

**S.230: Energy Development Improvement Act
Comparison, Senate with House**

Office of Legislative Council April 27, 2016

§	AS PASSED SENATE	§	AS PASSED HOUSE
<i>Designation</i>			
1	Designates the act as the Energy Development Improvement Act	1	<i>Same as Senate</i>
<i>Planning Sections</i>			
2	<p>24 V.S.A. § 4302. Purpose; goals</p> <p>Amends the energy goal of 24 V.S.A. chapter 117 (municipal and regional planning and development) to:</p> <ul style="list-style-type: none"> • Incorporate the existing statutes on greenhouse gas reduction goals, building efficiency goals, renewable energy goals, state energy policy, and the distributed renewable generation and energy transformation categories of the Renewable Energy Standard • Require consistency with State energy plans 	2	<p>24 V.S.A. § 4302. Purpose; goals</p> <p>Amends the energy goal of 24 V.S.A. chapter 117 to state a goal to make efficient use of energy, provide for development of renewable energy, and reduce emissions of greenhouse gases</p> <ul style="list-style-type: none"> • Describes general strategies for achieving these goals, such as building efficiency and renewable generation • State that specific strategies are in the State energy plans
3	<p>24 V.S.A. § 4345. Optional powers and duties of regional planning commissions</p> <p>Strikes optional powers related to making studies and recommendations on energy conservation and development of renewable energy resources; these optional powers are moved to Sec. 4 as mandatory duties</p>	3	<i>Same as Senate</i>

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4	<p>24 V.S.A. § 4345a. Duties of regional planning commissions</p> <ul style="list-style-type: none"> Clarifies that regional planning commissions (RPC) have the right to appear and participate in proceedings before the Public Service Board (PSB or Board) under 30 V.S.A. § 248 and the duty to do so when requested by the Board Inserts, as mandatory duties, the optional powers deleted in Sec. 3 	4	<i>Same as Senate</i>
5	Deleted.		
6	<p>24 V.S.A. § 4348a. Elements of a regional plan</p> <p>Amends the energy plan element to enable a comprehensive analysis across all energy sectors, a statement of policy on conservation and efficient use of energy and the development and siting of distributed and utility-scale renewable energy resources, and a statement of policy on and identification of potential areas for renewable energy resources and areas inappropriate for siting those resources or categories or sizes of those resources</p>	5	<p>24 V.S.A. § 4348a. Elements of a regional plan</p> <p>Amends the energy plan element to enable an analysis across all energy sectors, a statement of policy on conservation and efficient use of energy and the development and siting of renewable energy resources, and identification of potential areas for renewable energy resources and areas unsuitable for siting those resources or categories or sizes of those resources</p>
7	<p>24 V.S.A. § 4352. Certification of energy compliance</p> <p>Adds a statute under which regional and municipal plans may obtain a certification of energy compliance</p> <ul style="list-style-type: none"> Regional plan is certified by the Commissioner of Public Service on finding that the regional plan meets the statutes, goals, and policies in Sec. 2 	6	<p>24 V.S.A. § 4352. Optional determination of energy compliance; enhanced energy planning</p> <p>Adds a statute under which regional and municipal plans may obtain a determination of energy compliance</p> <ul style="list-style-type: none"> Regional plan determination is by the Commissioner of Public Service

