

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred House Bill No. 577  
3 entitled “An act relating to voter approval of electricity purchases by  
4 municipalities and electric cooperatives” respectfully reports that it has  
5 considered the same and recommends that the Senate propose to the House that  
6 the bill be amended by striking out all after the enacting clause and inserting in  
7 lieu thereof the following:

8 \* \* \* Municipal and Cooperative Electric Utilities; Energy Purchases; Voter  
9 Approval \* \* \*

10 Sec. 1. 30 V.S.A. § 2924 is amended to read:

11 § 2924. APPROVAL BY VOTERS OF MUNICIPALITY

12 (a) With respect to matters not subject to section 248 of this title, ~~before~~ a  
13 municipal department established under this chapter or local charter ~~may~~ shall  
14 obtain the approval of the voters of the municipality before in any way:

15 (1) ~~purchase purchasing~~ electric capacity or energy from outside the  
16 state, ~~for a period exceeding five years, that represents more than one percent~~  
17 ~~of its historic peak demand, or State:~~

18 (A) for a period exceeding five years, that represents more than three  
19 percent of its historic peak demand, unless the purchase is from a plant that  
20 produces electricity from renewable energy; or

1           (B) for a period exceeding ten years, that represents more than ten  
2           percent of its historic peak demand, if the purchase is from a plant that  
3           produces electricity from renewable energy;

4           (2) ~~invest~~ investing in an electric generation or transmission facility  
5           located outside this ~~state~~ State; or

6           (3) ~~begin~~ beginning site preparation for or construction of an electric  
7           generation facility within the ~~state~~ State, or an electric transmission facility  
8           within the ~~state which~~ State that is designed for immediate or eventual  
9           operation at any voltage or ~~exercise~~ exercising the right of eminent domain in  
10          connection with site preparation for or construction of any such transmission or  
11          generation facility, except for the replacement of existing facilities with  
12          equivalent facilities in the usual course of business;

13          (b) ~~that~~ A municipal department shall obtain the approval required by  
14          subsection (a) of this section by a vote of a majority of the voters of the  
15          municipality voting upon the question at a duly warned annual or special  
16          meeting to be held for that purpose. Prior to the meeting, ~~a~~ the municipal  
17          department may provide to the voters an assessment of any risks and benefits  
18          of the proposed action.

19          (c) In this section, “plant” and “renewable energy” have the same meaning  
20          as in section 8002 of this title.

1 Sec. 2. 30 V.S.A. § 3044 is amended to read:

2 § 3044. APPROVAL BY MEMBERS OF COOPERATIVE

3 (a) With respect to matters not subject to section 248 of this title, ~~before~~ a  
4 cooperative established under this chapter ~~may~~ shall obtain the approval of the  
5 voters of the cooperative before in any way:

6 (1) ~~purchase~~ purchasing electric capacity or energy from outside the  
7 ~~state, for a period exceeding five years, that represents more than one percent~~  
8 ~~of its historic peak demand, or State:~~

9 (A) for a period exceeding five years, that represents more than three  
10 percent of its historic peak demand, unless the purchase is from a plant that  
11 produces electricity from renewable energy; or

12 (B) for a period exceeding ten years, that represents more than ten  
13 percent of its historic peak demand, if the purchase is from a plant that  
14 produces electricity from renewable energy;

15 (2) ~~invest~~ investing in an electric generation or transmission facility  
16 located outside this ~~state~~ State; or

17 (3) ~~begin~~ beginning site preparation for or construction of an electric  
18 generation facility within the ~~state~~ State, or an electric transmission facility  
19 within the ~~state which~~ State that is designed for immediate or eventual  
20 operation at any voltage or ~~exercise~~ exercising the right of eminent domain in  
21 connection with site preparation for or construction of any such transmission or

1 generation facility, except for the replacement of existing facilities with  
2 equivalent facilities in the usual course of business.

3 (b) ~~that~~ A cooperative shall obtain the approval required by subsection (a)  
4 of this section by a vote of a majority of the voters of the cooperative voting  
5 upon the question at a duly warned annual or special meeting to be held for  
6 that purpose. Prior to the meeting, a the cooperative may provide to the voters  
7 an assessment of any risks and benefits of the proposed action.

8 (c) In this section, “plant” and “renewable energy” have the same meaning  
9 as in section 8002 of this title.

10 \* \* \* Telecommunications Siting; Local Input; Collocation \* \* \*

11 Sec. 3. 30 V.S.A. § 248a is amended to read:

12 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
13 FACILITIES

14 (a) Certificate. Notwithstanding any other provision of law, if the applicant  
15 seeks approval for the construction or installation of telecommunications  
16 facilities that are to be interconnected with other telecommunications facilities  
17 proposed or already in existence, the applicant may obtain a certificate of  
18 public good issued by the Public Service Board under this section, which the  
19 Board may grant if it finds that the facilities will promote the general good of  
20 the State consistent with subsection 202c(b) of this title. A single application  
21 may seek approval of one or more telecommunications facilities. An

1 application under this section shall include a copy of each other State and local  
2 permit, certificate, or approval that has been issued for the facility under a  
3 statute, ordinance, or bylaw pertaining to the environment or land use.

