

PRIOR LEGISLATION: VERMONT HYDRO-ELECTRIC POWER AUTHORITY

EXCERPT FROM 2004 ACTS AND RESOLVES NO. 121
repealed by 2010 Acts and Resolves No 135, Sec. 26(13)(B)

Sec. 101. 30 V.S.A. chapter 90 is added to read:

CHAPTER 90. VERMONT HYDRO-ELECTRIC POWER AUTHORITY

§ 8051. FINDINGS, PURPOSE, AND GOALS

(a) The general assembly of the state of Vermont finds:

(1) Potential exists to purchase an interest in hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(2) The general assembly created the Vermont Renewable Power Supply Acquisition Authority (VRPSAA) in Sec. 38 of No. 63 of the Acts of 2003 to investigate such a purchase and the VRPSAA has taken actions towards that goal.

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

(1) To promote the general good of the state;

(2) To stimulate the development of the Vermont economy;

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

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

(5) Not to compete with Vermont utilities;

(6) To ensure that the credit rating of the state will not be adversely affected and Vermont taxpayers will not be liable should the project fail because of the failure to produce sufficient revenue to service the debt, the failure of a partner, or for any other reason; and

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

§ 8052. DEFINITIONS

As used in this chapter:

(1) "Authority" means the Vermont Hydro-electric Power Authority established by this chapter.

(2) "Project" means the right to the sale at wholesale, exchange, or interchange of the hydroelectric energy, capacity or output produced by or at the hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(3) "Facilities" means the hydroelectric power stations and related assets along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts in which the authority has acquired an equity interest.

§ 8053. AUTHORITY; CREATION AND ORGANIZATION

(a) The Vermont Hydro-electric Power Authority is created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it constitutes the performance of essential governmental functions.

(b) The powers of the authority shall be exercised by seven directors appointed as follows:

(1) Five directors shall be appointed by the governor with the advice and consent of the senate, at least one of whom shall represent retail customers. No director appointed by the

governor, while serving as a director, shall be an employee, board member or director, or have a substantial ownership interest in an electric company regulated by the public service board or the department of public service under this title. The directors appointed by the governor shall be appointed for terms of five years and until their successors are appointed and confirmed, except that the first directors shall be appointed in the following manner: one for a term of two years, two for a term of three years, and two for a term of five years. The governor for cause may remove a director appointed by a governor. The governor may fill any vacancy occurring among the directors appointed by a governor for the balance of the unexpired term. A director may be reappointed.

(2) The state treasurer, who shall serve ex officio; and

(3) One director shall be a representative of the department of public service, appointed by the commissioner, who shall serve at the pleasure of the commissioner.

(c) The authority shall elect a chair, a vice chair, and a treasurer from among its directors. A quorum shall consist of four directors. No action of the authority shall be considered valid unless the action is supported by a majority vote of the directors present and voting and then only if at least four directors vote in favor of the action.

(d) Directors shall be compensated for necessary expenses incurred in the performance of their duties in the manner provided by section 1010 of Title 32.

(e) The governor or the governor's designee shall have the power to appoint an interim manager upon enactment of this chapter, who shall serve at the governor's pleasure, under the governor's direction, and for compensation established by the governor. The interim manager, with the approval of the governor or the governor's designee, shall have full authority to take all actions authorized under this chapter to protect and advance the interests of the state of Vermont

until such time as a manager employed pursuant to section 8054 of this chapter has assumed office.

(f) The authority shall continue so long as it shall have any obligations or indebtedness outstanding and until its existence is terminated by law. Upon termination of the authority, title to all of the property owned by the authority shall vest in the state. The state reserves the right to change or terminate the authority and any structure, organization, program, or activity of the authority, subject to constitutional limitations.

(g) The authority's board of directors shall adopt bylaws or other rules and regulations for the management of the affairs of the authority and carrying out the purposes of this chapter.

(h) The net earnings of the authority, beyond those necessary for retirement of its notes, bonds, or other obligations or indebtedness or to implement the public purposes and programs authorized in this chapter, shall not inure to the benefit of any person other than the state.

