

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 230 entitled “An act relating to improving the siting of energy
4 projects” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Designation * * *

8 Sec. 1. DESIGNATION OF ACT

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

10 * * * Integration of Energy and Land Use Planning * * *

11 Sec. 2. 24 V.S.A. § 4302 is amended to read:

12 § 4302. PURPOSE; GOALS

13 * * *

14 (c) In addition, this chapter shall be used to further the following specific
15 goals:

16 (1) To plan development so as to maintain the historic settlement pattern
17 of compact village and urban centers separated by rural countryside.

18 (A) Intensive residential development should be encouraged
19 primarily in areas related to community centers, and strip development along
20 highways should be discouraged.

1 (A) significant natural and fragile areas;

2 (B) outstanding water resources, including lakes, rivers, aquifers,
3 shorelands, and wetlands;

4 (C) significant scenic roads, waterways, and views;

5 (D) important historic structures, sites, or districts, archaeological
6 sites, and archaeologically sensitive areas.

7 (6) To maintain and improve the quality of air, water, wildlife, and land
8 resources.

9 (A) Vermont's air, water, wildlife, mineral, and land resources
10 should be planned for use and development according to the principles set
11 forth in 10 V.S.A. § 6086(a).

12 (B) Vermont's water quality should be maintained and improved
13 according to the policies and actions developed in the basin plans established
14 by the Secretary of Natural Resources under 10 V.S.A. § 1253.

15 (7) To encourage the efficient use of energy and the development of
16 renewable energy resources, consistent with the following:

17 (A) Vermont's greenhouse gas reduction goals under 10 V.S.A.
18 § 578(a);

19 (B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A.
20 § 580;

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

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

3 Sec. 5. CLARIFICATION OF EXISTING LAW

4 Sec. 4 of this act, amending 24 V.S.A. § 4345a(14) (participation in Section
5 248 proceedings), clarifies existing law.

6 Sec. 6. 24 V.S.A. § 4348a is amended to read:

7 § 4348a. ELEMENTS OF A REGIONAL PLAN

8 (a) A regional plan shall be consistent with the goals established in section
9 4302 of this title and shall include the following:

10 (1) A statement of basic policies of the region to guide the future growth
11 and development of land and of public services and facilities, and to protect the
12 environment.

13 (2) A land use element, which shall consist of a map and statement of
14 present and prospective land uses:

15 (A) indicating those areas proposed for forests, recreation, agriculture
16 (using the agricultural lands identification process established in 6 V.S.A. § 8),
17 residence, commerce, industry, public, and semi-public uses, open spaces, and
18 areas identified by the State, regional planning commissions or municipalities,
19 which require special consideration for aquifer protection, wetland protection,
20 or for other conservation purposes;

1 (B) indicating those areas within the region that are likely candidates
2 for designation under sections 2793 (downtown development districts), 2793a
3 (village centers), 2793b (new town centers), and 2793c (growth centers) of this
4 title;

5 (C) indicating locations proposed for developments with a potential
6 for regional impact, as determined by the regional planning commission,
7 including flood control projects, surface water supply projects, industrial parks,
8 office parks, shopping centers and shopping malls, airports, tourist attractions,
9 recreational facilities, private schools, public or private colleges, and
10 residential developments or subdivisions;

11 (D) setting forth the present and prospective location, amount,
12 intensity, and character of such land uses and the appropriate timing or
13 sequence of land development activities in relation to the provision of
14 necessary community facilities and services;

15 (E) indicating those areas that have the potential to sustain agriculture
16 and recommendations for maintaining them which may include transfer of
17 development rights, acquisition of development rights, or farmer assistance
18 programs.

19 (3) An energy element, which may include ~~an~~ a comprehensive analysis
20 of ~~energy~~ resources, needs, scarcities, costs, and problems within the region;
21 across all energy sectors, including electric, thermal, and transportation; a

1 statement of policy on the conservation and efficient use of energy and the
2 development and siting of distributed and utility-scale renewable energy
3 resources, ~~and~~; a statement of policy on patterns and densities of land use ~~and~~
4 ~~control devices~~ likely to result in conservation of energy; and a statement of
5 policy on and identification of potential areas for the development and siting of
6 renewable energy resources and areas that are inappropriate for siting those
7 resources or particular categories or sizes of those resources.

8 (4) A transportation element, which may consist of a statement of
9 present and prospective transportation and circulation facilities, and a map
10 showing existing and proposed highways, including limited access highways,
11 and streets by type and character of improvement, and where pertinent,
12 anticipated points of congestion, parking facilities, transit routes, terminals,
13 bicycle paths and trails, scenic roads, airports, railroads and port facilities, and
14 other similar facilities or uses, and recommendations to meet future needs for
15 such facilities, with indications of priorities of need, costs, and method of
16 financing.

17 * * *

1 Sec. 7. 24 V.S.A. § 4352 is added to read:

2 § 4352. CERTIFICATION OF ENERGY COMPLIANCE; REGIONAL AND

3 MUNICIPAL PLANS

4 (a) Regional plan certification. A regional planning commission may
5 submit its adopted regional plan to the Commissioner of Public Service
6 appointed under 30 V.S.A. § 1 for a certification of energy compliance. The
7 Commissioner shall issue such a certification on finding that the regional plan
8 is consistent with the statutes, goals, and policies listed in subdivision
9 4302(c)(7) of this title.

10 (b) Municipal plan certification. If the Commissioner of Public Service has
11 certified a regional plan that is in effect, a municipal legislative body within
12 the region may submit its adopted municipal plan to the regional planning
13 commission for a certification of energy compliance. Such a submission may
14 be made separately from or at the same time as a request for review and
15 approval of the municipal plan under section 4350 of this title. The regional
16 planning commission shall issue such a certification on finding that the
17 regional plan is consistent with the statutes, goals, and policies listed in
18 subdivision 4302(c)(7) of this title and the portions of the regional plan that
19 implement those statutes, goals, and policies.

20 (c) Standards. In determining whether to issue a certification of energy
21 compliance under this section, the Commissioner or regional planning

1 commission shall employ the standards for issuing such a certification
2 developed pursuant to 30 V.S.A. §§ 202(b)(6) and 202b(a)(3).

3 (d) Process. Review of whether to issue a certification under this section
4 shall include a public hearing noticed at least 15 days in advance by direct mail
5 to the requesting regional planning commission or municipal legislative body,
6 posting on the website of the entity from which the certification is requested,
7 and publication in a newspaper of general publication in the region or
8 municipality affected. The Commissioner or regional planning commission
9 shall grant or deny certification within two months of the receipt of a request
10 for certification. If certification is denied, the Commissioner or regional
11 planning commission shall state the reasons for denial in writing and, if
12 appropriate, suggest acceptable modifications. Submissions for certification
13 that follow a denial shall receive a grant or denial of certification within
14 45 days.

15 Sec. 8. 24 V.S.A. § 4382 is amended to read:

16 § 4382. THE PLAN FOR A MUNICIPALITY

17 (a) A plan for a municipality ~~may~~ shall be consistent with the goals
18 established in section 4302 of this title and compatible with approved plans of
19 other municipalities in the region and with the regional plan and shall include
20 the following:

1 (1) A statement of objectives, policies, and programs of the municipality
2 to guide the future growth and development of land, public services, and
3 facilities, and to protect the environment.

4 (2) A land use plan:

5 (A) consisting of a map and statement of present and prospective
6 land uses, indicating those areas proposed for forests, recreation, agriculture
7 (using the agricultural lands identification process established in 6 V.S.A. § 8),
8 residence, commerce, industry, public, and semi-public uses and open spaces
9 reserved for flood plain, wetland protection, or other conservation purposes;

10 (B) setting forth the present and prospective location, amount,
11 intensity, and character of such land uses and the appropriate timing or
12 sequence of land development activities in relation to the provision of
13 necessary community facilities and service; and

14 (C) identifying those areas, if any, proposed for designation under
15 chapter 76A of this title, together with, for each area proposed for designation,
16 an explanation of how the designation would further the plan's goals and the
17 goals of section 4302 of this title, and how the area meets the requirements for
18 the type of designation to be sought.

19 (3) A transportation plan, consisting of a map and statement of present
20 and prospective transportation and circulation facilities showing existing and
21 proposed highways and streets by type and character of improvement, and

1 where pertinent, parking facilities, transit routes, terminals, bicycle paths and
2 trails, scenic roads, airports, railroads, and port facilities, and other similar
3 facilities or uses, with indications of priority of need.

4 (4) A utility and facility plan, consisting of a map and statement of
5 present and prospective community facilities and public utilities showing
6 existing and proposed educational, recreational and other public sites,
7 buildings and facilities, including hospitals, libraries, power generating plants
8 and transmission lines, water supply, sewage disposal, refuse disposal, storm
9 drainage, and other similar facilities and activities, and recommendations to
10 meet future needs for community facilities and services, with indications of
11 priority of need, costs and method of financing.

12 (5) A statement of policies on the preservation of rare and irreplaceable
13 natural areas; and scenic and historic features and resources.

14 * * *

15 (9) An energy plan, including ~~an~~ a comprehensive analysis of energy
16 resources, needs, scarcities, costs, and problems within the municipality; across
17 all energy sectors, including electric, thermal, and transportation; a statement
18 of policy on the conservation and efficient use of energy, including programs,
19 such as thermal integrity standards for buildings, to implement that policy; a
20 statement of policy on the development and siting of distributed and
21 utility-scale renewable energy resources; a statement of policy on patterns and

1 densities of land use likely to result in conservation of energy and a statement
2 of policy on and identification of potential areas for the development and siting
3 of renewable energy resources and areas that are inappropriate for siting those
4 resources or particular categories or sizes of those resources.

5 * * *

6 Sec. 9. 30 V.S.A. § 202 is amended to read:

7 § 202. ELECTRICAL ENERGY PLANNING

8 (a) The Department of Public Service, through the Director for Regulated
9 Utility Planning, shall constitute the responsible utility planning agency of the
10 State for the purpose of obtaining for all consumers in the State proper utility
11 service at minimum cost under efficient and economical management
12 consistent with other public policy of the State. The Director shall be
13 responsible for the provision of plans for meeting emerging trends related to
14 electrical energy demand, supply, safety, and conservation.

15 (b) The Department, through the Director, shall prepare an electrical energy
16 plan for the State. The Plan shall be for a 20-year period and shall serve as a
17 basis for State electrical energy policy. The Electric Energy Plan shall be
18 based on the principles of “least cost integrated planning” set out in and
19 developed under section 218c of this title. The Plan shall include at a
20 minimum:

1 (1) an overview, looking 20 years ahead, of statewide growth and
2 development as they relate to future requirements for electrical energy,
3 including patterns of urban expansion, statewide and service area economic
4 growth, shifts in transportation modes, modifications in housing types, and
5 design, conservation, and other trends and factors which, as determined by the
6 Director, will significantly affect State electrical energy policy and programs;

7 (2) an assessment of all energy resources available to the State for
8 electrical generation or to supply electrical power, including, among others,
9 fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy
10 and strategies for minimizing the economic and environmental costs of energy
11 supply, including the production of pollutants, by means of efficiency and
12 emission improvements, fuel shifting, and other appropriate means;

13 (3) estimates of the projected level of electrical energy demand;

14 (4) a detailed exposition, including capital requirements and the
15 estimated cost to consumers, of how such demand shall be met based on the
16 assumptions made in subdivision (1) of this subsection and the policies set out
17 in subsection (c) of this section; ~~and~~

18 (5) specific strategies for reducing electric rates to the greatest extent
19 possible in Vermont over the most immediate six-year period, for the next
20 succeeding six-year period, and long-term sustainable strategies for achieving
21 and maintaining the lowest possible electric rates over the full 20-year

1 planning horizon consistent with the goal of maintaining a financially stable
2 electric utility industry in Vermont; and

3 (6) the following for use as guidance to municipal and regional planning
4 commissions in preparing municipal and regional plans under 24 V.S.A.
5 chapter 117 that are consistent with the statutes listed in 24 V.S.A.
6 § 4302(c)(7) and with the Plan and in obtaining a certification of energy
7 compliance under that chapter:

8 (A) specific recommendations on the conservation and efficient use
9 of electric energy and the development and siting of renewable electric
10 generation, developed in accordance with 24 V.S.A. § 4302(c)(7); and

11 (B) based on 24 V.S.A. § 4302(c)(7) and the recommendations
12 developed under subdivision (A) of this subdivision (6), a list of standards for
13 use in determining whether municipal and regional plans should receive a
14 certificate of energy compliance under 24 V.S.A. § 4352.

15 (c) In developing the Plan, the Department shall take into account the
16 protection of public health and safety; preservation of environmental quality;
17 the goals of 24 V.S.A. § 4302; the potential for reduction of rates paid by all
18 retail electricity customers; the potential for reduction of electrical demand
19 through conservation, including alternative utility rate structures; use of load
20 management technologies; efficiency of electrical usage; utilization of waste

1 heat from generation; and utility assistance to consumers in energy
2 conservation.

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

4 (1) Consult with:

5 (A) the public;

6 (B) Vermont municipal utilities and planning commissions;

7 (C) Vermont cooperative utilities;

8 (D) Vermont investor-owned utilities;

9 (E) Vermont electric transmission companies;

10 (F) environmental and residential consumer advocacy groups active
11 in electricity issues;

12 (G) industrial customer representatives;

13 (H) commercial customer representatives;

14 (I) the Public Service Board;

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

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

18 (L) other energy providers; and

19 (M) the regional planning commissions.

20 * * *

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

3 * * *

4 Sec. 10. 30 V.S.A. § 202b is amended to read:

5 § 202b. STATE COMPREHENSIVE ENERGY PLAN

6 (a) The Department of Public Service, in conjunction with other State
7 agencies designated by the Governor, shall prepare a State Comprehensive
8 Energy Plan covering at least a 20-year period. The Plan shall seek to
9 implement the State energy policy set forth in section 202a of this title and
10 shall be consistent with the goals of 24 V.S.A. § 4302. The Plan shall include:

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

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

17 (3) the following for use as guidance to municipal and regional planning
18 commissions in preparing municipal and regional plans under 24 V.S.A.
19 chapter 117 that are consistent with the statutes listed in 24 V.S.A.
20 § 4302(c)(7) and with the Plan and in obtaining a certification of energy
21 compliance under that chapter:

1 (A) specific recommendations on the conservation and efficient use
2 of energy and the development and siting of energy facilities, developed in
3 accordance with 24 V.S.A. § 4302(c)(7); and

4 (B) based on 24 V.S.A. § 4302(c)(7) and the policies developed
5 under subdivision (A) of this subdivision (3), a list of standards for use in
6 determining whether municipal and regional plans should receive a certificate
7 of energy compliance under 24 V.S.A. § 4352.

8 (b) In developing or updating the Plan’s recommendations, the Department
9 of Public Service shall seek public comment by holding public hearings in at
10 least five different geographic regions of the State on at least three different
11 dates, and by providing notice through publication once a week and at least
12 seven days apart for two or more successive weeks in a newspaper or
13 newspapers of general circulation in the regions where the hearings will be
14 held, and by delivering notices to all licensed commercial radio and television
15 stations with transmitting facilities within the State, plus Vermont Public
16 Radio and Vermont Educational Television.

17 (c) The Department shall adopt a State Energy Plan on or before January 1,
18 2016 and shall readopt the Plan by every sixth January 1 thereafter. On
19 adoption or readoption, the Plan shall be submitted to the General Assembly.
20 The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not
21 apply to such submission.

1 (1) Upon adoption of the Plan, analytical portions of the Plan may be
2 updated and published biennially.

3 (2) Every fourth year after the adoption or re adoption of a Plan under
4 this section, the Department shall publish the manner in which the Department
5 will engage the public in the process of re adopting the Plan under this section.

6 (3) The publication requirements of subdivisions (1) and (2) of this
7 subsection may be met by inclusion of the subject matter in the Department's
8 biennial report.

9 (4) The Plan's implementation recommendations shall be updated by the
10 Department no less frequently than every six years. These recommendations
11 shall be updated prior to the expiration of six years if the General Assembly
12 passes a joint resolution making a request to that effect. If the Department
13 proposes or the General Assembly requests the revision of implementation
14 recommendations, the Department shall hold public hearings on the proposed
15 revisions.

16 (d) Distribution of the Plan to members of the General Assembly shall be
17 in accordance with the provisions of 2 V.S.A. § 20(a)-(c).

18 Sec. 11. INITIAL IMPLEMENTATION; CERTIFICATION

19 STANDARDS

20 (a) On or before October 1, 2016, the Department of Public Service shall
21 publish specific recommendations and standards in accordance with 30 V.S.A.

1 §§ 202(b)(6) and 202b(a)(3) as enacted by Secs. 8 and 10 of this act. Prior to
2 issuing these recommendations and standards, the Department shall post on its
3 website a draft set of initial recommendations and standards and provide notice
4 and an opportunity to comment and request a public hearing to all persons
5 listed in 30 V.S.A. § 202(d)(1). The Commissioner may elect to hold one or
6 more public hearings on the Commissioner's own initiative.

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

13 Sec. 12. 30 V.S.A. § 248(b) is amended to read:

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

17 (1) With respect to an in-state facility, will not unduly interfere with the
18 orderly development of the region with due consideration having been given to
19 the recommendations of the municipal and regional planning commissions, the
20 recommendations of the municipal legislative bodies, and the land

1 conservation measures contained in the plan of any affected municipality.

2 However:

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

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

19 (C) With respect to an in-state electric generation facility, the Board
20 shall give substantial deference to the land conservation measures and specific
21 policies contained in a duly adopted regional and municipal plan that has

1 received a certificate of energy compliance under 24 V.S.A. § 4352. In this
2 subdivision (C), “substantial deference” means that a land conservation
3 measure or specific policy shall be applied in accordance with its terms unless
4 there is a clear and convincing demonstration that other factors affecting the
5 general good of the State outweigh the application of the measure or policy.

6 * * *

7 * * * Regulatory and Financial Incentives; Preferred Locations * * *

8 Sec. 13. 30 V.S.A. § 8002(30) is added to read:

9 (30) “Preferred location” means a site within the State on which a
10 renewable energy plant will be located that is one of the following:

11 (A) A new or existing structure, including a commercial or
12 residential building, a parking lot, or parking lot canopy, whose primary use is
13 not the generation of electricity or providing support for the placement of
14 equipment that generates electricity.

15 (B) A tract previously developed for a use other than siting a plant on
16 which a structure or impervious surface was lawfully in existence and use prior
17 to January 1 of the year in which an application for a certificate of public good
18 under section 248 of this title for the plant is filed or in which the plant seeks
19 an award of a contract under the standard offer program under section 8005a of
20 this title, whichever is earlier. To qualify under this subdivision (B), the limits
21 of disturbance of a proposed renewable energy plant must include either the

1 existing structure or impervious surface and shall not include any headwaters,
2 streams, shorelines, floodways, rare and irreplaceable natural areas, necessary
3 wildlife habitat, wetlands, endangered species, productive forestlands, and
4 primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

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

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

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

14 (F) A specific location designated in a duly adopted municipal plan
15 under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or
16 specific type or size of renewable energy plant, provided that the plant meets
17 any siting criteria recommended in the plan for the location. On or after
18 January 1, 2019, to qualify under this subdivision (F), the plan must be
19 certified under 24 V.S.A. § 4352.

1 (G) If the plant constitutes a net metering system, then in addition to
2 subdivisions (A) through (F) of this subdivision (30), a site designated by
3 Board rule as a preferred location.

4 Sec. 14. 30 V.S.A. § 8004(g) is added to read:

5 (g) Preferred locations. With respect to a renewable energy plant to be
6 located in the State whose energy or environmental attributes may be used to
7 satisfy the requirements of the RES, the Board shall exercise its authority
8 under this section and sections 8005 and 8006 of this title to promote siting
9 such a plant in a preferred location.

10 Sec. 15. 30 V.S.A. § 8005a is amended to read:

11 § 8005a. STANDARD OFFER PROGRAM

12 (a) Establishment. A standard offer program is established. To achieve the
13 goals of section 8001 of this title, the Board shall issue standard offers for
14 renewable energy plants that meet the eligibility requirements of this section.
15 The Board shall implement these standard offers by rule, order, or contract and
16 shall appoint a Standard Offer Facilitator to assist in this implementation. For
17 the purpose of this section, the Board and the Standard Offer Facilitator
18 constitute instrumentalities of the State.

19 (b) Eligibility. To be eligible for a standard offer under this section, a plant
20 must constitute a qualifying small power production facility under 16 U.S.C.
21 § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under

1 section 219a of this title, and must be a new standard offer plant. In this
2 section, “new standard offer plant” means a renewable energy plant that is
3 located in Vermont, that has a plant capacity of 2.2 MW or less, and that is
4 commissioned on or after September 30, 2009.

5 (c) Cumulative capacity. In accordance with this subsection, the Board
6 shall issue standard offers to new standard offer plants until a cumulative plant
7 capacity amount of 127.5 MW is reached.

8 (1) Pace. Annually commencing April 1, 2013, the Board shall increase
9 the cumulative plant capacity of the standard offer program (the annual
10 increase) until the 127.5-MW cumulative plant capacity of this subsection is
11 reached.

12 (A) Annual amounts. The amount of the annual increase shall be five
13 MW for the three years commencing April 1, 2013, 7.5 MW for the three years
14 commencing April 1, 2016, and 10 MW commencing April 1, 2019.

15 (B) Blocks. Each year, a portion of the annual increase shall be
16 reserved for new standard offer plants proposed by Vermont retail electricity
17 providers (the provider block), and the remainder shall be reserved for new
18 standard offer plants proposed by persons who are not providers (the
19 independent developer block).

20 (i) The portion of the annual increase reserved for the provider
21 block shall be 10 percent for the three years commencing April 1, 2013,

1 15 percent for the three years commencing April 1, 2016, and 20 percent
2 commencing April 1, 2019.

3 (ii) If the provider block for a given year is not fully subscribed,
4 any unsubscribed capacity within that block shall be added to the annual
5 increase for each following year until that capacity is subscribed and shall be
6 made available to new standard offer plants proposed by persons who are not
7 providers.

8 (iii) If the independent developer block for a given year is not
9 fully subscribed, any unsubscribed capacity within that block shall be added
10 to the annual increase for each following year until that capacity is
11 subscribed and:

12 (I) shall be made available to new standard offer plants
13 proposed by persons who are not providers; and

14 (II) may be made available to a provider following a written
15 request and specific proposal submitted to and approved by the Board.

16 (C) Adjustment; greenhouse gas reduction credits. The Board shall
17 adjust the annual increase to account for greenhouse gas reduction credits by
18 multiplying the annual increase by one minus the ratio of the prior year's
19 greenhouse gas reduction credits to that year's statewide retail electric sales.

1 (i) The amount of the prior year's greenhouse gas reduction
2 credits shall be determined in accordance with subdivision 8006a(a) of this
3 title.

4 (ii) The adjustment in the annual increase shall be applied
5 proportionally to the independent developer block and the provider block.

6 (iii) Greenhouse gas reduction credits used to diminish a
7 provider's obligation under section 8004 of this title may be used to adjust the
8 annual increase under this subsection (c).

9 (D) Pilot project; preferred locations. For a period of three years
10 commencing on January 1, 2017:

11 (i) The Board shall allocate the following portions of the annual
12 increase to new standard offer plants that will be wholly located in one or more
13 preferred locations other than parking lots or parking lot canopies:

14 (I) one-sixth of the annual increase, during the first year;

15 (II) one-quarter of the annual increase, during the second
16 year; and

17 (III) one-third of the annual increase, during the third year.

18 (ii) The Board separately shall allocate the following portions of
19 the annual increase to new standard offer plants that will be wholly located on
20 parking lots or parking lot canopies:

21 (I) one-sixth of the annual increase, during the first year;

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

8 (1) Market-based mechanisms. For new standard offer projects, the
9 Board shall use a market-based mechanism, such as a reverse auction or other
10 procurement tool, to obtain up to the authorized amount of a category of
11 renewable energy, if it first finds that use of the mechanism is consistent with:

12 (A) applicable federal law; and

13 (B) the goal of timely development at the lowest feasible cost.

14 (2) Avoided cost.

15 (A) The price paid for each category of renewable energy shall be the
16 avoided cost of the Vermont composite electric utility system if the Board
17 finds either of the following:

18 (i) Use of the pricing mechanism described in subdivision
19 (1)(market-based mechanisms) of this subsection (f) is inconsistent with
20 applicable federal law.

1 (ii) Use of the pricing mechanism described in subdivision
2 (1)(market-based mechanisms) of this subsection (f) is reasonably likely to
3 result in prices higher than the prices that would apply under this
4 subdivision (2).

5 (B) ~~For the purpose of~~ As used in this subsection (f), the term
6 “avoided cost” means the incremental cost to retail electricity providers of
7 electric energy or capacity or both, which, but for the purchase through the
8 standard offer, such providers would obtain from distributed renewable
9 generation that uses the same generation technology as the category of
10 renewable energy for which the Board is setting the price. ~~For the purpose of~~
11 As used in this subsection (f), the term “avoided cost” also includes the
12 Board’s consideration of each of the following:

13 (i) The relevant cost data of the Vermont composite electric utility
14 system.

15 (ii) The terms of the contract, including the duration of the
16 obligation.

17 (iii) The availability, during the system’s daily and seasonal peak
18 periods, of capacity or energy purchased through the standard offer, and the
19 estimated savings from mitigating peak load.

1 any associated tradeable renewable energy credits or to transfer those attributes
2 and credits to the interconnecting retail provider, and:

3 (i) if the customer retains the attributes, reduces the value of the
4 credit provided under this section for electricity generated by the customer's
5 net metering system by an appropriate amount; and

6 (ii) if the customer transfers the attributes to the interconnecting
7 provider, requires the provider to retain them for application toward
8 compliance with sections 8004 and 8005 of this title; and

9 (I) promotes the siting of net metering systems in preferred locations.

10 * * *

11 (3) The rules shall establish standards and procedures governing
12 application for and issuance or revocation of a certificate of public good for net
13 metering systems under the provisions of section 248 of this title. In
14 establishing these standards and procedures, ~~the rules~~:

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

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

20 (C) The rules shall seek to simplify the application and review
21 process as appropriate; ~~and~~.

1 (2) Guidance and information to be provided by the PAO shall include
2 the following:

3 (A) An explanation of the proceeding, including its purpose; its type,
4 such as rulemaking or contested case; and the restrictions or lack of restrictions
5 applicable to the type of proceeding, such as whether ex parte communications
6 are prohibited.

7 (B) Answers to procedural questions and direction to the statutes and
8 rules applicable to the proceeding.

9 (C) How to participate in the proceeding including, if necessary for
10 participation, how to file to a motion to intervene and how to submit prefiled
11 testimony. The Board shall create forms and templates for motions to
12 intervene, prefiled testimony, and other types of documents commonly filed
13 with the Board, which the PAO shall provide to a person on request. The
14 Board shall post these forms and templates on the Board’s website.

15 (D) The responsibilities of intervenors and other parties.

16 (E) The status of the proceeding. Examples of a proceeding’s status
17 include: a petition has been filed; the proceeding awaits scheduling a
18 prehearing conference or hearing; parties are conducting discovery or
19 submitting prefiled testimony; hearings are concluded and parties are preparing
20 briefs; and the proceeding is under submission to the Board and awaits a
21 decision. For each proceeding in which the next action constitutes the issuance

1 of an order, decision, or proposal for decision by the Board or a hearing
2 officer, the Chair or assigned hearing officer shall provide the PAO with an
3 expected date of issuance and the PAO shall provide this expected date to
4 requesting parties or members of the public.

5 (3) For each proceeding within the scope of subdivision (1) of this
6 subsection, the Board shall post, on its website, electronic copies of all filings
7 and submissions to the Board and all orders of the Board.

8 (4) The Board shall adopt rules or procedures to ensure that the
9 communications of the PAO with the Board's members and other employees
10 concerning contested cases do not contravene the requirements of the
11 Administrative Procedure Act applicable to such cases.

12 (5) The PAO shall have a duty to provide requesting parties and
13 members of the public with information that is accurate to the best of the
14 PAO's ability. The Board and its other employees shall have a duty to transmit
15 accurate information to the PAO. However, the Board and any assigned
16 hearing officer shall not be bound by statements of the PAO.

17 (6) The PAO shall not be an advocate for any person and shall not have
18 a duty to assist a person in the actual formation of the person's position or
19 arguments before the Board or the actions necessary to advance the person's
20 position or arguments such as the actual preparation of motions, memoranda,
21 or prefiled testimony.

1 (7) The Board may assign secondary duties to the PAO that do not
2 conflict with the PAO’s execution of his or her duties under this subsection.

3 Sec. 19. POSITION; APPROPRIATION

4 The following classified position is created in the Public Service Board—
5 one permanent, full-time Public Assistance Officer—for the purpose of Sec. 2
6 of this act. There is appropriated to the Public Service Board for fiscal year
7 2017 from the special fund described in 30 V.S.A. § 22 the amount of
8 \$100,000.00 for the purpose of this position.

9 Sec. 20. 30 V.S.A. § 248(a)(4) is amended to read:

10 (4)(A) With respect to a facility located in the State, the Public Service
11 Board shall hold a nontechnical public hearing on each petition for such
12 finding and certificate in at least one county in which any portion of the
13 construction of the facility is proposed to be located.

14 (B) The Public Service Board shall hold technical hearings at
15 locations which it selects.

16 (C) At the time of filing its application with the Board, copies shall
17 be given by the petitioner to the Attorney General and the Department of
18 Public Service, and, with respect to facilities within the State, the Department
19 of Health, Agency of Natural Resources, Historic Preservation Division,
20 Agency of Transportation, Agency of Agriculture, Food and Markets, and to
21 the chair or director of the municipal and regional planning commissions and

1 the municipal legislative body for each town and city in which the proposed
2 facility will be located.

3 (D) Notice of the public hearing shall be published and maintained
4 on the Board’s website for at least 12 days before the day appointed for the
5 hearing. Notice of the public hearing shall be published once in a newspaper
6 of general circulation in the county or counties in which the proposed facility
7 will be located, and the notice shall include an Internet address where more
8 information regarding the proposed facility may be viewed.

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

14 (F) The Agency of Agriculture, Food and Markets shall have the
15 right to appear as a party in any proceedings held under this subsection.

16 (G) The regional planning commission for the region in which the
17 facility is located shall have the right to appear as a party in any proceedings
18 held under this subsection. The regional planning commission of an adjacent
19 region shall have the same right if the facility is located within 500 feet of the
20 boundary of that planning commission.

1 (H) The legislative body and the planning commission for the
2 municipality in which a facility is located shall have the right to appear as a
3 party in any proceedings held under this subsection. The legislative body and
4 planning commission of an adjacent municipality shall have the same right if
5 the facility is located within 500 feet of the boundary of that adjacent
6 municipality.

7 (I) When a person has the right to appear and participate in a
8 proceeding before the Board under this chapter, the person may activate this
9 right by filing a letter with the Board stating that the person appears through
10 the person’s duly authorized representative, signed by that representative.

11 (J) With respect to an application for an electric generation facility
12 with a capacity that is greater than 15 kilowatts, and in addition to any other
13 information required by the Board, the application shall include information
14 that delineates:

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

19 (ii) the presence and total acreage of primary agricultural soils as
20 defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in

1 connection with the construction and operation of the facility and the amount
2 of those soils to be disturbed;

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

4 (iv) all impacts of the facility's construction and operation under
5 subdivision (b)(5) of this section, including impacts due to the creation or
6 modification of access roads and utility lines and the clearing or management
7 of vegetation.

8 Sec. 21. 30 V.S.A. § 248(f) is amended to read:

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

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

18 (2) The petitioner's application shall address the substantive written
19 comments related to the criteria of subsection (b) of this section received by
20 the petitioner within 45 days of the submittal made under this subsection and

1 the substantive oral comments related to those criteria made at a public hearing
2 under subdivision (1) of this subsection.

3 * * * CPG Conditions: Aesthetics Mitigation and Decommissioning * * *

4 Sec. 22. 30 V.S.A. § 248(t) and (u) are added to read:

5 (t) A certificate under this section for an in-state facility shall require the
6 following with respect to all measures to be undertaken to mitigate the impacts
7 of the facility on aesthetics and scenic beauty:

8 (1) The certificate holder shall obtain a certification from a qualified
9 expert that all required mitigation measures have been undertaken and all
10 required plantings have been installed.

11 (2) The certificate holder shall have control over all vegetation used to
12 demonstrate that the facility will not have an undue adverse effect on aesthetics
13 and all locations on which mitigation plantings are required to be installed. As
14 used in this subdivision, “control” means that the certificate holder has an
15 enforceable right to install and maintain plantings and to manage vegetation.

16 (3) For three years after installation of all required plantings, the
17 certificate holder annually shall submit documentation by a qualified expert
18 that the plantings have been maintained in accordance with the approved plans.

19 (4) The certificate holder shall have an ongoing duty to maintain the
20 plantings in accordance with the approved plans and replace dead or diseased
21 plantings as soon as seasonably possible.

1 (5) The Board shall approve each qualified expert employed to issue a
2 certification under this subsection. However, a qualified expert retained by the
3 Department of Public Service shall be the one to make the certification if the
4 Department has retained such an expert during the course of the proceeding
5 leading to issuance of the certificate.

6 (u) A certificate under this section for an in-state electric generation facility
7 with a capacity that is greater than 150 kilowatts shall require the
8 decommissioning or dismantling of the facility and ancillary improvements at
9 the end of the facility’s useful life and the posting of a bond or other security
10 acceptable to the Board that is sufficient to finance the decommissioning or
11 dismantling activities in full.

12 * * * Greenhouse Gases; Life Cycle Analysis * * *

13 Sec. 23. 30 V.S.A. § 248(v) is added to read:

14 (v) A petition under this section for an in-state facility that is not a net
15 metering system as defined in this title shall include a life cycle analysis of the
16 greenhouse gas impacts of the facility that the Board shall consider in issuing
17 findings under subdivisions (b)(2) and (5) of this section. In this subsection,
18 “facility” includes all generating equipment, poles, wires, substations,
19 structures, roads, and infrastructure, and all other associated land development.
20 This analysis shall include:

21 (1) emissions embodied in all facility components;

1 (2) emissions associated with the transportation of all such components
2 to the site or sites at which they will be installed;

3 (3) emissions associated with site preparation, including the clearing of
4 forested areas and reductions in future carbon sequestration potential from the
5 facility site or sites;

6 (4) emissions associated with the construction of all facility
7 components;

8 (5) emissions associated with the operation of the facility;

9 (6) emissions associated with the decommissioning of the facility; and

10 (7) for facilities that employ renewable energy as defined under section
11 8002 of this title, the reduction in greenhouse gas emissions achieved by the
12 facility as compared to alternative generation facilities that do not employ
13 renewable energy.

14 * * * Sound Standards Docket; Energy Facilities * * *

15 Sec. 24. SOUND STANDARDS DOCKET; COMPLETION DATE

16 On or before September 1, 2016, the Public Service Board shall issue a final
17 order in its pending Docket 8167, Investigation into the potential establishment
18 of standards related to sound levels from the operation of generation,
19 transmission, and distribution equipment by entities subject to Public Service
20 Board jurisdiction.

1 * * * Agency of Agriculture, Food and Markets; Fees; Billback * * *

2 Sec. 25. 30 V.S.A. § 248c is added to read:

3 § 248c. FEES; AGENCY OF AGRICULTURE, FOOD AND MARKETS;

4 PARTICIPATION IN ENERGY SITING PROCEEDINGS

5 (a) Establishment. This section establishes fees for the purpose of
6 supporting the role of the Agency of Agriculture, Food and Markets (the
7 Agency) in reviewing applications for in-state facilities under section 248 of
8 this title. These fees are in addition to the fees under section 248b of this title.

9 (b) Payment. The applicant shall pay the fee into the State Treasury at the
10 time the application for a certificate of public good under section 248 of this
11 title is filed with the Public Service Board in an amount determined in
12 accordance with this section. The fee shall be credited to a special fund that
13 shall be established and managed pursuant to 32 V.S.A. chapter 7,
14 subchapter 5, and which shall be available to the Agency to offset the cost of
15 participation in proceedings under section 248 of this title.

16 (c) Application. The fee established under this section shall apply only if
17 any generation equipment, utility lines, roads, or other improvements
18 associated with an in-state facility seeking a certificate of public good under
19 section 248 of this title will be located on a tract of land that contains primary
20 agricultural soils as defined in 10 V.S.A. § 6001.

1 Natural Resources shall report annually to the Joint Fiscal Committee all costs
2 incurred and expenditures charged under the authority of this subsection with
3 respect to proceedings under subdivision (b)(9) of this section and the purpose
4 for which such costs were incurred and expenditures made.

5 (3) The Agency of Agriculture, Food and Markets may authorize or
6 retain legal counsel, official stenographers, expert witnesses, advisors,
7 temporary employees, other research, scientific, or engineering services to:

8 (A) assist the Agency of Agriculture, Food and Markets in any
9 proceeding under section 248 of this title; or

10 (B) monitor compliance with an order issued under section 248 of
11 this title.

12 (4) The personnel authorized by this section shall be in addition to the
13 regular personnel of the Board or Department or other State agencies; and in
14 the case of the Department or other State agencies may be retained only with
15 the approval of the Governor and after notice to the applicant or the public
16 service company or companies. The Board or Department shall fix the amount
17 of compensation and expenses to be paid such additional personnel, except that
18 the Agency of Natural Resources or of Agriculture, Food and Markets,
19 respectively, shall fix the amount of compensation and expenses to be paid to
20 additional personnel that it retains under subdivision (2) of this subsection.

21 * * *

1 § 21. PARTICULAR PROCEEDINGS; ASSESSMENT OF COSTS

2 (a) ~~The Board, the Department, or the Agency of Natural Resources~~ An
3 agency may allocate the portion of the expense incurred or authorized by it in
4 retaining additional personnel ~~for the particular proceedings authorized in~~
5 pursuant to section 20 of this title to the applicant or the public service
6 company or companies involved ~~in those proceedings.~~ As used in this section,
7 “agency” means an agency, board, or department of the State enabled to
8 authorize or retain personnel under section 20 of this title.

9 (1) The Board shall upon petition of an applicant or public service
10 company to which costs are proposed to be allocated, review and determine,
11 after opportunity for hearing, having due regard for the size and complexity of
12 the project, the necessity and reasonableness of such costs, and may amend or
13 revise such allocations. Nothing in this section shall confer authority on the
14 Board to select or decide the personnel, the expenses of whom are being
15 allocated, unless such personnel are retained by the Board. Prior to allocating
16 costs, the Board shall make a determination of the purpose and use of the funds
17 to be raised hereunder, identify the recipient of the funds, provide for
18 allocation of costs among companies to be assessed, indicate an estimated
19 duration of the proceedings, and estimate the total costs to be imposed. With
20 the approval of the Board, such estimates may be revised as necessary. From
21 time to time during the progress of the work of such additional personnel, the

1 ~~Board, the Department, or the Agency of Natural Resources~~ agency retaining
2 the personnel shall render to the company detailed statements showing the
3 amount of money expended or contracted for in the work of such personnel,
4 which statements shall be paid by the applicant or the public service company
5 into the State Treasury at such time and in such manner as the ~~Board, the~~
6 ~~Department, or the Agency of Natural Resources~~ agency may reasonably
7 direct.

8 (2) In any proceeding under section 248 of this title, the Agency of
9 Natural Resources may allocate the portion of the expense incurred in retaining
10 additional staff authorized in subsection 21(a) of this title only if the following
11 apply:

12 (A) the Agency does not have the expertise and the retention of such
13 expertise is required to fulfill the Agency's statutory obligations in the
14 proceeding; and

15 (B) the Agency allocates only that portion of the cost for such
16 expertise that exceeds the fee paid by the applicant under section 248b of this
17 title.

18 (b) When regular employees of ~~the Board, the Department, or the Agency~~
19 ~~of Natural Resources~~ an agency are employed in the particular proceedings
20 described in section 20 of this title, the ~~Board, the Department, or the Agency~~
21 ~~of Natural Resources~~ agency may also allocate the portion of their costs and

1 expenses to the applicant or the public service company or companies involved
2 in the proceedings. The costs of regular employees shall be computed on the
3 basis of working days within the salary period. The manner of assessment and
4 of making payments shall otherwise be as provided for additional personnel in
5 subsection (a) of this section. However, with respect to proceedings under
6 section 248 of this title, the Agency of Natural Resources shall not allocate the
7 costs of regular employees.

8 * * *

9 (d) The Agency of Natural Resources may allocate expenses under this
10 section only for costs in excess of the amount specified in 3 V.S.A.
11 § 2809(d)(1)(A).

12 (e) ~~On Annually on or before January 15, 2011, and annually thereafter,~~ the
13 Agency of Natural Resources and of Agriculture, Food and Markets each shall
14 report to the Senate and House Committees on Natural Resources and Energy,
15 the Senate Committee on Agriculture, and the House Committee on
16 Agriculture and Forests Products the total amount of expenses allocated under
17 this section during the previous fiscal year. The report shall include the name
18 of each applicant or public service company to whom expenses were allocated
19 and the amount allocated to each applicant or company.

20 * * *

