

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

11 Sec. 3. VERMONT HYDROELECTRIC POWER ACQUISITION

12 WORKING GROUP

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

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

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

21 (2) the State Treasurer or designee;

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

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

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

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

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

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

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

15 (B) the alternatives for disposition of the power output of the dam
16 facilities, including wholesale and retail sales within and outside the State and
17 use of the power within a portfolio to support advanced and renewable energy
18 technologies, and the impacts of these alternatives on the credit-worthiness of
19 the State and the ability of Vermont utilities to access investment capital on
20 reasonable commercial terms.

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

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

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

14 (f) Public records. Commercial and financial information of a proprietary
15 nature produced or acquired by the Working Group shall be exempt from
16 public inspection and copying under the Public Records Act if public release of
17 the information could jeopardize the position of the State of Vermont and its
18 agents in negotiations or in the purchase of the facilities on advantageous
19 terms.

20 (g) Meetings. The members of the Working Group shall be appointed not
21 later than 13 days following passage of this act and the Secretary of

1 Administration shall convene the Working Group not later than 15 days after
2 the effective date of this act.

3 (h) Appropriation. The Secretary of Administration is authorized to expend
4 \$75,000.00 from general funds appropriated to the Executive Branch in the
5 FY 2017 Appropriations Act for the study required in this section. If the
6 Secretary determines that additional expenditures are necessary to preserve
7 options on behalf of the State, the Working Group is authorized to approve the
8 Secretary's use of an additional \$175,000.00 from general funds appropriated
9 to the Executive Branch in the FY 2017 Appropriations Act. The Secretary
10 shall make an offsetting reduction or funds transfer for any amount expended
11 from the funds appropriated to the Executive Branch in the FY 2017
12 Appropriations Act. Any additional funding shall require approval from the
13 Emergency Board.

14 (i) Report. On or before August 1, 2016, the Working Group shall submit a
15 report on the study and recommendation described in subsection (c) of this
16 section to the Senate Committees on Finance and on Natural Resources and
17 Energy, and the House Committees on Commerce and Economic Development
18 and on Natural Resources and Energy.

19 (j) Bid. If the Working Group's report described in subsection (i) of this
20 section includes a recommendation to purchase the dam facilities, then the
21 Working Group is authorized to submit a bid to purchase the dam facilities;

1 provided, however, that the Working Group shall obtain approval of the
2 General Assembly to proceed with the bid within 14 days of receipt of
3 notification that the bid has been accepted. If the bid is accepted when the
4 General Assembly is not in session, then the Working Group shall request that
5 the Governor convene a special session for the purpose of approving the bid.

6 Sec. 4. 30 V.S.A. chapter 90 is added to read:

7 CHAPTER 90. VERMONT HYDROELECTRIC POWER AUTHORITY

8 Subchapter 1. General Provisions

9 § 8040. FINDINGS, PURPOSE, AND GOALS

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

14 (b) Therefore, it is the purpose of this chapter to create an entity with the
15 authority to finance, purchase, own, operate, or manage any interest in the
16 hydroelectric power facilities along the Connecticut and Deerfield Rivers
17 located in Vermont, New Hampshire and Massachusetts, and to sell the electric
18 energy under the control of the Authority from those facilities at wholesale to
19 authorized wholesale purchasers. The purchase and operation of an interest
20 shall be pursued with the following goals:

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

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

2 (3) to increase the degree to which Vermont’s energy needs are met
3 through environmentally-sound sustainable and renewable in-state energy
4 sources;

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

7 (5) to not compete with Vermont utilities;

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

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

14 § 8041. DEFINITIONS

15 As used in this chapter:

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

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

1 § 8042. ESTABLISHMENT

2 There is created a body corporate and politic to be known as the Vermont
3 Hydroelectric Power Authority. The Authority is an instrumentality of the
4 State exercising public and essential governmental functions, and the exercise
5 by the Authority of the powers conferred upon it by this chapter constitutes the
6 performance of essential governmental functions.

7 § 8043. BOARD OF DIRECTORS

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

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

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

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

19 (b) Terms and vacancies. The directors appointed by the Governor shall be
20 appointed for terms of five years and until their successors are appointed and
21 confirmed, except that the first directors shall be appointed in the following

1 manner: one for a term of two years, two for a term of three years, and two for
2 a term of five years. The Governor for cause may remove a director appointed
3 by a Governor. The Governor may fill any vacancy occurring among the
4 directors appointed by a Governor for the balance of the unexpired term. A
5 director may be reappointed.

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

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

12 (e) Compensation. Directors shall be compensated for necessary expenses
13 incurred in the performance of their duties in the manner provided by
14 32 V.S.A. § 1010(b).

15 (f) Bylaws. The Authority's board of directors shall adopt bylaws or other
16 rules and regulations for the management of the affairs of the Authority and
17 carrying out the purposes of this chapter.

18 (g) Conflicts. Despite any law or charter provision to the contrary, a
19 director or officer of the Authority who is also an officer, employee, or
20 member of a legislative body of a municipality or other public body or of the

1 State shall not thereby be precluded from voting or acting on behalf of the
2 Authority on a matter involving the municipality or public body or the State.