4 (b) Definitions. As used in this section:

5 (1) “Ancillary improvements” means telecommunications equipment  
6 and site improvements that are primarily intended to serve a  
7 telecommunications facility, including wires or cables and associated poles to  
8 connect the facility to an electric or communications grid; fencing; equipment  
9 cabinets or shelters; emergency backup generators; and access roads.

10 (2) “De minimis modification” means the addition, modification, or  
11 replacement of telecommunications equipment, antennas, or ancillary  
12 improvements on a telecommunications facility or existing support structure,  
13 whether or not the structure was constructed as a telecommunications facility,  
14 or the reconstruction of such a facility or support structure, provided:

15 (A) the height and width of the facility or support structure,  
16 excluding equipment, antennas, or ancillary improvements, are not increased;

17 (B) the total amount of impervious surface, including access roads,  
18 surrounding the facility or support structure is not increased by more than  
19 300 square feet;

20 (C) the addition, modification, or replacement of an antenna or any  
21 other equipment on a facility or support structure does not extend vertically

1 more than 10 feet above the facility or support structure and does not extend  
2 horizontally more than 10 feet from the facility or support structure; and

3 (D) the additional equipment, antennas, or ancillary improvements on  
4 the support structure, excluding cabling, does not increase the aggregate  
5 surface area of the faces of the equipment, antennas, or ancillary improvements  
6 on the support structure by more than 75 square feet.

7 (3) “Good cause” means a showing of evidence that the substantial  
8 deference required under subdivision (c)(2) of this section would create a  
9 substantial shortcoming detrimental to the public good or State’s interests in  
10 section 202c of this title.

11 (4)(A) “Limited size and scope” means:

12 (i) A new telecommunications facility, including any ancillary  
13 improvements, that does not exceed 140 feet in height; or

14 (ii) An addition, modification, replacement, or removal of  
15 telecommunications equipment at a lawfully constructed telecommunications  
16 facility or on an existing support structure, and ancillary improvements, that  
17 would result in a facility of a total height of less than 200 feet and does not  
18 increase the width of the existing support structure by more than 20 feet.

19 (B) For construction described in subdivision (3)(A) of this  
20 subsection to be of limited size and scope, it shall not disturb more than  
21 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision,

1 “disturbed earth” means the exposure of soil to the erosive effects of wind,  
2 rain, or runoff.

3 (5) “Substantial deference” means that the plans and recommendations  
4 referenced under subdivision (c)(2) of this section are presumed correct, valid,  
5 and reasonable.

6 ~~(4)~~(6) “Telecommunications facility” means a communications facility  
7 that transmits and receives signals to and from a local, State, national, or  
8 international network used primarily for two-way communications for  
9 commercial, industrial, municipal, county, or State purposes and any  
10 associated support structure that is proposed for construction or installation  
11 which is primarily for communications purposes, and any ancillary  
12 improvements that are proposed for construction or installation and are  
13 primarily intended to serve the communications facilities or support structure.  
14 An applicant may seek approval of construction or installation of a  
15 telecommunications facility whether or not the telecommunications facility is  
16 attached to an existing structure.

17 ~~(5)~~(7) “Wireless service” means any commercial mobile radio service,  
18 wireless service, common carrier wireless exchange service, cellular service,  
19 personal communications service (PCS), specialized mobile radio service,  
20 paging service, wireless data service, or public or private radio dispatch  
21 service.

1 (c) Findings. Before the Public Service Board issues a certificate of public  
2 good under this section, it shall find that:

3 (1) The proposed facility will not have an undue adverse effect on  
4 aesthetics, historic sites, air and water purity, the natural environment, and the  
5 public health and safety, and the public's use and enjoyment of the I-89 and  
6 I-91 scenic corridors or of any highway that has been designated as a scenic  
7 road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C.  
8 § 162, with due consideration having been given to the relevant criteria  
9 specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

10 However, with respect to telecommunications facilities of limited size and  
11 scope, the Board shall waive all criteria of this subdivision other than  
12 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty,  
13 historic sites, rare and irreplaceable natural areas; endangered species;  
14 necessary wildlife habitat). Such waiver shall be on condition that:

15 (A) the Board may determine, pursuant to the procedures described  
16 in subdivision (j)(2)(A) of this section, that a petition raises a significant issue  
17 with respect to any criterion of this subdivision; and

18 (B) a telecommunications facility of limited size and scope shall  
19 comply, at a minimum, with the requirements of the Low Risk Site Handbook  
20 for Erosion Prevention and Sediment Control issued by the Department of



1 Environmental Conservation, regardless of any provisions in that handbook  
2 that limit its applicability.

3 (2) Unless there is good cause to find otherwise, substantial deference  
4 has been given to ~~the land conservation measures in the plans of the affected~~  
5 ~~municipalities and;~~ to the recommendations of the municipal legislative bodies  
6 and the municipal and regional planning commissions regarding the municipal  
7 and regional plans, respectively; and to the recommendations of the regional  
8 planning commission concerning the regional plan. Nothing in this section or  
9 other provision of law shall prevent a municipal body from basing its  
10 recommendations to which substantial deference is required under this  
11 subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw  
12 adopted under 24 V.S.A. chapter 117 by the municipality in which the facility  
13 is located. A rebuttable presumption respecting compliance with the  
14 applicable plan shall be created by a letter from an affected municipal  
15 legislative body or municipal planning commission concerning compliance  
16 with the municipal plan and by a letter from a regional planning commission  
17 concerning compliance with the regional plan.

