

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred House Bill No. 739  
3 entitled “An act relating to energy productivity investments under the self-  
4 managed energy efficiency program” respectfully reports that it has considered  
5 the same and recommends that the Senate propose to the House that the bill be  
6 amended by striking out all after the enacting clause and inserting in lieu  
7 thereof the following:

8 *Proposal from Senator Lyons/OMYA/GlobalFoundries*

9 Sec. 1. 30 V.S.A. § 209 is amended to read:

10 § 209. JURISDICTION; GENERAL SCOPE

11 \* \* \*

12 (j) Self-managed energy efficiency programs.

13 (1) There shall be a class of self-managed energy efficiency programs  
14 for transmission and industrial electric ratepayers only.

15 (2) The Commission, by order, shall enact this class of programs.

16 (3) Entities approved to participate in the self-managed energy  
17 efficiency program class shall be exempt from all statewide charges under  
18 subdivision (d)(3) of this section that support energy efficiency programs  
19 performed by or on behalf of Vermont electric utilities. If an electric ratepayer  
20 approved to participate in this program class also is a customer of a natural gas  
21 utility, the ratepayer shall be exempt from all charges under subdivision (d)(3)

1 of this section or contained within the rates charged by the natural gas utility to  
2 the ratepayer that support energy efficiency programs performed by or on  
3 behalf of that utility, provided that the ratepayer complies with this subsection.

4 (4) All of the following shall apply to a class of programs under this  
5 subsection:

6 (A) A member of the transmission or industrial electric rate classes  
7 shall be eligible to apply to participate in the self-managed energy efficiency  
8 program class if the charges to the applicant, or to its predecessor in interest at  
9 the served property, under subdivision (d)(3) of this section were a  
10 minimum of:

11 (i) \$1.5 million during calendar year 2008; or

12 (ii) \$1.5 million during calendar year 2017.

13 (B) A cost-based fee to be determined by the Commission shall be  
14 charged to the applicant to cover the administrative costs, including savings  
15 verification, incurred by the Commission and Department. The Commission  
16 shall determine procedures for savings verification. Such procedures shall be  
17 consistent with savings verification procedures established for entities  
18 appointed under subdivision (d)(2) of this section **and, when determined to**  
19 **be cost-effective under subdivision (4)(L) of this subsection, with the**  
20 **requirements of the Independent System Operator of New England for the**  
21 **forward capacity market (FCM) program.**

1 (C) An applicant shall demonstrate to the Commission that it has a  
2 comprehensive energy management program with annual objectives.  
3 Achievement of certification of ISO standard 14001 shall be eligible to satisfy  
4 the requirements of having a comprehensive program.

5 (D) An applicant eligible pursuant to subdivision (A)(i) of this  
6 subdivision (j)(4) shall commit to an annual average energy efficiency  
7 investment in energy efficiency and **energy** productivity programs and  
8 measures during each three-year period that the applicant participates in the  
9 program of ~~no~~ not less than \$1 million. An applicant eligible pursuant to  
10 subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average  
11 investment in energy efficiency and **energy** productivity programs and  
12 measures during each three-year period that the applicant participates in the  
13 program of not less than \$500,000.00. To achieve the exemption from energy  
14 efficiency charges related to natural gas under subdivision (3) of this  
15 subsection (j), the an applicant shall make an additional annual energy  
16 efficiency investment in an amount not less than \$55,000.00. As used in this  
17 subsection (j), “**energy** productivity programs and measures” means  
18 investments that reduce the amount of energy required to produce a unit of  
19 product **below baseline energy use. Baseline energy use shall be calculated**  
20 **as the average amount of energy required to make one unit of the same**

1 **product in the two years preceding implementation of the program or**  
2 **measure.**

3 (E) Participation in the self-managed program includes efficiency and  
4 productivity programs and measures applicable to electric and other forms of  
5 energy. A participant may balance ~~efficiency~~ investments in such programs  
6 and measures across all types of energy or fuels without limitations.

7 (F) A participant shall provide to the Commission and Department  
8 annually an accounting of ~~energy~~ investments in energy efficiency and energy  
9 productivity programs and measures and the resultant energy savings in the  
10 form prescribed by the Commission, which may conduct reasonable audits to  
11 ensure the accuracy of the data provided.

