

VERMONT'S SITING LAW FOR ELECTRIC GENERATION AND TRANSMISSION AND NATURAL GAS FACILITIES

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Under 30 V.S.A. § 248 (“Section 248”), a certificate of public good (CPG) must be obtained from the Vermont Public Service Board (PSB) prior to site preparation for or construction of an in-state electric generation or transmission facility or a natural gas transmission line, storage facility, or manufactured-gas facility.

- To issue a CPG, the PSB must find that the facility will promote the general good of the state and meets statutory criteria related to the need for the facility, its interaction with the grid, its economic benefits, and its environmental and land use impacts.
- Environmental and land use criteria incorporated into Section 248 address such matters as air and water pollution, soil erosion, shorelines, aesthetics, wildlife habitat, historic sites, and impacts on public services, facilities, and lands.
- The PSB is required to give “due consideration” to the applicable local land use plan and the recommendations of local government and the regional planning commission, and to most but not all of the environmental and land use criteria found in the state land use statute known as “Act 250” (10 V.S.A. chapter 151).
- In 2016, the General Assembly amended Section 248 to require the PSB to give “substantial deference” to the local and regional plans if they exercise an option to obtain an affirmative determination of energy compliance.
- There are exemptions for Section 248 projects from Act 250 and local bylaws.
- Section 248 projects often require other permits from the Agency of Natural Resources such as stormwater discharge permits. Applicants often seek these permits after receiving a Section 248 CPG.

The PSB is the state’s public utilities commission. It functions like a court and holds hearings at which witnesses present evidence and are cross-examined.

- Parties to a Section 248 proceeding include the applicant, the Department of Public Service, the Agency of Natural Resources, the municipal legislative body, and the municipal and regional planning commissions. Parties can include individuals such as adjoining property owners, and organizations such as advocacy groups.
- When considering an in-state facility, the PSB must hold at least one non-judicial “public hearing” in a county in which the facility is to be located.
- An expedited process exists for facilities of “limited size and scope,” under which there are no hearings unless the PSB determines there is a significant issue.
- Appeal from the PSB is to the Vermont Supreme Court, which applies a deferential standard of review.