18 (3) If the proposed facility relates to the provision of wireless service,  
19 the proposed facility reasonably cannot be collocated on or at an existing  
20 telecommunications facility, or such collocation would cause an undue adverse  
21 effect on aesthetics.

1           (A) If a proposed new support structure for a new  
2           telecommunications facility that provides wireless service will exceed 50 feet  
3           in height in a cleared area or will exceed 20 feet in height above the average  
4           treeline measured within a 100-foot radius from the structure in a wooded area,  
5           the application shall identify all existing telecommunications facilities within  
6           the area to be served by the proposed structure and, for each such existing  
7           facility, shall include a projection of the coverage and an estimate of additional  
8           capacity that would be provided if the applicant's proposed  
9           telecommunications equipment were located on or at the existing facility. The  
10           applicant also shall compare each such projection and estimate to the coverage  
11           and capacity that would be provided at the site of the proposed structure.

12           (B) To obtain a finding that a proposed facility cannot reasonably be  
13           collocated on or at an existing telecommunications facility, the applicant must  
14           demonstrate that:

15                   (i) collocating on or at an existing facility will result in a  
16                   significant reduction of the area to be served or the capacity to be provided by  
17                   the proposed facility or substantially impede coverage or capacity objectives  
18                   for the proposed facility that promote the general good of the State under  
19                   subsection 202c(b) of this title;

20                   (ii) the proposed antennas and equipment will exceed the  
21                   structural or spatial capacity of the existing or approved tower or facility, and

1 the existing or approved tower or facility cannot be reinforced, modified, or  
2 replaced to accommodate planned or equivalent equipment, at a reasonable  
3 cost, to provide coverage and capacity comparable to that of the proposed  
4 facility;

5 (iii) the owner of the existing facility will not provide space for  
6 the applicant's proposed telecommunications equipment on or at that facility  
7 on commercially reasonable terms; or

8 (iv) the proposed antennas and equipment will cause radio  
9 frequency interference that will materially impact the usefulness of other  
10 existing or permitted equipment at the existing or approved tower or facility  
11 and such interference cannot be mitigated at a reasonable cost.

12 \* \* \*

13 (e) Notice. No less than 45 60 days prior to filing an application for a  
14 certificate of public good under this section, the applicant shall serve written  
15 notice of an application to be filed with the Board pursuant to this section to  
16 the legislative bodies and municipal and regional planning commissions in the  
17 communities in which the applicant proposes to construct or install facilities;  
18 the Secretary of Natural Resources; the Secretary of Transportation; the  
19 Division for Historic Preservation; the Commissioner of Public Service and its  
20 Director for Public Advocacy; the Natural Resources Board if the application  
21 concerns a telecommunications facility for which a permit previously has been

1 issued under 10 V.S.A. chapter 151; and the landowners of record of property  
2 adjoining the project sites. In addition, at least one copy of each application  
3 shall be filed with each of these municipal and regional planning commissions.

4 (1) Upon motion or otherwise, the Public Service Board shall direct that  
5 further public or personal notice be provided if the Board finds that such  
6 further notice will not unduly delay consideration of the merits and that  
7 additional notice is necessary for fair consideration of the application.

8 (2) On the request of the municipal legislative body or the planning  
9 commission, the applicant shall attend a public meeting with the municipal  
10 legislative body or planning commission, or both, within the ~~45-day~~ 60-day  
11 notice period before filing an application for a certificate of public good. The  
12 Department of Public Service shall attend the public meeting on the request of  
13 the municipality. The Department shall consider the comments made and  
14 information obtained at the meeting in making recommendations to the Board  
15 on the application and in determining whether to retain additional personnel  
16 under subsection (o) of this section.

17 (3) With the notice required under this subsection, the applicant shall  
18 include a written assessment of the collocation requirements of subdivision  
19 (c)(3) of this section, as they pertain to the applicant's proposed  
20 telecommunications facility. On the request of the municipal legislative body  
21 or the planning commission, the Department of Public Service, pursuant to its

1 authority under subsection (o) of this section, shall retain an expert to review  
2 the applicant's collocation assessment and to conduct further independent  
3 analysis, as necessary. Within 45 days of receiving the applicant's notice and  
4 collocation assessment, the Department shall report its own preliminary  
5 findings and recommendations regarding collocation to the applicant and to all  
6 persons required to receive notice of an application for a certificate of public  
7 good under this subsection (e).

8 \* \* \*

9 (h) Exemptions from other law.

10 (1) An applicant using the procedures provided in this section shall not  
11 be required to obtain a permit or permit amendment or other approval under  
12 the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the  
13 facilities subject to the application or to a certificate of public good issued  
14 pursuant to this section. This exemption from obtaining a permit or permit  
15 amendment under 24 V.S.A. chapter 117 shall not affect the substantial  
16 deference to be given to a plan or recommendation based on a local land use  
17 bylaw under subdivision (c)(2) of this section.

18 (2) ~~Ordinances~~ An applicant using the procedures provided in this  
19 section shall not be required to obtain an approval from the municipality under  
20 an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter  
21 that would otherwise apply to the construction or installation of facilities

1 subject to this section ~~are preempted~~. This exemption from obtaining an  
2 approval under such an ordinance shall not affect the substantial deference to  
3 be given to a plan or recommendation based on such an ordinance under  
4 subdivision (c)(2) of this section.

