall have the right to appear as a party in any proceedings  
11 held under this subsection. The regional planning commission of an adjacent  
12 region shall have the same right if the distance of the facility's nearest  
13 component to the boundary of that planning commission is 500 feet or  
14 10 times the height of the facility's tallest component, whichever is greater.

15 (H) The legislative body and the planning commission for the  
16 municipality in which a facility is located shall have the right to appear as a  
17 party in any proceedings held under this subsection. The legislative body and  
18 planning commission of an adjacent municipality shall have the same right if  
19 the distance of the facility's nearest component to the boundary of that  
20 adjacent municipality is 500 feet or 10 times the height of the facility's tallest  
21 component, whichever is greater.

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

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

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

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

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

20                   (iv) all impacts of the facility’s construction and operation under  
21           subdivision (b)(5) of this section, including impacts due to the creation or

1 modification of access roads and utility lines and the clearing or management  
2 of vegetation.

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

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

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

19 (B) The purpose of this subdivision is to reduce the visual impact of  
20 wind turbine obstruction lights on the environment and nearby properties. The  
21 General Assembly finds that wind turbine obstruction lights that remain

1 illuminated through the night create light pollution. Radar-controlled  
2 obstruction lights are only illuminated when aircraft are detected in the area,  
3 and therefore the use of these lights will reduce the negative environmental  
4 impacts of obstruction lights.

5 (7) When a certificate of public good under this section or amendment  
6 to such a certificate is issued for an in-state electric generation facility with a  
7 capacity that is greater than 15 kilowatts, the certificate holder within 45 days  
8 shall record a notice of the certificate or amended certificate, on a form  
9 prescribed by the Board, in the land records of each municipality in which a  
10 facility subject to the certificate is located and shall submit proof of this  
11 recording to the Board. The recording under this subsection shall be indexed  
12 as though the certificate holder were the grantor of a deed. The prescribed  
13 form shall not exceed one page and shall require identification of the land on  
14 which the facility is to be located by reference to the conveyance to the current  
15 landowner, the number of the certificate, and the name of each person to which  
16 the certificate was issued, and shall include information on how to contact the  
17 Board to view the certificate and supporting documents.

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

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

6           However:

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

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



1 installation of such a facility or have the effect of interfering with the facility's  
2 intended functional use.

3 (C) With respect to an in-state electric generation facility, the Board  
4 shall give substantial deference to the land conservation measures and specific  
5 policies contained in a duly adopted regional and municipal plan that has  
6 received an affirmative determination of energy compliance under 24 V.S.A.  
7 § 4352. In this subdivision (C), “substantial deference” means that a land  
8 conservation measure or specific policy shall be applied in accordance with its  
9 terms unless there is a clear and convincing demonstration that other factors  
10 affecting the general good of the State outweigh the application of the measure  
11 or policy. The term shall not include consideration of whether the  
12 determination of energy compliance should or should not have been  
13 affirmative under 24 V.S.A. § 4352.

14 \* \* \*

15 (5) With respect to an in-state facility, will not have an undue adverse  
16 effect on ~~esthetics~~ aesthetics, historic sites, air and water purity, the natural  
17 environment, the use of natural resources, and the public health and safety,  
18 with due consideration having been given to the criteria specified in 10 V.S.A.  
19 §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary  
20 agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.

21 \* \* \*

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

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

10 (2) The petitioner's application shall address the substantive written  
11 comments related to the criteria of subsection (b) of this section received by  
12 the petitioner within 45 days of the submittal made under this subsection and  
13 the substantive oral comments related to those criteria made at a public hearing  
14 under subdivision (1) of this subsection.

15 \* \* \*

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

1 ground-mounted solar generation facility shall state the contents of this  
2 subsection.

3 Sec. 11a. RULES; PETITION

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

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

14 \* \* \* Sound Standards; Wind Generation Facilities \* \* \*

15 Sec. 12. SOUND STANDARDS; WIND GENERATION

16 (a) On or before July 1, 2017, the Public Service Board (the Board) shall  
17 finally adopt rules under 3 V.S.A. chapter 25 regarding sound from wind  
18 generation facilities approved under 30 V.S.A. § 248, unless such deadline is  
19 extended by the Legislative Committee on Administrative Rules pursuant to  
20 3 V.S.A. § 843(c). In developing these rules, the Board shall consider:

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

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

6           (b) On or before 45 days after the effective date of this section, the Board  
7           shall adopt temporary rules on sound levels from wind generation facilities  
8           using the process under 3 V.S.A. § 844. The rules shall be effective on  
9           adoption and shall apply to applications for such facilities under 30 V.S.A.  
10           § 248 filed on or after the effective date of this section. Until the Board adopts  
11           temporary rules pursuant to this subsection (b), the Board shall not issue a  
12           certificate of public good for a wind generation facility for which an  
13           application is filed on or after the effective date of this section.