(i) Despite any law or charter provision to the contrary, a director or officer of the authority who is also an officer, employee, or member of a legislative body of a municipality or other public body or of the state shall not thereby be precluded from voting or acting on behalf of the authority on a matter involving the municipality or public body or the state.

§ 8054. MANAGER

The authority shall employ and compensate a manager who shall serve under a contract for a specific term or at the pleasure of the authority. The authority, with the governor's approval, shall fix the manager's compensation. The manager shall be the chief executive officer of the authority and shall administer, manage, and direct the affairs and business of the authority, subject to the policies, control, and direction of the directors.

§ 8055. GENERAL POWERS

The authority shall have such powers as are necessary to carry out the purposes of this chapter including those powers provided a corporation under chapter 3 of Title 11A, subject to the limitations in section 8056 of this title, and shall include the power:

(1) To borrow money, make and issue negotiable bonds, notes, and commercial paper; and give other evidences of indebtedness or obligations, and give security therefor. Such evidences of indebtedness or obligations may be incurred for any of the authority's corporate purposes. Such evidences of indebtedness or obligations shall be in such form and denominations, and with such terms and provisions, including the maturity date or dates, redemption provisions, and other provisions necessary or desirable. Such evidences of indebtedness or obligations shall be either taxable or tax-exempt and shall be noninterest bearing, or bear interest at such rate or rates, which may be fixed or variable, as may be sufficient or necessary to effect the issuance and sale or resale thereof. The authority is authorized to enter into such agreements with other persons as the authority deems necessary or appropriate in connection with the issuance, sale, and resale of such evidences of indebtedness or obligations, including, without limitation, trust indentures, bond purchase agreements, disclosure agreements, remarketing agreements, agreements providing liquidity or credit facilities, bond insurance, or other credit enhancements in connection with such evidences of indebtedness or obligations. The authority is authorized to resell or retire any such evidences of indebtedness or obligations prior to the stated maturity thereof. No indebtedness shall be issued by the authority without the written approval of the state treasurer, which approval shall be given if, based upon his or her investigation, the state treasurer has certified that:

(A) none of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont has concluded that such indebtedness will be included as part of the state of Vermont's net tax-supported debt computation, as prepared by such rating agencies; or

(B) the financing structure and flow of funds for such indebtedness will not result in such indebtedness being counted as net tax-supported debt, or its equivalent, on the state of Vermont's debt statement, as prepared by any of the nationally-recognized credit rating agencies that rate general obligation debt of the state of Vermont.

(2) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of property necessary to carry out the purposes of this chapter, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than fee; to hold and dispose of real and personal property; to enter into all contracts, leases, agreements, and arrangements; and to do all lawful acts and things necessary or incidental to the performance of its duties and the execution of its powers under this chapter.

(3) To pledge or assign any money, fees, charges, or other revenues of the authority and any proceeds derived by the authority from the sale of property or from insurance or condemnation awards.

(4) To sue and be sued in its own name and plead and be impleaded; service of process upon the authority in any action shall be made by service upon the secretary of state, either by hand or by leaving a copy of the process at the office of the secretary.

(5) To adopt and amend bylaws, rules, and regulations for the calling and conduct of its meetings and for the conduct of its affairs.

(6) To employ personnel who, in the discretion of the authority, may be in the classified system under chapter 13 of Title 3, and to employ or contract with agents, consultants, legal

advisors, and other persons and entities as may be necessary or desirable for its purposes, upon such terms as the authority may determine.

(7) To contract with the state of Vermont or any agency or political subdivision thereof, public corporations or bodies, private corporations or individuals for any purposes related to the authority.

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

(9) To administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority.

(10) To do business inside or outside the state.

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

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

(13) Alone or jointly, to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in the facilities or portions of the facilities, the product or service from them, securities or obligations issued or incurred in connection with the financing of them, or research and development relating to them,

within or outside the state. The authority may also enter into and perform contracts with any person with respect to the foregoing.