12 (G) The Commission shall report to the General Assembly annually  
13 ~~by~~ on or before April 30 concerning the prior calendar year's class of self-  
14 managed energy efficiency programs. The report shall include identification of  
15 participants, their annual investments, and resulting savings, and any actions  
16 taken to exclude entities from the program.

17 (H) Upon approval of an application by the Commission, the  
18 applicant shall be able to participate in the class of self-managed energy  
19 efficiency programs.

20 (I) On a determination that, for a given three-year period, a  
21 participant in the self-managed efficiency program class did not meet or has

1 not met the commitment required by subdivision ~~(4)(D)~~ of this ~~subsection~~  
2 subdivision (j)(4), the Commission shall terminate the participant's eligibility  
3 for the self-managed program class.

4 (i) On such termination, the former participant will be subject  
5 fully to the then existing charges applicable to its rate class without exemption  
6 under subdivision (3) of this subsection (j), and within 90 days ~~of~~ after such  
7 termination shall pay:

8 (I) the difference between the investment it made pursuant to  
9 the self-managed energy efficiency program during the three-year period of  
10 noncompliance and the full amount of the charges and rates related to energy  
11 efficiency it would have incurred during that period absent exemption under  
12 subdivision (3) of this subsection (j); and

13 (II) the difference between the investment it made pursuant to  
14 the program within the current three-year period, if different from the period of  
15 noncompliance, and the full amount of the charges and rates related to energy  
16 efficiency it would have incurred during the current period absent exemption  
17 under subdivision (3) of this subsection (j).

18 (ii) Payments under subdivision ~~(4)(I)(i)~~ of this ~~subsection (j)~~  
19 subdivision (4)(I) shall be made to the entities to which the full amount of  
20 charges and rates would have been paid absent exemption under subdivision  
21 (3) of this subsection (j).

1 (iii) A former participant may not reapply for membership in the  
2 self-managed program after termination under this subdivision (4)(I).

3 (J) A participant in the self-managed program class may request  
4 confidentiality of data it reports to the Commission if the data would qualify  
5 for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is  
6 requested, the Commission shall disclose the data only in accordance with a  
7 protective agreement approved by the Commission and signed by the recipient  
8 of the data, unless a court orders otherwise.

9 (K) Any data not subject to a confidentiality request under  
10 subdivision ~~(4)(J)~~ of this subsection subdivision (4) will be a public record.

11 (L) A participant in the self-managed program class ~~may~~ **shall work**  
12 **with the Department of Public Service to determine whether it is cost-**  
13 **effective to** submit projects to the ~~independent system operator~~  
14 **Independent System Operator** of New England, ~~including through~~  
15 ~~recognized aggregators,~~ for payments under that operator's ~~forward capacity~~  
16 ~~market~~ **FCM** program, ~~and shall invest such payments in electric or fuel~~  
17 ~~efficiency.~~

18 **(i) As used in this subdivision (L), “cost-effective” requires**  
19 **that the estimated payments from the FCM program exceed the**  
20 **incremental cost of savings verification necessary for submission to that**  
21 **program.**

1                    **(ii) If the Department determines the submission to be cost-**  
2                    **effective, then an entity appointed to deliver electric energy efficiency**  
3                    **services under subdivision (d)(2) of this section shall submit the project to**  
4                    **the FCM program for payment and any resulting payments shall be**  
5                    **remitted to the Electric Efficiency Fund for use in accordance with**  
6                    **subdivision (e)(1)(A) of this section.**

7                    (M) A participant in the self-managed program class may receive  
8                    funding from an energy program administered by a government or other entity  
9                    ~~which~~ that is not the participant ~~but~~ and may ~~not~~ count such funds received as  
10                    part of the annual commitment to its self-managed energy efficiency program.

11                    \* \* \*

12                    *Proposal from Efficiency Vermont*

13                    Sec. 2. ENERGY SAVINGS ACCOUNT PARTNERSHIP PILOT

14                    (a) Definitions. As used in this section:

15                    (1) “ACCD” means the Agency of Commerce and Community  
16                    Development under 3 V.S.A. chapter 47.

17                    (2) “Commission” means the Public Utility Commission under  
18                    30 V.S.A. § 3.