3 § 8044. MANAGER

4 (a) Manager. The Authority shall employ and compensate a manager who
5 shall serve under a contract for a specific term or at the pleasure of the
6 Authority. The Authority, with the Governor's approval, shall fix the
7 manager's compensation. The manager shall be the chief executive officer of
8 the Authority and shall administer, manage, and direct the affairs and business
9 of the Authority, subject to the policies, control, and direction of the directors.

10 (b) Interim manager. The Governor or the Governor's designee shall have
11 the power to appoint an interim manager upon enactment of this chapter, who
12 shall serve at the Governor's pleasure, under the Governor's direction, and for
13 compensation established by the Governor. The interim manager, with the
14 approval of the Governor or the Governor's designee, shall have full authority
15 to take all actions authorized under this chapter to protect and advance the
16 interests of the State of Vermont until such time as a manager employed
17 pursuant to subsection (a) of this section has assumed office.

18 § 8045. TERMINATION

19 (a) The Authority shall continue so long as it shall have any obligations or
20 indebtedness outstanding and until its existence is terminated by law. Upon
21 termination of the Authority, title to all of the property owned by the Authority

1 shall vest in the State. The State reserves the right to change or terminate the
2 Authority and any structure, organization, program, or activity of the
3 Authority, subject to constitutional limitations.

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

8 Subchapter 2. Powers and Prohibitions

9 § 8046. GENERAL POWERS

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

12 (1) To borrow money and to issue negotiable bonds, notes, and
13 commercial paper, and give other evidences of indebtedness or obligations,
14 and to provide for and secure the payment thereof, and to provide for the rights
15 of the holders thereof, to purchase, hold, and dispose of any of its bonds, notes,
16 or commercial paper, and to resell or retire any such evidences of indebtedness
17 or obligations prior to the stated maturity thereof.

18 (2) To enter into all contracts, leases, agreements, and arrangements,
19 including such agreements with other persons as the Authority deems
20 necessary or appropriate in connection with the issuance, sale, and resale of
21 evidences of indebtedness or obligations, including trust indentures, bond

1 purchase agreements, disclosure agreements, remarketing agreements,
2 agreements providing liquidity or credit facilities, bond insurance, or other
3 credit enhancements in connection with such evidences of indebtedness or
4 obligations.

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

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

12 (5) To employ personnel who, in the discretion of the Authority, may be
13 in the classified system under 3 V.S.A. chapter 13, and to employ or contract
14 with agents, consultants, legal advisors, and other persons and entities as may
15 be necessary or desirable for its purposes, upon such terms as the Authority
16 may determine.

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

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

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

4 (9) To apply to the appropriate agencies of the State, other states, the
5 United States, and to any other proper agency for permits, licenses, certificates,
6 or approvals which may be necessary, and to construct, maintain, and operate
7 the facilities in accordance with these licenses, permits, certificates, or
8 approvals;

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

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

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

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

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

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

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

7 § 8047. PROHIBITIONS

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

11 § 8048. OBLIGATIONS NOT OBLIGATIONS OF THE STATE

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

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

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

18 (2) no financing or security document, bond, or other instrument issued
19 or entered into in the name and on behalf of the Authority under this chapter
20 shall in any way obligate the State to raise any money by taxation or use other
21 funds for any purpose to pay any debt or meet any financial obligation to any

1 person at any time in relation to a facility, project, or program financed in
2 whole or in part by the issue of the Authority's bonds under this chapter.

3 § 8049. RECORDS; ANNUAL REPORT; AUDIT

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

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

14 Subchapter 3. Form and Nature of Indebtedness; Approval

15 § 8050. BONDS; INDEBTEDNESS

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

1 (b) Form of bonds. Bonds issued under this section shall bear the manual
2 or facsimile signature of the manager of the Authority and the manual or
3 facsimile signature of the Chair or Vice Chair of the Authority. Bonds shall be
4 sold by the signing officers at public or private sale, and the proceeds thereof
5 shall be paid to the trustee under the security document that secures the bonds.
6 Such bonds shall be in such form and denominations, and with such terms and
7 provisions, including the maturity date or dates, redemption provisions, and
8 other provisions necessary or desirable. Such bonds shall be either taxable or
9 tax-exempt and shall be noninterest bearing, or bear interest at such rate or
10 rates, which may be fixed or variable, as may be sufficient or necessary to
11 effect the issuance and sale or resale thereof. If any swaps or similar derivative
12 instrument is used in the issuance of such bonds, the Authority shall employ a
13 swap adviser to develop an interest rate management plan.
14 (c) Trustee. A state or national chartered bank, Vermont bank, or Vermont
15 trust company may serve as trustee for the benefit of debtholders under a
16 security document, and the trustee may at any time own all or any part of the
17 indebtedness issued under that security document, unless otherwise provided
18 therein. All monies received or held by the Authority or by a trustee pursuant
19 to a financing or security document shall be deemed to be trust funds and shall
20 be held and applied solely in accordance with the applicable document.

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

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

11 § 8051. BONDS; INDEBTEDNESS; APPROVAL

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

15 Subchapter 4. Funds and Accounts

16 § 8052. FUNDS; ACCOUNTS.

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