5 (3) Disputes over jurisdiction under this section shall be resolved by the  
6 Public Service Board, subject to appeal as provided by section 12 of this title.  
7 An applicant that has obtained or been denied a permit or permit amendment  
8 under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction  
9 of a telecommunications facility may not apply for approval from the Board  
10 for the same or substantially the same facility, except that an applicant may  
11 seek approval for a modification to such a facility.

12 \* \* \*

13 Sec. 4. 24 V.S.A. § 4412(8)(C) is amended to read:

14 (C) The regulation of a telecommunications facility, as defined in  
15 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter  
16 when and to the extent jurisdiction is assumed by the Public Service Board  
17 according to the provisions of that section. This exemption from obtaining  
18 approval under this chapter shall not affect the substantial deference to be  
19 given to a plan or recommendation based on a local land use bylaw under  
20 30 V.S.A. § 248a(c)(2).

21

1           \* \* \* Department of Public Service; CPG; Complaint Protocol \* \* \*

2           Sec. 5. DEPARTMENT OF PUBLIC SERVICE; CERTIFICATE OF  
3                           PUBLIC GOOD; COMPLAINT PROTOCOL

4           (a) Not later than September 1, 2016, the Commissioner of Public Service  
5           shall establish and implement a protocol for handling complaints concerning  
6           the alleged failure of a company to comply with the terms and conditions of a  
7           certificate of public good issued by the Public Service Board under 30 V.S.A.  
8           §§ 248 or 248a. The Commissioner may revise the protocol at any time to  
9           achieve a more effective and satisfactory response to complaints.

10          (b) The purpose of this section is to create a single location within State  
11          government for receipt and tracking of all complaints described in subsection  
12          (a) of this section. The protocol shall include a process for filing,  
13          investigating, and responding to complaints in a timely manner, as well as a  
14          procedure for tracking the number and nature of complaints received and a  
15          summary of actions taken by the Department of Public Service in response to  
16          each complaint, which information shall be aggregated and reported annually  
17          to the General Assembly beginning January 1, 2017, notwithstanding 2 V.S.A.  
18          § 20(d). In addition, the Department shall keep a record of complaints filed  
19          under the protocol. A summary of the record shall be published on a website  
20          maintained by the Department to increase public awareness and transparency,  
21          which may reduce the occurrence of redundant complaint filings. The

1 Commissioner’s protocol shall include standards and procedures for  
2 consolidating complaints of a similar nature involving the same company and  
3 procedures under which a company receiving a complaint informs the  
4 Department of the complaint and its nature and such information as the  
5 Commissioner determines is necessary to track its progress and response.

6 (c) A complainant shall not be required to direct a complaint to a company  
7 prior to submitting a complaint with the Department of Public Service pursuant  
8 to the complaint protocol established under this section.

9 (d) The Commissioner may retain experts and other personnel as identified  
10 in 30 V.S.A. § 20 to investigate complaints, and may allocate the reasonable  
11 expenses incurred in retaining such personnel to the company as provided  
12 under 30 V.S.A. § 21.

13 (e) The complaint protocol established under this section shall be in  
14 addition to any procedure established under 30 V.S.A. § 208. Unresolved  
15 complaints may be considered by the Public Service Board pursuant to its  
16 authority under Title 30, including 30 V.S.A. § 8(f), and Public Service Board  
17 Rules.

18 (f) With its report filed under this section on or before January 1, 2018, the  
19 Commissioner shall make recommendations regarding the establishment of  
20 and payment for an ongoing process for monitoring a company’s compliance



1 with a certificate of public good for the purpose of reducing the filing of  
2 individual complaints under this section.

3 \* \* \* Ratepayer Advocacy; Attorney General; Pilot Project \* \* \*

4 Sec. 6. RATEPAYER ADVOCACY; ATTORNEY GENERAL; PILOT  
5 PROJECT

6 (a) The Attorney General shall represent the interests of ratepayer classes  
7 who are not independently represented parties in any proceeding to change the  
8 rate schedule of a public service company under chapter 5 of Title 30.

9 (b) This section shall apply to any rate proceeding commenced after July 1,  
10 2016 and before February 1, 2018.

11 (c) For purposes of this section, “public service company” means an  
12 electric company if the proposed rate change affects at least 25,000 residential  
13 consumers or a natural gas company.

14 (d) For purposes of carrying out his or her duties under this section, the  
15 Attorney General:

16 (1) shall have access to and use of all files, records, and data of the  
17 Public Service Board and the Department of Public Service available to any  
18 other attorney representing a party in a proceeding before the Board; and

19 (2) may seek review of any determination, finding, or order of the Board  
20 in the name of ratepayers.

1       (e) On or before January 15 in the years 2017, 2018, and 2019, the  
2       Attorney General shall submit a report to the General Assembly, which  
3       includes his or her findings and recommendations regarding the status of  
4       ratepayer advocacy in Vermont as well as any specific recommendations he or  
5       she deems appropriate for legislation relative to Board or Department  
6       procedures, rules, jurisdiction, personnel, and functions or to the Attorney  
7       General’s ongoing representation of ratepayers in rate proceedings.

8       (f) The Public Service Board shall allocate expenses incurred by the  
9       Attorney General under this section to the public service company involved in  
10       the proceedings as provided in 30 V.S.A. §§ 20 and 21.