19                    (3) “Customer” means a commercial or industrial electric customer that  
20                    is located in a service territory in which Efficiency Vermont delivers energy  
21                    efficiency programs and measures and that does not qualify for SMEEP.

1           (4) “Customer EEC Funds” means a customer’s EEC payments during  
2           the period of the ESA partnership project.

3           (5) “Department” means the Department of Public Service under  
4           3 V.S.A. § 212 and 30 V.S.A. § 1.

5           (6) “EEC” means an energy efficiency charge on a customer’s retail  
6           electric bill under 30 V.S.A. § 209(d).

7           (7) “Efficiency Vermont” or “EVT” means the EEU whose appointment  
8           under 30 V.S.A § 209(d)(2) includes the delivery of programs and measures to  
9           customers of multiple electric distribution utilities.

10           (8) “Energy efficiency utility” or “EEU” means an entity appointed to  
11           deliver energy efficiency and conservation programs and measures under  
12           30 V.S.A. § 209(d)(2).

13           (9) “Energy productivity measures” means investments that reduce the  
14           amount of energy required to produce a unit of product **below baseline energy**  
15           **use. Baseline energy use shall be calculated as the average amount of**  
16           **energy required to make one unit of the same product in the two years**  
17           **preceding implementation of the program or measure.**

18           (10) “ESA” means an energy savings account under 30 V.S.A.  
19           § 209(d)(3)(B).

20           (11) “ESA Partnership Pilot” means the three-year pilot program  
21           established by this section.

1           (12) “SMEEP” means the self-managed energy efficiency program  
2           established under 30 V.S.A. § 209(j).

3           (13) “Standing committees of jurisdiction” means the House Committee  
4           on Energy and Technology and the Senate Committees on Finance and on  
5           Natural Resources and Energy.

6           (14) “Unregulated fuel” shall have the same meaning as in 30 V.S.A.  
7           § 209(e).

8           (b) ESA Partnership Pilot; establishment. On or before July 1, 2019, the  
9           Commission by rule or order shall establish a three-year pilot program for  
10           customers to self-direct the use of their Customer EEC Funds, working with  
11           EVT. The total amount of Customer EEC Funds available in the pilot program  
12           each year shall not exceed \$2 million. The pilot program established under  
13           this section shall be an expansion of the ESA option under which:

14           (1) Notwithstanding any contrary provision of 30 V.S.A. § 209(d)(3)(B),  
15           the customer shall **continue to pay its EEC and** be able to receive an amount  
16           equal to 100 percent of its **ESA account balance** to pay for the full cost of  
17           projects that are eligible under subdivision (3) of this subsection; for technical  
18           assistance and other services from Efficiency Vermont; and for evaluation,  
19           measurement, and verification activity conducted by the Department or EVT.

20           (2) The customer may receive payments in advance of project  
21           completion from EVT based on the energy management plan submitted under

1 subsection (d) of this section, estimated project costs, and projected energy  
2 savings. However, a customer shall not receive advance payments from EVT  
3 that exceed the amount of Customer EEC Funds the customer has already paid.

4 (3) Notwithstanding any contrary provision of 30 V.S.A. § 209(e)(2),  
5 the Customer EEC Funds may be used for one or more of the following:  
6 electric energy efficiency, thermal energy and process-fuel efficiency for  
7 unregulated fuels, **energy** productivity measures, demand management, and  
8 energy storage that provides benefits to the customer and its interconnecting  
9 utility. **EVT may allocate the cost of the pilot across regulated and**  
10 **unregulated fuel funding sources in a manner that avoids or reduces the**  
11 **need to adjust savings goals approved by the Commission.**

12 (c) Methodology for evaluation, measurement, and verification. In its rule  
13 or order under subsection (b) of this section, the Commission shall establish a  
14 methodology for evaluation, measurement, and verification of projects  
15 implemented under the pilot that is consistent with the requirements of  
16 30 V.S.A. § 218c and that includes cost-effectiveness screening that values  
17 energy savings across the customer’s energy portfolio and non-energy benefits  
18 such as economic development. As used in this subsection, “economic  
19 development” includes job creation, job retention, and capital investment.

20 (1) This methodology may be considered for future establishment of  
21 EEU performance criteria under 30 V.S.A. § 209(d).