(14) To exercise all powers necessary or incidental to affect any or all of the purposes for which the authority is created.

(15) To sell project electric power at wholesale within or outside the state.

(16) To purchase, maintain, and operate the facilities.

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

§ 8056. LIMITATIONS ON POWERS

(a) The authority shall not sell electric power at retail to any ultimate customer in Vermont, or require any electric utility to purchase electric power in a wholesale transaction.

(b) The authority shall not seek or obtain treatment for any facility as a “qualifying facility” in Vermont under 18 C.F.R. § 292.201-207 or subdivision 209(a)(8) of this title.

(c) Electric power provided by the authority shall not be sold to the department of public service for ultimate sale at retail to Vermont consumers under sections 211 or 212a of this title.

(d) The authority shall take no action to cause, nor shall any provision of this chapter be construed to impose, any obligation upon the state as a result of the insolvency of a partner.

§ 8057. OBLIGATIONS NOT OBLIGATIONS OF THE STATE

The authority shall have the benefit of sovereign immunity to the same extent as the state of Vermont. Notwithstanding the foregoing, obligations of the authority under a contract authorized by this chapter shall not be deemed to constitute an obligation, indebtedness or a lending of credit of the state.

§ 8058. BONDS

(a) In addition to any other statute affecting the authority, the authority may issue bonds to pay the costs of purchasing the facilities on the Connecticut and Deerfield Rivers, or property related to such facilities, to pay the costs of repairs, replacements or expansions of the facilities, or to pay capitalized interest and costs of issuance, which have been approved by the authority or to refund bonds previously issued.

(b) In addition to any other statute affecting the authority, no bonds shall be issued under this section without the prior approval of the governor or designee.

(c) Bonds issued under this section shall bear the manual or facsimile signature of the manager of the authority and the manual or facsimile signature of the chair or vice chair of the authority. Bonds shall be sold by the signing officers at public or private sale, and the proceeds thereof shall be paid to the trustee under the security document that secures the bonds.

(d) No financing or security document, bond, or other instrument issued or entered into in the name and on behalf of the authority under this chapter shall in any way obligate the state to raise any money by taxation or use other funds for any purpose to pay any debt or meet any financial obligation to any person at any time in relation to a facility, project, or program financed in whole or in part by the issue of the authority's bonds under this chapter, except from monies received or to be received under a financing or security document entered into under this chapter or except as may be required by any other provision of law. Notwithstanding the provisions of this subsection, the authority may accept and expend with respect to a facility, project, or program any gifts or grants received from any source in accordance with the terms of the gifts or grants.

(e) The authority may undertake a joint financing of the project.

(f) A state or national chartered bank, Vermont bank, or Vermont trust company may serve as trustee for the benefit of bondholders under a security document; and the trustee may at any time own all or any part of the bonds issued under that security document, unless otherwise provided therein. All monies received or held by the authority or by a trustee pursuant to a financing or security document, other than funds received or held by the authority for its own use, shall be deemed to be trust funds and shall be held and applied solely in accordance with the applicable document.

(g) Except as provided in any financing or security document entered into or any bond issued under this chapter, each of the parties to the financing or security document or any bondholder may enforce the obligation of any other person to the party or bondholder under the bond or instrument by appropriate legal proceedings.

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

§ 8059. RECORDS; ANNUAL REPORT; AUDIT

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

(b) Each year, prior to February 1, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the authority,

and a copy of the audit shall be filed with the state treasurer.

Sec. 102. VERMONT HYDRO-ELECTRIC POWER AUTHORITY; TRANSITIONAL
PROVISION; TERMINATION

(a) Nothing in Sec. 101 of this act shall be interpreted to limit the lawful activities of the Vermont Renewable Power Supply Acquisition Authority created in Sec. 38 of No. 63 of the Acts of 2003.

(b) Sec. 101 of this act, creating Chapter 90 of Title 30, shall terminate on July 1, 2007 if at that time no directors have been appointed by the governor and confirmed by the senate. If directors have been appointed and confirmed before that date, chapter 90 of Title 30 shall remain the law of the state.