11                   \* \* \* VTA Grants; Compliance; Refund \* \* \*

12       Sec. 7. VTA GRANT; COMPLIANCE; REFUND

13       (a) With funds appropriated by the General Assembly in 2011 Acts and  
14       Resolves No. 40, Secs. 3 and 49, the Vermont Telecommunications Authority  
15       (VTA) awarded VTel Wireless, a subsidiary of the Vermont Telephone  
16       Company, a \$2,644.093.00 grant to purchase equipment to deploy mobile  
17       voice service over its wireless broadband 4G LTE (WOW) network by  
18       December 31, 2014. The equipment purchased by VTel does not currently  
19       comply with the FCC’s E-911 location accuracy requirements and, therefore,  
20       has not been deployed.

1       (b) Consistent with all applicable State and federal requirements, VTel  
2       shall provide mobile voice service over its WOW network to not less than  
3       2,000 Vermont customers on or before November 1, 2017.

4       (c) On or before November 15, 2017, VTel Wireless shall submit to the  
5       Department of Public Service, the successor in interest to the VTA, written  
6       evidence substantiating compliance with subsection (b) of this section. If the  
7       Department of Public Service finds that VTel Wireless has not complied with  
8       subsection (b) of this section, VTel shall refund the State of Vermont  
9       \$2,644,093.00.

10       (d) Any money refunded to the State under this section shall be deposited  
11       into the Connectivity Fund and used solely to support the Connectivity  
12       Initiative established under 30 V.S.A. § 7515b.

13       \* \* \* Vermont Hydroelectric Power Acquisition; Working Group \* \* \*

14       Sec. 8. VERMONT HYDROELECTRIC POWER ACQUISITION

15               WORKING GROUP

16       (a) Creation. There is created the Vermont Hydroelectric Power  
17       Acquisition Working Group to prepare due diligence and feasibility studies  
18       regarding the purchase of hydroelectric dams and related assets currently  
19       owned by TransCanada Hydro on the Connecticut and Deerfield Rivers (the  
20       “dam facilities”).

1        (b) Membership. The Working Group shall be composed of the following  
2        seven members:

3            (1) the Secretary of Administration or designee who shall serve as chair;

4            (2) the State Treasurer or designee;

5            (3) the Commissioner of Public Service or designee;

6            (4) two persons chosen by the Governor, at least one of whom shall be  
7        an employee of a regional planning commission serving communities that host  
8        at least two hydroelectric facilities owned by TransCanada Hydro;

9            (5) one person chosen by the Speaker of the House; and

10          (6) one person chosen by the Senate Committee on Committees.

11        (c) Powers and duties. The Working Group shall:

12            (1) Review and study the principal policy, economic, environmental,  
13        and engineering issues involved in a purchase of the dam facilities, including:

14            (A) the administrative and structural options for the ownership of the  
15        dam facilities and the sale and distribution of their power output, including  
16        ownership through the creation of a limited purpose State public power  
17        authority, the Vermont Public Power Supply Authority, by one or more  
18        Vermont utilities, or by a public-private partnership; and

19            (B) the alternatives for disposition of the power output of the dam  
20        facilities, including wholesale and retail sales within and outside the State and  
21        use of the power within a portfolio to support advanced and renewable energy

1 technologies, and the impacts of these alternatives on the credit-worthiness of  
2 the State and the ability of Vermont utilities to access investment capital on  
3 reasonable commercial terms.

4 (2) Prepare recommendations on the purchase of the dam facilities.

5 (d) Assistance. The Working Group may consult with other State,  
6 municipal, or private entities, including representatives of the State Treasurer;  
7 the Vermont Agency of Natural Resources; the Vermont Municipal Bond  
8 Bank; representatives of existing municipal, cooperative, and investor-owned  
9 utilities; the Vermont Department of Public Service; and, where appropriate,  
10 the Public Service Board. Reasonable administrative support for the Working  
11 Group shall be provided upon request by the Department of Public Service and  
12 the Office of Legislative Council. The Working Group may retain professional  
13 assistance to undertake the duties required herein.

14 (e) Reimbursement. Legislative members of the Working Group shall  
15 receive per diem and expenses pursuant to 2 V.S.A. § 406, and members of the  
16 Working Group who are not State employees may be compensated by their  
17 appointing authorities.

18 (f) Public records. Commercial and financial information of a proprietary  
19 nature produced or acquired by the Working Group shall be exempt from  
20 public inspection and copying under the Public Records Act if public release of  
21 the information could jeopardize the position of the State of Vermont and its

1 agents in negotiations or in the purchase of the facilities on advantageous  
2 terms.

3 (g) Meetings. The members of the Working Group shall be appointed not  
4 later than 13 days following passage of this act and the Secretary of  
5 Administration shall convene the Working Group not later than 15 days after  
6 the effective date of this act.

7 (h) Appropriation. The Secretary of Administration is authorized to expend  
8 \$75,000.00 from general funds appropriated to the Executive Branch in the  
9 FY 2017 Appropriations Act for the study required in this section. If the  
10 Secretary determines that additional expenditures are necessary to preserve  
11 options on behalf of the State, the Working Group is authorized to approve the  
12 Secretary's use of an additional \$175,000.00 from general funds appropriated  
13 to the Executive Branch in the FY 2017 Appropriations Act. The Secretary  
14 shall make an offsetting reduction or funds transfer for any amount expended  
15 from the funds appropriated to the Executive Branch in the FY 2017  
16 Appropriations Act. Any additional funding shall require approval from the  
17 Emergency Board.