1           (2) EVT and the Department shall evaluate and verify the electricity  
2           savings of each project funded under the ESA Partnership Pilot with no less  
3           rigor than is required by the Independent System Operator of New England  
4           (ISO-NE) for the ISO-NE's forward capacity market.

5           (c) Competitive solicitation. A customer shall apply to participate in the  
6           ESA Partnership Pilot through a competitive solicitation process conducted  
7           jointly by EVT, the Department, and ACCD.

8           (1) Promptly after the Commission's rule or order under subsection (b)  
9           of this section becomes effective, EVT, the Department, and ACCD shall  
10           establish criteria for customer selection that are consistent with that rule or  
11           order and that take into account energy efficiency and economic development.

12           (2) On establishment of the selection criteria, EVT, the Department, and  
13           ACCD jointly shall issue a request for proposals (RFP) from customers  
14           seeking to participate in the ESA Partnership Pilot.

15           (3) EVT, the Department, and ACCD jointly shall select customers to  
16           participate in the ESA Partnership Pilot from among the customers that timely  
17           submit proposals in response to the RFP and shall notify the Commission of  
18           the selected customers.

19           (4) If EVT, the Department, and ACCD are unable to resolve an issue  
20           arising under this subsection, they shall bring the issue to the Commission for  
21           resolution.

1           (5) Customer selection under this subsection shall be completed before  
2           July 1, 2019.

3           (d) Energy management plans. Working with EVT, each customer selected  
4           for the ESA Partnership Pilot shall develop an energy management plan for the  
5           three-year period of the pilot with projects to be implemented, energy savings  
6           targets, and a timeline for projects and investments. A copy of each plan shall  
7           be submitted to the Commission, the Department, and ACCD.

8           (e) Other EEU services. A customer that participates in the ESA  
9           Partnership Pilot shall not be eligible for other EEU services, except for an  
10           EEU appointed to deliver natural gas efficiency programs and measures.

11           (f) Other funding. A customer that participates in the ESA Partnership  
12           Pilot may receive funding from an energy program administered by a  
13           government or other person that is not the participant, including an EEU  
14           appointed to deliver natural gas efficiency services, but shall not count such  
15           funds as part of the investment commitment of the ESA Partnership Pilot.

16           (g) Unused funds. At the end of the ESA Partnership Pilot, any Customer  
17           EEC Funds that have not been expended or committed under the pilot shall  
18           revert to use for systemwide energy efficiency programs and measures.

19           (h) Annual reports. On or before each November 1 from 2020 through  
20           2022, the EVT and the selected customers jointly shall submit written progress  
21           reports to the Commission, the Department, and the standing committees of

1 jurisdiction that include projects under the ESA Partnership Pilot and their  
2 associated energy and cost savings. A customer's projects under the pilot and  
3 the associated data and results shall be made public through this report.  
4 However, a customer may request that the Commission order customer-  
5 specific data to be used in preparing a report under this subsection be kept  
6 confidential if the data would qualify for exemption from disclosure under  
7 1 V.S.A. § 317. If the Commission issues such an order, the data subject to the  
8 order shall be disclosed only in accordance with a protective agreement  
9 approved by the Commission and signed by the recipient of the data, unless a  
10 court directs otherwise.

11 (i) Evaluation; recommendation. On completion of the ESA Partnership  
12 Pilot, the Commission shall conduct or shall have a third party conduct an  
13 independent evaluation of the ESA Partnership Pilot **that analyses and**  
14 **compares, among pilot participants and companies of similar size outside**  
15 **the pilot: job creation and retention, energy savings, total energy cost**  
16 **reductions, energy productivity measures, amount of capital applied and**  
17 **leveraged, and other criteria as defined by the Commission. The**  
18 **evaluation shall also study the effects of the pilot on other ratepayers.**  
19 After considering the results of that evaluation, **the Commission** shall submit a  
20 written recommendation to the standing committees of jurisdiction on whether  
21 to continue the program conducted under this section and, if so, under what

1 recommended conditions and revisions, if any. The Commission shall submit  
2 this recommendation on or before January 15, 2023.

3 Sec. 3. EFFECTIVE DATE

4 This act shall take effect on July 1, 2018.

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8 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_  
Senator \_\_\_\_\_

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FOR THE COMMITTEE

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