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	<ul style="list-style-type: none"> • If a regional plan is certified, then municipal plan is certified by RPC on finding that the municipal plan meets those statutes, goals, and policies and the implementing provisions of the regional plan • In certifying a plan, the Commissioner or RPC must use standards to be developed by the Commissioner under Secs. 9 and 10 • Sets out procedures for approving or denying certifications • Allows for appeal by RPCs and municipalities of certification decisions to hearing officer under the contested case provisions of the Administrative Procedure Act, with timelines 		<ul style="list-style-type: none"> • If a regional plan is determined energy compliant, then municipal plan can receive determination from RPC • To receive affirmative determination: <ul style="list-style-type: none"> ▶ Regional plan must have energy element per Sec. 5 ▶ Municipal plan must have same energy element as required for regional plan and must be confirmed as consistent with planning goals and regional plan ▶ Plans to be consistent with statutes on greenhouse gas reduction goals, building efficiency goals, renewable energy goals, State energy policy, and the distributed generation and energy transformation categories of the Renewable Energy Standard, and with recommendations in State energy plans ▶ Plan must meet standards issued by the Department of Public Service (DPS) in State energy plans for issuing determination of energy compliance • State energy plans must contain: <ul style="list-style-type: none"> ▶ Recommendations for regional and municipal planning that provide strategies and options to employ in meeting the statutory goals and policies ▶ Standards for issuing energy compliance determination to consist of criteria to ensure consistency with the statutory goals and policies and with the energy plan recommendations • Sets out process for issuing determinations of energy compliance • Allows for RPC appeal of DPS decision to the Natural Resources Board under contested case provisions of the Administrative Procedure Act, with timelines • Until July 1, 2018, allows municipalities to seek a determination of energy compliance from DPS if

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			<p>their region has not received a determination; may appeal DPS to Natural Resources board</p> <ul style="list-style-type: none"> • Affirmative determination lasts until plan expires
8	<p>24 V.S.A. § 4382. The plan for a municipality</p> <p>Amends the energy plan provision to enable a comprehensive analysis across all energy sectors, a statement of policy on conservation and efficient use of energy and the development and siting of distributed and utility-scale renewable energy resources, and a statement of policy on and identification of potential areas for renewable energy resources and areas inappropriate for siting those resources or categories or sizes of those resources</p>		<p><i>Senate section struck</i></p>
9	<p>30 V.S.A. § 202. Electrical energy planning</p> <p>Requires the 20-year electric plan by DPS to:</p> <ul style="list-style-type: none"> • Include specific recommendations on energy efficiency and renewable generation siting to guide municipal and regional planning commissions in preparing land use plans • Include standards for use in determining whether to certify land use plans under Sec. 7 • Take into the account the planning goals at 24 V.S.A. § 4302 • Provide municipalities and regions with information on the location and capacity of grid infrastructure <p>In developing the plan, DPS to consult with municipal and regional planning commissions</p>	7	<p>30 V.S.A. § 202. Electrical energy planning</p> <p>Requires the 20-year electric plan by DPS to:</p> <ul style="list-style-type: none"> • Include the recommendations and standards described in Sec. 6 • Take into the account the relevant planning goals at 24 V.S.A. § 4302 • Provide municipalities and regions with information on the location and capacity of grid infrastructure <p>In developing the plan, DPS to consult with municipal and regional planning commissions</p> <p>Date for future issuance of plans changed from every sixth January 1 to every sixth January 15</p>

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10	<p>30 V.S.A. § 202b. State comprehensive energy plan</p> <p>Requires Comprehensive Energy Plan issued by DPS to:</p> <ul style="list-style-type: none"> • Include specific recommendations on energy efficiency and renewable generation siting to guide municipal and regional planning commissions in preparing land use plans • Include standards for use in determining whether to certify land use plans under Sec. 7 • Be consistent with the municipal and regional planning goals at 24 V.S.A. § 4302 	8	<p>30 V.S.A. § 202b. State comprehensive energy plan</p> <p>Requires Comprehensive Energy Plan issued by DPS to:</p> <ul style="list-style-type: none"> • Include the recommendations and standards described in Sec. 6 • Be consistent with the relevant planning goals at 24 V.S.A. § 4302 <p>Date for future issuance of plans changed from every sixth January 1 to every sixth January 15</p>
11	<p>Initial implementation, certification standards (session law)</p> <p>Directs DPS to adopt the recommendations and standards called for in Secs. 9 and 10 by Oct. 1, 2016, after a public process; on adoption, considered an appendix to the currently adopted plans</p>	9	<p>Initial implementation; recommendations; standards (session law)</p> <p>Directs DPS to adopt the recommendations and standards called for in Sec. 6 by Nov. 1, 2016</p> <ul style="list-style-type: none"> • Before issuance, DPS must consult with affected parties and conduct a public process • Lists specific elements that standards must address, including analysis of existing energy use and resources; establishment of targets over time for energy efficiency, and use of renewable energy; pathways and recommendation to achieve these targets; and identification of areas suitable and, if any, unsuitable for siting renewable energy resources • Standard to comply with Sec. 6 and be consistent with current energy plans • On adoption, considered an appendix to the current plans

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11a	<p>Training (session law)</p> <p>Requires DPS, in collaboration with the Vermont League of Cities and Towns and Vermont Association of Planning and Development Agencies, to conduct a series of training sessions across the state for municipal and regional planning commissions</p>	9	<i>Same as Senate Sec. 11a with technical changes</i>
11b	<p>Planning Support; Allocation of Costs (session law)</p> <p>Requires DPS to disburse, in FY 2017, \$300,000.00 to regional planning commissions and municipalities to support implementation of this act; DPS to allocate costs to electric utilities</p>		<i>Senate section struck</i>
<i>Sections on Siting Process (organized based on House proposal, with corresponding Senate sections on left)</i>			
12, 17a, 20– 23d	<p><i>Sec. 17a:</i></p> <p>30 V.S.A. § 248(a). New gas and electric purchases, investments and facilities; certificate of public good</p> <p>Provides an exception to the certificate of public good (CPG) requirement for a hydroelectric generation facility that is subject to of the Federal Energy Regulatory Commission (FERC)</p> <p><i>Sec. 20:</i></p> <p>30 V.S.A. § 248(a)(4). Hearings; notice; parties</p> <p>Amends the subdivision of Section 248 that addresses</p>	11	<p>30 V.S.A. § 248. New gas and electric purchases, investments, and facilities; certificate of public good</p> <p>Clarifies that CPG is not required for a hydroelectric generation plant that is subject to FERC licensing jurisdiction</p> <p>Participation in siting process:</p> <ul style="list-style-type: none"> • Provides that Agency of Agriculture, Food and Markets (AAFM) has the right to participate • Clarifies that RPCs have the right to participate • Grants adjacent RPCs and municipalities the right to participate if the facility will be within a distance of 500 feet or 10 times the height of the facility, whichever is greater

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	<p>notice, hearings, and parties to the PSB energy siting process to:</p> <ul style="list-style-type: none"> • Require the Agency of Agriculture, Food and Markets (AAFM) to participate if the proceeding concerns an electric generation facility greater than 150 kW to be located on a tract with primary agricultural soils; otherwise, AAFM has the right to appear and participate • Clarify that RPCs have the right to appear and participate • Grant adjacent RPCs and municipalities the right to participate if the facility will be within 500 feet of their border • Allows a person who has the right to appear and participate to exercise that right by filing a letter • For generation facilities greater than 15 kW, requires that the application include certain information, including the full limits of physical disturbance, the presence and disturbance of primary agricultural soils, and all visible infrastructure <p><i>Sec. 12:</i></p> <p>30 V.S.A. § 248(b). Criteria</p> <p>Would amend the Section 248 criteria:</p> <ul style="list-style-type: none"> • PSB to apply the land conservation measures and specific policies in municipal or regional plans as follows: <ul style="list-style-type: none"> ▶ For applications before March 1, 2017, deference unless a preponderance of the evidence shows they are outweighed by a factor affecting the 		<ul style="list-style-type: none"> • Allows a person who has the right to appear and participate to exercise that right by filing a letter <p>For generation facilities greater than 50 kW:</p> <ul style="list-style-type: none"> ▶ requires that the application include certain information, including the full limits of physical disturbance, the presence and disturbance of primary agricultural soils, and all visible infrastructure ▶ Does not apply if facility is on new or existing structure built for a purpose other than generating electricity <p>PSB to address standard conditions on the following through rulemaking:</p> <ul style="list-style-type: none"> • Postconstruction maintenance of aesthetic mitigation • Decommissioning <p>Requires wind generation for which the Federal Aviation Administration (FAA) requires obstruction lighting to use radar-controlled lighting if allowed by the FAA and facility includes four or more wind turbines</p> <p>For in-state electric generation facility, certificate holder to record notice of the certificate of public good on the land records, using a one-page form prescribed by the PSB</p> <p>Would amend the Section 248 criteria:</p> <ul style="list-style-type: none"> • Substantial deference to municipal and regional plan provisions if the plan has received an affirmative determination of energy compliance under Sec. 6 <ul style="list-style-type: none"> ▶ PSB to apply plan provision according to its terms unless there is a clear and convincing

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	<p>general good of the state</p> <ul style="list-style-type: none"> ▶ For applications on or after March 1, 2017: <ul style="list-style-type: none"> ▪ If certified, deference unless there is a clear and convincing demonstration that they are outweighed by a factor affecting the general good of the state ▪ If not certified, due consideration (as under current law) • Requires the PSB to give due consideration to the Act 250 criteria related to primary agricultural soils and productive forest soils and to impacts on forest health and integrity <p><i>Sec. 21:</i></p> <p>30 V.S.A. § 248(f). 45-day preapplication submittal</p> <p>Requires that the petitioner’s application address comments made during the 45-day preapplication process</p> <p><i>Sec. 22:</i></p> <p>30 V.S.A. § 248(t). Conditions on aesthetics mitigation and decommissioning</p> <p>PSB to address the following through rulemaking:</p> <ul style="list-style-type: none"> • ensuring that aesthetic mitigation is undertaken and maintained • decommissioning plans for in-state generation greater than 150 kW, and the determination of the minimum size facility for which there must be financial assurance for decommissioning 		<p>demonstration that they are outweighed by a factor affecting the general good of the state</p> <ul style="list-style-type: none"> ▶ PSB may not consider whether energy compliance determination should have been affirmative • Requires the PSB to give due consideration to impacts to primary agricultural soils <p>Requires that the petitioner’s application address comments made during the 45-day preapplication process</p> <p>If a solar generation facility is built on primary agricultural soils, requires soils to remain classified as primary agricultural, with review of any change of use to be as if facility was never built</p> <p><i>House proposal strikes the following from the Senate bill:</i></p> <ul style="list-style-type: none"> • <i>Deadline for rulemaking on postconstruction aesthetic mitigation issues and decommissioning</i> • <i>Life cycle cost analysis of greenhouse gas impacts</i> • <i>Requiring DPS to work with owners of existing wind facilities to encourage installing radar-controlled obstruction lights</i>

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	<p><i>Sec. 22a:</i></p> <p>Rules; Petition (session law)</p> <p>DPS to file petition for rulemaking to implement Sec. 22 by 8/1/16, and PSB to finally adopt these rules by 6/15/17</p> <p><i>Sec. 23:</i></p> <p>30 V.S.A. § 248(u). Greenhouse gas impacts; life cycle analysis</p> <p>Requires that a petition for a CPG under Section 248 include a life cycle analysis of greenhouse gas impacts that the PSB shall consider in making findings. Would not apply to net metering systems.</p> <p><i>Sec. 23a:</i></p> <p>30 V.S.A. 248(v). Primary agricultural soils; solar</p> <p>If a solar generation facility is built on primary agricultural soils, requires soils to remain classified as primary agricultural, with review of any change of use to be as if facility was never built</p> <p><i>Sec. 23b:</i></p> <p>30 V.S.A. § 248(w). Wind generation; lighting</p> <p>Requires wind generation for which the Federal Aviation</p>		

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	<p>Administration (FAA) requires obstruction lighting to use radar-controlled lighting if allowed by the FAA</p> <p><i>Sec. 23c:</i></p> <p>Existing wind facilities; radar-controlled lighting (session law)</p> <p>Requires DPS to work with the owner and operator of each existing in-state wind generation facility to encourage the installation of radar-controlled obstruction lights</p> <p><i>Sec. 23d:</i></p> <p>30 V.S.A. § 248(x). Certificates; recording</p> <p>For in-state electric generation facility, certificate holder to record notice of the certificate of public good on the land records, using a one-page form prescribed by the PSB</p>		
24	<p>Sound standards docket; completion date (session law)</p> <p>Directs the PSB to issue a final order by Oct. 1, 2016 in its pending, non-contested case proceeding on the potential establishment of sound standards for energy facilities</p> <p>For wind generation, expands scope of docket to include PSB's recommendations and implementation plan on:</p> <ul style="list-style-type: none"> • maximum instantaneous and average audible sound levels 	12	<p>Sound standards; wind generation facilities (session law)</p> <p>Directs PSB to issue final rules by Sep. 15, 2017 on sound from wind generation facilities.</p> <ul style="list-style-type: none"> • In developing rules, PSB to consider standards that apply to all such facilities, a methodology for determining sound levels on a case-by-case basis, or a combination thereof. • Rules to apply to all applications filed on or after April 15, 2016.

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	<ul style="list-style-type: none"> • release of sound monitoring data to public • minimum setback for wind turbines • whether to require maximum sound levels for infra sound <p>PSB to provide opportunity to submit information and request a workshop before issuing final decision</p>		
<i>Preferred Locations, Standard Offer Pilot, and Net Metering</i>			
13	<p>30 V.S.A. § 8002(30). Definition, “preferred locations”</p> <p>This section would add a definition of the term “preferred locations” to the renewable energy chapter, to include:</p> <ul style="list-style-type: none"> • new or existing structures, such as a commercial building or parking lot • previously developed tracts on which a structure or impervious surface exists • brownfields • landfills • disturbed portion of gravel pit or quarry or similar extraction site • specific location designated in a municipal plan • Site on the National Priorities List pursuant to CERCLA (Superfund) • Hydroelectric facility – either a new hydroelectric facility at an existing dam or the redevelopment of an existing hydroelectric facility that is out of service • for net metering systems, additional locations as the PSB may adopt by rule 		<i>Senate section struck</i>

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14	Deleted		
15	<p>30 V.S.A. § 8005a. Standard offer program</p> <p>Creates a pilot project within the Standard Offer Program to encourage siting renewable generation facilities in preferred locations, allocating the pilot project to sets of facilities:</p> <ul style="list-style-type: none"> • Facilities to be located on a preferred location other than a parking lot or parking lot canopy • Facilities to be located on a parking lot or parking lot canopy 		<i>Senate section struck</i>
16	<p>Standard offer pilot; report (session law)</p> <p>By 1/15/18, PSB to report to standing committees on the progress of the standard offer pilot authorized by Sec. 15</p>		<i>Senate section struck</i>
17	<p>30 V.S.A. § 8010. Self-generation and net metering</p> <p>PSB to promote siting net metering systems in preferred locations</p> <p>With respect to Section 248 applications for net metering systems exceeding 15 kW, directs the PSB not to waive:</p> <ul style="list-style-type: none"> • Notice to AAFM, ANR, DPS, DHP, the municipal legislative body; and the municipal and regional planning commissions • Requirements in Secs. 20–22 on information to be included in the application, preapplication submittals to local and regional bodies, and permit conditions regarding aesthetic mitigation and, for systems greater than 150 kW, decommissioning 	13	<p>30 V.S.A. § 8010. Self-generation and net metering</p> <p>Adds, to existing direction that PSB simplify application and review process, language to include simplifying the process for group net metering systems that are at least 50 percent customer owned</p> <p>With respect to Section 248 applications for net metering systems exceeding, directs the PSB not to waive:</p> <ul style="list-style-type: none"> • The information required in the application for systems greater than 50 kW, as described in Sec. 11 above • For systems greater than 15 kW: <ul style="list-style-type: none"> ▶ Notice to AAFM, ANR, DPS, DHP, the municipal legislative body; and the municipal and regional planning commissions

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	Clarifies that this section does not confer authority to require a CPG for a hydroelectric generation plant that is subject to FERC licensing jurisdiction		<ul style="list-style-type: none"> ▶ Requirements in Sec. 11 on preapplication submittals to local and regional bodies ▶ Waiver allowed if facility is on new or existing structure built for a purpose other than generating electricity Provides that, if a hydroelectric plant is subject to FERC jurisdiction, net metering approval is to be obtained through means other than application for a Section 248 CPG
<i>Public Assistance Officer</i>			
18	30 V.S.A. § 3. Public Service Board Establishes a Public Assistance Officer (PAO) at the PSB to provide information and assistance to the public about siting cases; states that the PAO will facilitate citizen participation in siting cases, including: <ul style="list-style-type: none"> • providing citizens representing themselves with procedural advice and assistance • helping citizens representing themselves obtain files, records, and data • conducting educational programs and produce education materials 		<i>Senate section struck</i>
18a	Public Assistance Officer; Report (session law) By 1/1/18, PAO to file report on the implementation of Sec. 18, with an evaluation of its impact on the ability of citizens to participate and recommendations for future action		<i>Senate section struck</i>
19	Appropriation (session law)		<i>Senate section struck</i>

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	For FY 17, authorizes \$100,000 for the PAO from the special fund that supports the PSB and DPS; limits PAO position to two years		
<i>AAFM Billback Authority</i>			
25	<p>30 V.S.A. § 20. Particular proceedings; personnel</p> <p>Authorizes AAFM to retain additional experts, legal counsel, and other personnel to assist its participation in Section 248 proceedings</p> <p>30 V.S.A. § 21. Particular proceedings; assessment of costs</p> <p>Authorizes AAFM to allocate the costs of these additional personnel in a Section 248 to the applicant, with an annual report to standing committees on the total amount allocated</p>		<i>Senate section struck</i>
<i>Alternative Regulation; System Expansion Funds</i>			
26	<p>30 V.S.A. § 218d(d). Alternative regulation</p> <p>Limits the authority of the PSB to allow ratepayer funds to be set aside for a future expansion or upgrade of the transmission or distribution network of an electric or natural gas utility.</p>		<i>Senate section struck</i>
<i>Municipal Electric Utilities; Hydro Facilities; Renewable Energy Standard</i>			
26a	30 V.S.A. § 8005(a)(1). Total renewable energy	14	<i>Same as Senate Sec. 26a</i>

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	Allows a municipal electric utility to petition for reduction in the “total renewable energy” requirement of the Renewable Energy Standard for one period of up to three years if an environmental permit or certification requires reduction in the electric energy generated by a hydroelectric facility owned by the utility		
<i>Access to Public Service Board Working Group</i>			
26b	Access to Public Service Board Working Group; report Creates a working group to report by Dec. 15, 2016 on recommendations to increase the ease of citizen participation in PSB proceedings.	15	<i>Same as Senate Sec. 26b</i>
<i>Effective Dates</i>			
27	The act takes effect on July 1, 2016, except that: <ul style="list-style-type: none"> • the effective dates section and Sec. 11 (initial implementation; certification standards) take effect on passage and Sec. 17 (net metering systems) takes effect in January 2017 • Secs. 12 (PSB application; municipal and regional plans) and 24 (sound standards docket) take effect on passage • Secs. 22a (rules; petition), 23b (wind generation; obstruction lighting), 23c (existing facilities; obstruction lighting), and 26b (Access to Public Service Board Working Group) take effect on passage. • Delays the effective date of a requirement, in Sec. 18, to post PSB documents online until July 1, 2017 	16	The act takes effect on July 1, 2016, except that: <ul style="list-style-type: none"> • The effective dates section and Secs. 9 (initial implementation; recommendations; standards), 11 (30 V.S.A. § 248), 12 (sound standards; wind generation) and 15 (Access to Public Service Board Working Group) take effect on passage. • Sec. 13 (net metering systems) takes effect in January 2017