18 (i) Report. On or before August 1, 2016, the Working Group shall submit a  
19 report on the study and recommendation described in subsection (c) of this  
20 section to the Senate Committees on Finance and on Natural Resources and

1 Energy, and the House Committees on Commerce and Economic Development  
2 and on Natural Resources and Energy.

3 (j) Bid. If the Working Group’s report described in subsection (i) of this  
4 section includes a recommendation to purchase the dam facilities, then the  
5 Working Group is authorized to submit a bid to purchase the dam facilities;  
6 provided, however, that the Working Group shall obtain approval of the  
7 General Assembly to proceed with the bid within 14 days of receipt of  
8 notification that the bid has been accepted. If the bid is accepted when the  
9 General Assembly is not in session, then the Working Group shall request that  
10 the Governor convene a special session for the purpose of approving the bid.

11 Sec. 9. 30 V.S.A. chapter 90 is added to read:

12 CHAPTER 90. VERMONT HYDROELECTRIC POWER AUTHORITY

13 Subchapter 1. General Provisions

14 § 8040. FINDINGS, PURPOSE, AND GOALS

15 (a) The General Assembly of the State of Vermont finds that potential  
16 exists to purchase an interest in hydroelectric power stations along the  
17 Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and  
18 Massachusetts.

19 (b) Therefore, it is the purpose of this chapter to create an entity with the  
20 authority to finance, purchase, own, operate, or manage any interest in the  
21 hydroelectric power facilities along the Connecticut and Deerfield Rivers

1 located in Vermont, New Hampshire and Massachusetts, and to sell the electric  
2 energy under the control of the Authority from those facilities at wholesale to  
3 authorized wholesale purchasers. The purchase and operation of an interest  
4 shall be pursued with the following goals:

5 (1) to promote the general good of the State;

6 (2) to stimulate the development of the Vermont economy;

7 (3) to increase the degree to which Vermont's energy needs are met  
8 through environmentally-sound sustainable and renewable in-state energy  
9 sources;

10 (4) to lessen electricity price risk and volatility for Vermont ratepayers  
11 and to increase system reliability;

12 (5) to not compete with Vermont utilities;

13 (6) to ensure that the credit rating of the State will not be adversely  
14 affected and Vermont taxpayers will not be liable should the purchase of the  
15 facilities fail because of the failure to produce sufficient revenue to service the  
16 debt, the failure of a partner, or for any other reason; and

17 (7) to cause the facilities to be operated in an environmentally sound  
18 manner consistent with federal licenses and purposes.

19 § 8041. DEFINITIONS

20 As used in this chapter:



1           (1) “Authority” means the Vermont Hydroelectric Power Authority  
2           established by this chapter.

3           (2) “Facilities” means the hydroelectric power stations and related assets  
4           along the Connecticut and Deerfield Rivers located in Vermont, New  
5           Hampshire, and Massachusetts in which the Authority has acquired an equity  
6           interest.

7           § 8042. ESTABLISHMENT

8           There is created a body corporate and politic to be known as the Vermont  
9           Hydroelectric Power Authority. The Authority is an instrumentality of the  
10           State exercising public and essential governmental functions, and the exercise  
11           by the Authority of the powers conferred upon it by this chapter constitutes the  
12           performance of essential governmental functions.

13           § 8043. BOARD OF DIRECTORS

14           (a) Directors. The powers of the Authority shall be exercised by seven  
15           directors appointed as follows:

16           (1) Five directors shall be appointed by the Governor, at least one of  
17           whom shall represent retail customers. No director appointed by the Governor,  
18           while serving as a director, shall be an employee, board member, or director, or  
19           have a substantial ownership interest in an electric company regulated by the  
20           Public Service Board or the Department of Public Service under this title;

21           (2) The State Treasurer, who shall serve ex officio; and

1           (3) One director shall be a representative of the Department of Public  
2           Service, appointed by the Commissioner, who shall serve at the pleasure of the  
3           Commissioner.

4           (b) Terms and vacancies. The directors appointed by the Governor shall be  
5           appointed for terms of five years and until their successors are appointed and  
6           confirmed, except that the first directors shall be appointed in the following  
7           manner: one for a term of two years, two for a term of three years, and two for  
8           a term of five years. The Governor for cause may remove a director appointed  
9           by a Governor. The Governor may fill any vacancy occurring among the  
10           directors appointed by a Governor for the balance of the unexpired term. A  
11           director may be reappointed.

12           (c) Officers. The Authority shall elect a chair, a vice chair, and a treasurer  
13           from among its directors.

14           (d) Quorum. A quorum shall consist of four directors. No action of the  
15           Authority shall be considered valid unless the action is supported by a majority  
16           vote of the directors present and voting and then only if at least four directors  
17           vote in favor of the action.

18           (e) Compensation. Directors shall be compensated for necessary expenses  
19           incurred in the performance of their duties in the manner provided by  
20           32 V.S.A. § 1010(b).

1       (f) Bylaws. The Authority’s board of directors shall adopt bylaws or other  
2       rules and regulations for the management of the affairs of the Authority and  
3       carrying out the purposes of this chapter.