14           (1) The standard under 3 V.S.A. § 844(a) regarding imminent peril to  
15           public health, safety, or welfare shall not apply to the rules to be adopted under  
16           this subsection. This subsection employs the process set forth in 3 V.S.A.  
17           § 844 solely for the purpose of using an existing rulemaking procedure to  
18           adopt temporary rules in a short time frame.

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

21           (A) standards that apply to all such facilities;

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

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

6           (3) These rules shall not allow sound levels from a wind generation  
7           facility that exceed the lowest maximum decibel levels authorized in any  
8           certificate of public good that contains limits on decibel levels issued by the  
9           Board for the same category of wind generation facility before the effective  
10           date of this section. For the purpose of this subdivision (3), there shall be two  
11           categories of wind generation facilities:

12           (A) facilities with a plant capacity as defined in 30 V.S.A. § 8002 of  
13           500 kilowatts (kW) or less; and

14           (B) facilities with a plant capacity as defined in 30 V.S.A. § 8002  
15           greater than 500 kW.

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

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

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



1 facilities. To qualify for the allocation to plants wholly located over parking  
2 lots or on parking lot canopies, the location shall remain in use as a parking lot.

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

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

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

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

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

16 (III) A tract previously developed for a use other than siting a  
17 plant on which a structure or impervious surface was lawfully in existence and  
18 use prior to July 1 of the year preceding the year in which an application for a  
19 certificate of public good under section 248 of this title for the plant is filed or  
20 in which the plant seeks an award of a contract under the standard offer  
21 program under this section, whichever is earlier. To qualify under this

1 subdivision (III), the limits of disturbance of a proposed renewable energy  
2 plant must include either the existing structure or impervious surface and shall  
3 not include any headwaters, streams, shorelines, floodways, rare and  
4 irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered  
5 species, productive forestlands, and primary agricultural soils, all of which are  
6 as defined in 10 V.S.A. chapter 151.

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

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

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

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

20 (VIII) A site listed on the National Priorities List (NPL)  
21 established under the Comprehensive Environmental Response, Compensation,



1 and Liability Act, 42 U.S.C. chapter 103, if the U.S. Environmental Protection  
2 Agency or the Agency of Natural Resources confirms each of the following:

3 (aa) The site is listed on the NPL.

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

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

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

13 \* \* \*

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

21 \* \* \*

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

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

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

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

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Sec. 12b. STANDARD OFFER PILOT; REPORT

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

\* \* \* Net Metering \* \* \*

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

§ 8010. SELF-GENERATION AND NET METERING

\* \* \*

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

\* \* \*

(3) The rules shall establish standards and procedures governing application for and issuance or revocation of a certificate of public good for net

1 metering systems under the provisions of section 248 of this title. In  
2 establishing these standards and procedures, ~~the rules~~:

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

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

8 (C) The rules shall seek to simplify the application and review  
9 process as appropriate; ~~and, including simplifying the application and review~~  
10 process to encourage group net metering systems when the system is at least  
11 50 percent owned by the customers who receive the bill credits for the  
12 electricity generated by the system.

13 (D) ~~with~~ With respect to net metering systems that exceed 150 kW in  
14 plant capacity, shall apply the so-called “Quechee” test for aesthetic impact as  
15 described by the Vermont Supreme Court in the case of In re Halnon, 174 Vt.  
16 515 (2002) (mem.). The rules and application form shall state the components  
17 of this test.

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



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

2 (1) Total renewable energy.

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

10 (B) Required amounts. The amounts of total renewable energy  
11 required by this subsection shall be 55 percent of each retail electricity  
12 provider's annual retail electric sales during the year beginning on January 1,  
13 2017, increasing by an additional four percent each third January 1 thereafter,  
14 until reaching 75 percent on and after January 1, 2032.

15 \* \* \*

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

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

7           (ii) this purchase will:

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

12                   \* \* \* Access to Public Service Board Process \* \* \*

13           Sec. 15. ACCESS TO PUBLIC SERVICE BOARD WORKING

14                   GROUP: REPORT

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

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

19                   (2) The Commissioner of Public Service or designee.

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

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

3           (5) A Senate member of the Joint Energy Committee established under  
4           2 V.S.A. chapter 17, appointed by the Committee on Committees.

5           (b) Powers and duties; term.

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

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

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

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

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

19                   \* \* \* Regulated Energy Utility Expansion Funds \* \* \*

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



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

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

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

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

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

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

20 (1) of this subsection.

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\* \* \* Effective Dates \* \* \*

Sec. 16. EFFECTIVE DATES

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

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

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