4       (g) Conflicts. Despite any law or charter provision to the contrary, a  
5       director or officer of the Authority who is also an officer, employee, or  
6       member of a legislative body of a municipality or other public body or of the  
7       State shall not thereby be precluded from voting or acting on behalf of the  
8       Authority on a matter involving the municipality or public body or the State.

9       § 8044. MANAGER

10       (a) Manager. The Authority shall employ and compensate a manager who  
11       shall serve under a contract for a specific term or at the pleasure of the  
12       Authority. The Authority, with the Governor’s approval, shall fix the  
13       manager’s compensation. The manager shall be the chief executive officer of  
14       the Authority and shall administer, manage, and direct the affairs and business  
15       of the Authority, subject to the policies, control, and direction of the directors.

16       (b) Interim manager. The Governor or the Governor’s designee shall have  
17       the power to appoint an interim manager upon enactment of this chapter, who  
18       shall serve at the Governor’s pleasure, under the Governor’s direction, and for  
19       compensation established by the Governor. The interim manager, with the  
20       approval of the Governor or the Governor’s designee, shall have full authority  
21       to take all actions authorized under this chapter to protect and advance the

1 interests of the State of Vermont until such time as a manager employed  
2 pursuant to subsection (a) of this section has assumed office.

3 § 8045. TERMINATION

4 (a) The Authority shall continue so long as it shall have any obligations or  
5 indebtedness outstanding and until its existence is terminated by law. Upon  
6 termination of the Authority, title to all of the property owned by the Authority  
7 shall vest in the State. The State reserves the right to change or terminate the  
8 Authority and any structure, organization, program, or activity of the  
9 Authority, subject to constitutional limitations.

10 (b) The net earnings of the Authority, beyond those necessary for  
11 retirement of its notes, bonds, or other obligations or indebtedness or to  
12 implement the public purposes and programs authorized in this chapter, shall  
13 not inure to the benefit of any person other than the State.

14 Subchapter 2. Powers and Prohibitions

15 § 8046. GENERAL POWERS

16 The Authority has the following powers as are necessary to carry out the  
17 purposes of this chapter:

18 (1) To borrow money and to issue negotiable bonds, notes, and  
19 commercial paper, and give other evidences of indebtedness or obligations,  
20 and to provide for and secure the payment thereof, and to provide for the rights  
21 of the holders thereof, to purchase, hold, and dispose of any of its bonds, notes,

1 or commercial paper, and to resell or retire any such evidences of indebtedness  
2 or obligations prior to the stated maturity thereof.

3 (2) To enter into all contracts, leases, agreements, and arrangements,  
4 including such agreements with other persons as the Authority deems  
5 necessary or appropriate in connection with the issuance, sale, and resale of  
6 evidences of indebtedness or obligations, including trust indentures, bond  
7 purchase agreements, disclosure agreements, remarketing agreements,  
8 agreements providing liquidity or credit facilities, bond insurance, or other  
9 credit enhancements in connection with such evidences of indebtedness or  
10 obligations.

11 (3) To acquire by purchase, lease, gift, or otherwise, or to obtain options  
12 for the acquisition of property necessary to carry out the purposes of this  
13 chapter, real or personal, improved or unimproved, tangible or intangible,  
14 including an interest in land of less than fee.

15 (4) To pledge or assign any money, fees, charges, or other revenues of  
16 the Authority and any proceeds derived by the Authority from the sale of  
17 property or from insurance or condemnation awards.

18 (5) To employ personnel who, in the discretion of the Authority, may be  
19 in the classified system under 3 V.S.A. chapter 13, and to employ or contract  
20 with agents, consultants, legal advisors, and other persons and entities as may

1 be necessary or desirable for its purposes, upon such terms as the Authority  
2 may determine.

3 (6) To apply and contract for and to expend assistance from the United  
4 States or other sources, whatever the form.

5 (7) To administer its own funds and to deposit funds which are not  
6 needed currently to meet the obligations of the Authority.

7 (8) To invest funds which are not needed currently to meet the  
8 obligations of the Authority, pursuant to an investment policy approved by the  
9 State Treasurer.

10 (9) To apply to the appropriate agencies of the State, other states, the  
11 United States, and to any other proper agency for permits, licenses, certificates,  
12 or approvals which may be necessary, and to construct, maintain, and operate  
13 the facilities in accordance with these licenses, permits, certificates, or  
14 approvals;

15 (10) To contract with respect to the purchase, sale, delivery, exchange,  
16 interchange, wheeling, pooling, transmission, or use of project electric power  
17 and energy and to otherwise participate in intrastate, interstate, and  
18 international wholesale arrangements with respect to those matters.

19 (11) To contract for the use of transmission and distribution facilities  
20 owned by others solely for the purpose of engaging in wholesale transactions.

1           (12) Alone or jointly, to plan, finance, acquire, construct, improve,  
2           purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of, or  
3           otherwise participate in the facilities or portions of the facilities, the product or  
4           service from them, securities or obligations issued or incurred in connection  
5           with the financing of them, or research and development relating to them,  
6           within or outside the state.

7           (13) To sell electric power at wholesale within or outside the State.

8           (14) To undertake a joint financing of the facilities.

9           (15) To accept and expend with respect to a facility, project, or program  
10          any gifts or grants received from any source in accordance with the terms of  
11          the gifts or grants.

12          (16) To exercise all powers necessary or incidental to affect any or all of  
13          the purposes for which the Authority is created.

14          § 8047. PROHIBITIONS

15          The Authority shall take no action to cause, nor shall any provision of this  
16          chapter be construed to impose, any obligation upon the State as a result of the  
17          insolvency of a partner.

18          § 8048. OBLIGATIONS NOT OBLIGATIONS OF THE STATE

19          (a) The Authority shall have the benefit of sovereign immunity to the same  
20          extent as the State of Vermont.

21          (b) Notwithstanding subsection (a) of this section:

1           (1) obligations of the Authority under a contract authorized by this  
2           chapter shall not be deemed to constitute an obligation, indebtedness, or a  
3           lending of credit of the State; and

4           (2) no financing or security document, bond, or other instrument issued  
5           or entered into in the name and on behalf of the Authority under this chapter  
6           shall in any way obligate the State to raise any money by taxation or use other  
7           funds for any purpose to pay any debt or meet any financial obligation to any  
8           person at any time in relation to a facility, project, or program financed in  
9           whole or in part by the issue of the Authority's bonds under this chapter.

10           § 8049. RECORDS; ANNUAL REPORT; AUDIT

11           (a) The Authority shall keep an accurate account of all its activities and of  
12           all its receipts and expenditures.

13           (b) Each year, prior to February 1, the Authority shall submit a report of its  
14           activities for the preceding fiscal year to the Governor and to the General  
15           Assembly. The report shall set forth a complete operating and financial  
16           statement covering its operations during the year. The Authority shall cause an  
17           audit of its books and accounts to be made at least once in each year by a  
18           certified public accountant. The cost of the audit shall be considered an  
19           expense of the Authority, and a copy of the audit shall be filed with the State  
20           Treasurer.

21           Subchapter 3. Form and Nature of **Indebtedness**; Approval



1 § 8050. BONDS; INDEBTEDNESS

2 (a) Issue. The Authority may issue bonds, or any other forms of  
3 indebtedness, to pay the costs of purchasing the facilities, or property related to  
4 such facilities, to pay the costs of repairs, replacements, or expansions of the  
5 facilities, to pay capitalized interest and costs of issuance, which have been  
6 approved by the Authority, or to refund bonds previously issued.

7 (b) Form of bonds. Bonds issued under this section shall bear the manual  
8 or facsimile signature of the manager of the Authority and the manual or  
9 facsimile signature of the Chair or Vice Chair of the Authority. Bonds shall be  
10 sold by the signing officers at public or private sale, and the proceeds thereof  
11 shall be paid to the trustee under the security document that secures the bonds.  
12 Such bonds shall be in such form and denominations, and with such terms and  
13 provisions, including the maturity date or dates, redemption provisions, and  
14 other provisions necessary or desirable. Such bonds shall be either taxable or  
15 tax-exempt and shall be noninterest bearing, or bear interest at such rate or  
16 rates, which may be fixed or variable, as may be sufficient or necessary to  
17 effect the issuance and sale or resale thereof. If any swaps or similar derivative  
18 instrument is used in the issuance of such bonds, the Authority shall employ a  
19 swap adviser to develop an interest rate management plan.

20 (c) Trustee. A state or national chartered bank, Vermont bank, or Vermont  
21 trust company may serve as trustee for the benefit of debtholders under a

1 security document, and the trustee may at any time own all or any part of the  
2 indebtedness issued under that security document, unless otherwise provided  
3 therein. All monies received or held by the Authority or by a trustee pursuant  
4 to a financing or security document shall be deemed to be trust funds and shall  
5 be held and applied solely in accordance with the applicable document.

6 (d) Enforcement. Except as provided in any financing or security  
7 document entered into or any indebtedness issued under this chapter, each of  
8 the parties to the financing or security document or any debtholder may  
9 enforce the obligation of any other person to the party or debtholder under the  
10 bond or instrument by appropriate legal proceedings.

11 (e) Legal investments. Any indebtedness issued under this chapter shall be  
12 legal investments for all persons without limit as to the amount held, regardless  
13 of whether they are acting for their own account or in a fiduciary capacity.  
14 Such bonds shall likewise be legal investments for all public officials  
15 authorized to invest public funds.

16 § 8051. BONDS; INDEBTEDNESS; APPROVAL

17 The Authority shall issue indebtedness under this chapter pursuant to  
18 guidelines developed by the State Treasurer. The Governor and the State  
19 Treasurer shall provide written approval prior to any issuance.

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Subchapter 4. Funds and Accounts

§ 8052. FUNDS; ACCOUNTS.

The Authority shall establish funds and accounts, including reserve funds, necessary to meet the Authority’s operating and capital needs, and the provisions of any security documents. Any debt service reserves shall be structured to be consistent with applicable guidelines established by the Internal Revenue Service.

Sec. 10. VERMONT HYDROELECTRIC POWER AUTHORITY;  
TRANSITIONAL PROVISION; APPOINTMENT; TERMINATION

(a) The Governor shall appoint the directors of the Authority within 14 days following the request of the Vermont Hydroelectric Power Acquisition Working Group.

(b) Sec. 9 of this act, creating 30 V.S.A. chapter 90, shall terminate on January 15, 2017 if at that time the State has not purchased or commenced negotiations to purchase, the dam facilities, as determined by the Secretary of Administration.

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

Sec. 11. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 1 and 2 shall take effect on July 1, 2016.

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7 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE