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S.106

Introduced by Senators Rodgers, Benning, Branagan, Degree, Kitchel, and  
Starr

Referred to Committee on

Date:

Subject: Conservation and development; natural resources; land use; Act 250;  
energy; public service

Statement of purpose of bill as introduced: This bill proposes to place electric  
generation facilities under the jurisdiction of the State land use law, known as  
Act 250, and to allow municipal land use regulation of such a facility.

11 An act relating to land use jurisdiction over electric generation facilities

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 \* \* \* Land Use Jurisdiction over Electric Generation \* \* \*

14 Sec. 1. 10 V.S.A. § 6001 is amended to read:

15 § 6001. DEFINITIONS

16 In this chapter:

17 \* \* \*

18 (3)(A) “Development” means each of the following:

19 (i) The construction of improvements on a tract or tracts of land,  
20 owned or controlled by a person, involving more than 10 acres of land within a

1 radius of five miles of any point on any involved land, for commercial or  
2 industrial purposes in a municipality that has adopted permanent zoning and  
3 subdivision bylaws.

4 (ii) The construction of improvements for commercial or  
5 industrial purposes on more than one acre of land within a municipality that  
6 has not adopted permanent zoning and subdivision bylaws.

7 (iii) The construction of improvements for commercial or  
8 industrial purposes on a tract or tracts of land, owned or controlled by a person,  
9 involving more than one acre of land within a municipality that has adopted  
10 permanent zoning and subdivision bylaws, if the municipality in which the  
11 proposed project is located has elected by ordinance, adopted under 24 V.S.A.  
12 chapter 59, to have this jurisdiction apply.

13 \* \* \*

14 (vi) The construction of improvements for commercial, industrial  
15 or residential use above the elevation of 2,500 feet.

16 (vii) Exploration for fissionable source materials beyond the  
17 reconnaissance phase or the extraction or processing of fissionable source  
18 material.

19 (viii) The drilling of an oil and gas well.

20 \* \* \*



1 set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and  
2 4464, the dedication of lands for public use, and the filing of bonds to ~~insure~~  
3 ensure compliance. The requirements and conditions incorporated from  
4 Title 24 may be applied whether or not a local plan has been adopted. General  
5 requirements and conditions may be established by rule of the Natural  
6 Resources Board. A permit or permit amendment issued under this chapter for  
7 a development under subdivision 6001(3)(A)(xi) of this title shall require the  
8 decommissioning or dismantling of the development at the end of the facility's  
9 useful life and the posting of a bond or other security acceptable to the District  
10 Commission that is sufficient to finance the decommissioning or dismantling  
11 activities in full, unless the development has a plant capacity as defined in  
12 30 V.S.A. § 8002 that is 15 kilowatts or less.

13 Sec. 3. 24 V.S.A. § 4413 is amended to read:

14 § 4413. LIMITATIONS ON MUNICIPAL BYLAWS

15 \* \* \*

16 (b) A bylaw under this chapter shall not regulate public utility ~~power~~  
17 ~~generating plants and~~ transmission facilities regulated under 30 V.S.A. § 248.

18 \* \* \*

19 (g) Notwithstanding any provision of law to the contrary, a bylaw adopted  
20 under this chapter shall not:

1 (1) Regulate the installation, operation, and maintenance, on a flat roof  
2 of an otherwise complying structure, of a solar energy device that heats water  
3 or space or generates electricity. ~~For the purpose of~~ As used in this  
4 subdivision, “flat roof” means a roof having a slope less than or equal to five  
5 degrees.

6 (2) Prohibit or have the effect of prohibiting the installation of solar  
7 collectors not exempted from regulation under subdivision (1) of this  
8 subsection, clotheslines, or other energy devices based on renewable resources.

9 \* \* \*

10 Sec. 4. 24 V.S.A. § 4414 is amended to read:

11 \* \* \*

12 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

13 Any of the following types of regulations may be adopted by a municipality  
14 in its bylaws in conformance with the plan and for the purposes established in  
15 section 4302 of this title.

16 \* \* \*

17 (15) Solar plants; screening. ~~Notwithstanding any contrary provision of~~  
18 ~~sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a~~ A  
19 municipality may adopt a freestanding bylaw to establish screening  
20 requirements that shall apply to a ground-mounted plant that generates  
21 electricity from solar energy. ~~In a proceeding under 30 V.S.A. § 248, the~~

1 ~~municipality may make recommendations to the Public Service Board applying~~  
2 ~~the bylaw to such a plant. The bylaw may designate the municipal body to~~  
3 ~~make this recommendation. Screening requirements and recommendations~~  
4 ~~adopted under this subdivision shall be a condition of a certificate of public~~  
5 ~~good issued for the plant under 30 V.S.A. § 248, provided that they do not~~  
6 ~~prohibit or have the effect of prohibiting the installation of such a plant and do~~  
7 ~~not have the effect of interfering with its intended functional use.~~

8 ~~(A) Screening requirements under this subdivision shall not be more~~  
9 ~~restrictive than screening requirements applied to commercial development in~~  
10 ~~the municipality under this chapter or, if the municipality does not have other~~  
11 ~~bylaws except flood hazard, 10 V.S.A. chapter 151.~~

12 ~~(B)~~ In this section, “plant” shall have the same meaning as in  
13 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation  
14 measures to harmonize a facility with its surroundings and includes  
15 landscaping, vegetation, fencing, and topographic features.

16 ~~(C) This subdivision (15) shall not authorize requiring a municipal~~  
17 ~~land use permit for a solar electric generation plant, and a municipal action~~  
18 ~~under this subdivision shall not be subject to the provisions of subchapter 11~~  
19 ~~(appeals) of this chapter. Notwithstanding any contrary provision of this title,~~  
20 ~~enforcement of a bylaw adopted under this subdivision shall be pursuant to the~~  
21 ~~provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248.~~

1 Sec. 5. 24 V.S.A. § 2291 is amended to read:

2 § 2291. ENUMERATION OF POWERS

3 For the purpose of promoting the public health, safety, welfare, and  
4 convenience, a town, city, or incorporated village shall have the following  
5 powers:

6 \* \* \*

7 (28) ~~Notwithstanding any contrary provision of sections 2291a and 4413~~  
8 ~~of this title or 30 V.S.A. chapter 5 or 89, a A municipality may adopt an~~  
9 ~~ordinance to establish screening requirements that shall apply to a ground-~~  
10 ~~mounted plant that generates electricity from solar energy. In a proceeding~~  
11 ~~under 30 V.S.A. § 248, the municipality may make recommendations to the~~  
12 ~~Public Service Board applying the ordinance to such a plant. The ordinance~~  
13 ~~may designate the municipal body to make this recommendation. Screening~~  
14 ~~requirements and recommendations adopted under this subdivision shall be a~~  
15 ~~condition of a certificate of public good issued for the plant under 30 V.S.A.~~  
16 ~~§ 248, provided that they do not prohibit or have the effect of prohibiting the~~  
17 ~~installation of such a plant and do not have the effect of interfering with its~~  
18 ~~intended functional use.~~

19 (A) ~~Screening requirements under this subdivision shall not be more~~  
20 ~~restrictive than screening requirements applied to commercial development in~~

1 ~~the municipality under chapter 117 of this title or, if the municipality does not~~  
2 ~~have other bylaws except flood hazard, 10 V.S.A. chapter 151.~~

3 (B) In this section subdivision (28), “plant” shall have the same  
4 meaning as in 30 V.S.A. § 8002 and “screening” means reasonable aesthetic  
5 mitigation measures to harmonize a facility with its surroundings and includes  
6 landscaping, vegetation, fencing, and topographic features.

7 ~~(C) This subdivision (28) shall not authorize requiring a municipal~~  
8 ~~permit for a solar electric generation plant. Notwithstanding any contrary~~  
9 ~~provision of this title, enforcement of an ordinance adopted under this~~  
10 ~~subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to~~  
11 ~~violations of 30 V.S.A. § 248.~~

12 \* \* \* Removal of Public Service Board Jurisdiction \* \* \*

13 Sec. 6. 30 V.S.A. § 248 is amended to read:

14 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND  
15 FACILITIES; CERTIFICATE OF PUBLIC GOOD

16 (a)(1) No company, as defined in section 201 of this title, may:

17 \* \* \*

18 (2) Except for the replacement of existing facilities with equivalent  
19 facilities in the usual course of business, ~~and except for electric generation~~  
20 ~~facilities that are operated solely for on-site electricity consumption by the~~  
21 ~~owner of those facilities and for hydroelectric generation facilities subject to~~



1 ~~licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12,~~  
2 ~~subchapter 1:~~

3 (A) no company, as defined in section 201 of this title, and no person,  
4 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or  
5 construction of an ~~electric generation facility~~ or electric transmission facility  
6 within the State which is designed for immediate or eventual operation at any  
7 voltage; and

8 (B) no such company may exercise the right of eminent domain in  
9 connection with site preparation for or construction of any such transmission ~~or~~  
10 ~~generation~~ facility, unless the Public Service Board first finds that the same  
11 will promote the general good of the State and issues a certificate to that effect.

12 \* \* \*

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

17 \* \* \*

18 (F) ~~The following shall apply to the participation of the Agency of~~  
19 Agriculture, Food and Markets shall have the right to appear and participate in  
20 proceedings held under this subsection:

1           (i) ~~In any proceeding regarding an electric generation facility that~~  
2 ~~will have a capacity greater than 500 kilowatts and will be sited on a tract~~  
3 ~~containing primary agricultural soils as defined in 10 V.S.A. § 6001, the~~  
4 ~~Agency shall appear as a party and provide evidence and recommendations~~  
5 ~~concerning any findings to be made under subdivision (b)(5) of this section on~~  
6 ~~those soils, and may provide evidence and recommendations concerning any~~  
7 ~~other matters to be determined by the Board in such a proceeding.~~

8           (ii) ~~In a proceeding other than one described in subdivision (i) of~~  
9 ~~this subdivision (4)(F), the Agency shall have the right to appear and~~  
10 ~~participate.~~

11   \* \* \*

12           (J) ~~This subdivision (J) applies to an application for an electric~~  
13 ~~generation facility with a capacity that is greater than 50 kilowatts, unless the~~  
14 ~~facility is located on a new or existing structure the primary purpose of which~~  
15 ~~is not the generation of electricity. In addition to any other information~~  
16 ~~required by the Board, the application for such a facility shall include~~  
17 ~~information that delineates:~~

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

1           ~~(ii) the presence and total acreage of primary agricultural soils as~~  
2           ~~defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in~~  
3           ~~connection with the construction and operation of the facility, the amount of~~  
4           ~~those soils to be disturbed, and any other proposed impacts to those soils;~~

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

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

10                                   \* \* \*

11           ~~(6) In any certificate of public good issued under this section for an in-~~  
12           ~~state plant as defined in section 8002 of this title that generates electricity from~~  
13           ~~wind, the Board shall require the plant to install radar controlled obstruction~~  
14           ~~lights on all wind turbines for which the Federal Aviation Administration~~  
15           ~~(FAA) requires obstruction lights, if the plant includes four or more wind~~  
16           ~~turbines and the FAA allows the use of radar controlled lighting technology.~~

17           ~~(A) Nothing in this subdivision shall allow the Board to approve~~  
18           ~~obstruction lights that do not meet FAA standards.~~

19           ~~(B) The purpose of this subdivision (6) is to reduce the visual impact~~  
20           ~~of wind turbine obstruction lights on the environment and nearby properties.~~  
21           ~~The General Assembly finds that wind turbine obstruction lights that remain~~

1 illuminated through the night create light pollution. Radar controlled  
2 obstruction lights are only illuminated when aircraft are detected in the area,  
3 and therefore the use of these lights will reduce the negative environmental  
4 impacts of obstruction lights. [Repealed.]

5 (7) ~~When a certificate of public good under this section or amendment~~  
6 ~~to such a certificate is issued for an in state electric generation facility with a~~  
7 ~~capacity that is greater than 15 kilowatts, the certificate holder within 45 days~~  
8 ~~shall record a notice of the certificate or amended certificate, on a form~~  
9 ~~prescribed by the Board, in the land records of each municipality in which a~~  
10 ~~facility subject to the certificate is located and shall submit proof of this~~  
11 ~~recording to the Board. The recording under this subsection shall be indexed~~  
12 ~~as though the certificate holder were the grantor of a deed. The prescribed~~  
13 ~~form shall not exceed one page and shall require identification of the land on~~  
14 ~~which the facility is to be located by reference to the conveyance to the current~~  
15 ~~landowner, the number of the certificate, and the name of each person to which~~  
16 ~~the certificate was issued, and shall include information on how to contact the~~  
17 ~~Board to view the certificate and supporting documents. [Repealed.]~~

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

1           (1) With respect to an in-state facility, will not unduly interfere with the  
2 orderly development of the region with due consideration having been given to  
3 the recommendations of the municipal and regional planning commissions, the  
4 recommendations of the municipal legislative bodies, and the land  
5 conservation measures contained in the plan of any affected municipality.

6           However:

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

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

1 ~~installation of such a facility or have the effect of interfering with the facility's~~  
2 ~~intended functional use. [Repealed.]~~

3 (C) ~~With respect to an in-state electric generation facility, the Board~~  
4 ~~shall give substantial deference to the land conservation measures and specific~~  
5 ~~policies contained in a duly adopted regional and municipal plan that has~~  
6 ~~received an affirmative determination of energy compliance under 24 V.S.A.~~  
7 ~~§ 4352. In this subdivision (C), "substantial deference" means that a land~~  
8 ~~conservation measure or specific policy shall be applied in accordance with its~~  
9 ~~terms unless there is a clear and convincing demonstration that other factors~~  
10 ~~affecting the general good of the State outweigh the application of the measure~~  
11 ~~or policy. The term shall not include consideration of whether the~~  
12 ~~determination of energy compliance should or should not have been~~  
13 ~~affirmative under 24 V.S.A. § 4352. [Repealed.]~~

14 (2) Is required to meet the need for present and future demand for  
15 service which could not otherwise be provided in a more cost-effective manner  
16 through energy conservation programs and measures and energy-efficiency  
17 and load management measures, including those developed pursuant to the  
18 provisions of subsection 209(d), section 218c, and subsection 218(b) of this  
19 title. In determining whether this criterion is met, the Board shall assess the  
20 environmental and economic costs of the purchase, investment, or construction  
21 in the manner set out under subdivision 218c(a)(1) (least-cost integrated plan)

1 of this title and, as to a generation facility, shall consider whether the facility  
2 will avoid, reduce, or defer transmission or distribution system investments.

3 \* \* \*

4 (11) ~~With respect to an in-state generation facility that produces electric~~  
5 ~~energy using woody biomass, will:~~

6 (A) ~~comply with the applicable air pollution control requirements~~  
7 ~~under the federal Clean Air Act, 42 U.S.C. § 7401 et seq.;~~

8 (B) ~~achieve the highest design system efficiency that is commercially~~  
9 ~~available, feasible, and cost-effective for the type and design of the proposed~~  
10 ~~facility; and~~

11 (C) ~~comply with harvesting procedures and procurement standards~~  
12 ~~that ensure long-term forest health and sustainability. These procedures and~~  
13 ~~standards at a minimum shall be consistent with the guidelines and standards~~  
14 ~~developed pursuant to 10 V.S.A. § 2750 (harvesting guidelines and~~  
15 ~~procurement standards) when adopted under that statute. [Repealed.]~~

16 \* \* \*

17 (k)(1) Notwithstanding any other provisions of this section, the Board may  
18 waive, for a specified and limited time, the applicable prohibitions contained in  
19 this section and 10 V.S.A. chapter 151 upon site preparation for or construction  
20 of an electric transmission facility or a generation facility necessary to ensure

1 the stability or reliability of the electric system or a natural gas facility,  
2 pending full review under this section.

3 (2) A person seeking a waiver under this subsection shall file a petition  
4 with the Board and shall provide copies to the Department of Public Service,  
5 the Natural Resources Board, and the Agency of Natural Resources. Upon  
6 receiving the petition, the Board shall conduct an expedited preliminary  
7 hearing, upon such notice to the governmental bodies listed in subdivision  
8 (a)(4)(C) of this section as the Board may require.

9 (3) An order granting a waiver may include terms, conditions, and  
10 safeguards, including the posting of a bond or other security, as the Board  
11 deems proper, considering the scope and duration of the requested waiver.

12 (4) A waiver shall be granted only upon a showing that:

13 (A) good cause exists because an emergency situation has occurred;

14 (B) the waiver is necessary to provide adequate and efficient service  
15 or to preserve the property of the public service company devoted to  
16 public use;

17 (C) measures will be taken, as the Board deems appropriate, to  
18 minimize significant adverse impacts under the criteria specified in  
19 subdivisions (b)(5) and (8) of this section; and

20 (D) taking into account any terms, conditions, and safeguards that the  
21 Board may require, the waiver will promote the general good of the State.



1           (5) Upon the expiration of a waiver, if a certificate of public good has  
2 not been issued under this section or land use permit issued under 10 V.S.A.  
3 chapter 151, whichever applies, the Board shall require the removal,  
4 relocation, or alteration of the facilities subject to the waiver, as it finds will  
5 best promote the general good of the State.

6           (1) Notwithstanding other provisions of this section, and without limiting  
7 any existing authority of the Governor, and pursuant to 20 V.S.A. § 9(10) and  
8 (11), when the Governor has proclaimed a state of emergency pursuant to  
9 20 V.S.A. § 9, the Governor, in consultation with the Chair of the Public  
10 Service Board, ~~and~~ the Commissioner of Public Service, and the Chair of the  
11 Natural Resources Board or their designees, may waive the applicable  
12 prohibitions contained in this section and 10 V.S.A. chapter 151 upon site  
13 preparation for or construction of an electric transmission facility or a  
14 generation facility necessary to ensure the stability or reliability of the electric  
15 system or a natural gas facility. Waivers issued under this subsection shall be  
16 subject to such conditions as are required by the Governor, and shall be valid  
17 for the duration of the declared emergency plus 180 days, or such lesser overall  
18 term as determined by the Governor. Upon the expiration of a waiver under  
19 this subsection, if a certificate of public good has not been issued under this  
20 section, the Board shall require the removal, relocation, or alteration of the

1 facilities, subject to the waiver, as the Board finds will best promote the  
2 general good of the State.

3 ~~(m) In any matter with respect to which the Board considers the operation~~  
4 ~~of a nuclear energy generating plant beyond the date permitted in any~~  
5 ~~certificate of public good granted under this title, including any certificate in~~  
6 ~~effect as of January 1, 2006, the Board shall evaluate the application under~~  
7 ~~current assumptions and analyses and not an extension of the cost benefit~~  
8 ~~assumptions and analyses forming the basis of the previous certificate of public~~  
9 ~~good for the operation of the facility. [Repealed.]~~

10 (n)(1) No company as defined in section 201 of this title and no person as  
11 defined in 10 V.S.A. § 6001(14) may place or allow the placement of wireless  
12 communications facilities on an electric transmission ~~or generation~~ facility  
13 located in this State, ~~including a net metering system~~, without receiving a  
14 certificate of public good from the Public Service Board pursuant to this  
15 subsection. The Public Service Board may issue a certificate of public good  
16 for the placement of wireless communications facilities on electric  
17 transmission ~~and generation~~ facilities if such placement is in compliance with  
18 the criteria of this section and Board rules or orders implementing this section.  
19 In developing such rules and orders, the Board:

20 \* \* \*

1       ~~(o) The Board shall not reject as incomplete a petition under this section for~~  
2       ~~a wind generation facility on the grounds that the petition does not specify the~~  
3       ~~exact make or dimensions of the turbines and rotors to be installed at the~~  
4       ~~facility as long as the petition provides the maximum horizontal and vertical~~  
5       ~~dimensions of those turbines and rotors and the maximum decibel level that the~~  
6       ~~turbines and rotors will produce as measured at the nearest residential structure~~  
7       ~~over a 12-hour period commencing at 7:00 p.m. [Repealed.]~~

8       ~~(p) An in-state generation facility receiving a certificate under this section~~  
9       ~~that produces electric energy using woody biomass shall annually disclose to~~  
10       ~~the Board the amount, type, and source of wood acquired to generate energy.~~  
11       ~~[Repealed.]~~

12       ~~(q)(1) A certificate under this section shall be required for a plant using~~  
13       ~~methane derived from an agricultural operation as follows:~~

14               ~~(A) With respect to a plant that constitutes farming pursuant to~~  
15       ~~10 V.S.A. § 6001(22)(F), only for the equipment used to generate electricity~~  
16       ~~from biogas, the equipment used to refine biogas into natural gas, the~~  
17       ~~structures housing such equipment used to generate electricity or refine biogas,~~  
18       ~~and the interconnection to electric and natural gas distribution and transmission~~  
19       ~~systems. The certificate shall not be required for the methane digester, the~~  
20       ~~digester influents and non-gas effluents, the buildings and equipment used to~~  
21       ~~handle such influents and non-gas effluents, or the on-farm use of heat and~~

1 exhaust produced by the generation of electricity, and these components shall  
2 not be subject to jurisdiction under this section.

3 ~~(B) With respect to a plant that does not constitute farming pursuant~~  
4 ~~to 10 V.S.A. § 6001(22)(F) but which receives feedstock from off-site farms,~~  
5 ~~for all on-site components of the plant, for the transportation of feedstock to~~  
6 ~~the plant from off-site contributing farms, and the transportation of effluent or~~  
7 ~~digestate back to those farms. The certificate shall not regulate any farming~~  
8 ~~activities conducted on the contributing farms that provide feedstock to a plant~~  
9 ~~or use of effluent or digestate returned to the contributing farms from the plant.~~

10 ~~(2) Notwithstanding 1 V.S.A. § 214 and Board Rule 5.408, if the Board~~  
11 ~~issued a certificate to a plant using methane derived from an agricultural~~  
12 ~~operation prior to July 1, 2013, such certificate shall require an amendment~~  
13 ~~only when there is a substantial change, pursuant to Board Rule 5.408, to the~~  
14 ~~equipment used to generate electricity from biogas, the equipment used to~~  
15 ~~refine biogas into natural gas, the structures housing such equipment used to~~  
16 ~~generate electricity or refine biogas, or the interconnection to electric and~~  
17 ~~natural gas distribution and transmission systems. The Board's jurisdiction in~~  
18 ~~any future proceedings concerning such a certificate shall be limited pursuant~~  
19 ~~to subdivision (1) of this subsection.~~

1           ~~(3) This subsection shall not affect the determination, under section~~  
2           ~~8005a of this title, of the price for a standard offer to a plant using methane~~  
3           ~~derived from an agricultural operation.~~

4           ~~(4) As used in this section, "biogas" means a gas resulting from the~~  
5           ~~action of microorganisms on organic material such as manure or food~~  
6           ~~processing waste. [Repealed.]~~

7           ~~(r) The Board may provide that, in any proceeding under subdivision~~  
8           ~~(a)(2)(A) of this section for the construction of a renewable energy plant, a~~  
9           ~~demonstration of compliance with subdivision (b)(2) of this section, relating to~~  
10           ~~establishing need for the plant, shall not be required if all or part of the~~  
11           ~~electricity to be generated by the plant is under contract to one or more~~  
12           ~~Vermont electric distribution companies and if no part of the plant is financed~~  
13           ~~directly or indirectly through investments, other than power contracts, backed~~  
14           ~~by Vermont electricity ratepayers. In this subsection, "plant" and "renewable~~  
15           ~~energy" shall be as defined in section 8002 of this title. [Repealed.]~~

16           ~~(s) This subsection sets minimum setback requirements that shall apply to~~  
17           ~~in-state ground-mounted solar electric generation facilities approved under this~~  
18           ~~section.~~

19           ~~(1) The minimum setbacks shall be:~~

20           ~~(A) from a State or municipal highway, measured from the edge of~~  
21           ~~the traveled way:~~

1                   ~~(i) 100 feet for a facility with a plant capacity exceeding~~  
2                   ~~150 kW; and~~

3                   ~~(ii) 40 feet for a facility with a plant capacity less than or equal to~~  
4                   ~~150 kW but greater than 15 kW.~~

5                   ~~(B) From each property boundary that is not a State or municipal~~  
6                   ~~highway:~~

7                   ~~(i) 50 feet for a facility with a plant capacity exceeding~~  
8                   ~~150 kW; and~~

9                   ~~(ii) 25 feet for a facility with a plant capacity less than or equal to~~  
10                  ~~150 kW but greater than 15 kW.~~

11                  ~~(2) This subsection does not require a setback for a facility with a plant~~  
12                  ~~capacity equal to or less than 15 kW.~~

13                  ~~(3) On review of an application, the Board may:~~

14                   ~~(A) require a larger setback than this subsection requires; or~~

15                   ~~(B) approve an agreement to a smaller setback among the applicant,~~  
16                  ~~the municipal legislative body, and each owner of property adjoining the~~  
17                  ~~smaller setback.~~

18                  ~~(4) In this subsection:~~

19                   ~~(A) “kW” and “plant capacity” shall have the same meaning as in~~  
20                  ~~section 8002 of this title.~~

1           ~~(B) “Setback” means the shortest distance between the nearest~~  
2           ~~portion of a solar panel or support structure for a solar panel, at its point of~~  
3           ~~attachment to the ground, and a property boundary or the edge of a highway’s~~  
4           ~~traveled way. [Repealed.]~~

5           (t) ~~Notwithstanding any contrary provision of the law, primary agricultural~~  
6           ~~soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric~~  
7           ~~generation facility approved under this section shall remain classified as such~~  
8           ~~soils, and the review of any change in use of the site subsequent to the~~  
9           ~~construction of the facility shall treat the soils as if the facility had never been~~  
10           ~~constructed. Each certificate of public good issued by the Board for a ground-~~  
11           ~~mounted solar generation facility shall state the contents of this subsection.~~

12           ~~[Repealed.]~~

13           Sec. 7. 30 V.S.A. § 248b is amended to read:

14           § 248b. FEES; AGENCY OF NATURAL RESOURCES; PARTICIPATION  
15           IN SITING PROCEEDINGS

16           (a) Establishment. This section establishes fees for the purpose of  
17           supporting the role of the Agency of Natural Resources (the Agency) in  
18           reviewing applications for in-state facilities under sections 248 and 248a of this  
19           title.

20           (b) Payment. The applicant shall pay the fee into the State Treasury at the  
21           time the application for a certificate of public good is filed with the Public

1 Service Board in an amount calculated in accordance with this section. The  
2 fee shall be deposited into the Natural Resources Management Fund and  
3 allocated to the Agency.

4 (c) Definitions. In this section:

5 (1) ~~“kW,” “MW,” and “plant capacity” shall have the same meaning as~~  
6 ~~in section 8002 of this title. [Repealed.]~~

7 (2) “Natural gas facility” shall have the same meaning as in section 248  
8 of this title.

9 (3) “Telecommunications facility” shall have the same meaning as in  
10 section 248a of this title.

11 (d) Electric transmission and natural gas facilities. This subsection sets  
12 fees for applications under section 248 of this title.

13 (1) ~~There shall be no fee for an electric generation facility less than or~~  
14 ~~equal to 139 kW in plant capacity or for an application filed under subsection~~  
15 ~~248(k), (l), or (n) of this title.~~

16 (2) ~~The fee for electric generation facilities greater than 139 kW through~~  
17 ~~five MW in plant capacity shall be calculated as follows, except that in no~~  
18 ~~event shall the fee exceed \$15,000.00:~~

19 (A) ~~An electric generation facility from 140 kW through 450 kW in~~  
20 ~~plant capacity, \$3.00 per kW.~~



1           ~~(B) An electric generation facility from 451 kW through 2.2 MW in~~  
2 ~~plant capacity, \$4.00 per kW.~~

3           ~~(C) An electric generation facility from 2.201 MW through five MW~~  
4 ~~in plant capacity, \$5.00 per kW.~~

5           ~~(3)~~ The fee shall be equal to \$2.50 for each \$1,000.00 of construction  
6 costs, but in no event greater than \$100,000.00 per application, ~~for a new~~  
7 ~~electric generation facility greater than five MW in capacity, and for a new~~  
8 electric transmission facility or new natural gas facility not eligible for  
9 treatment under subsection 248(j) of this title.

10           ~~(4)~~(2) The fee shall be \$2,500.00 for an application under subsection  
11 248(j) of this title ~~for a facility that is not electric generation and for an~~  
12 application or that portion of an application under section 248 of this title that  
13 consists of upgrading an existing facility within its existing development  
14 footprint, reconductoring of an electric transmission line on an existing  
15 structure, or the addition of an electric transmission line to an existing  
16 structure.

17    \* \* \*

18           Sec. 8. REPEALS

19           The following are repealed:

20           (1) 30 V.S.A. § 8007 (small renewable energy plants; simplified  
21 procedures).

1           (2) 30 V.S.A. § 8010(c) (net metering; § 248 applications) and (e) (net  
2           metering; hydroelectric generation; approval other than through § 248).

3           Sec. 9. INTERCONNECTION; RULES OF THE BOARD

4           (a) Nothing in this act affects the authority of the Public Service Board  
5           over the interconnection of electric generation facilities to the transmission or  
6           distribution system of a company subject to Board jurisdiction. Electric  
7           generation facilities shall comply with rules of the Board concerning  
8           interconnection.

9           (b) Board Rule 5.700 (sound levels from wind generation) is repealed.

10          (c) This provisions of this act shall supersede any conflicting provision of  
11          the rules of the Board.

12          (d) On or before September 1, 2017, the Board shall propose amendments  
13          to its rules, including Rules 5.100 (net metering) and 5.400 (§ 248 petitions),  
14          that conform the rules to this act. On or before May 1, 2018, the Board shall  
15          finally adopt these rule amendments, unless such deadline is extended by the  
16          Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

17          Sec. 10. CONTINUED VALIDITY; CERTIFICATES OF PUBLIC GOOD;

18                   TRANSFER OF JURISDICTION

19          (a) Nothing in this act shall affect the validity of a certificate of public good  
20          issued under 30 V.S.A. § 248 prior to the effective date of this section. As of  
21          that date, each such certificate shall be considered a permit issued under

1     10 V.S.A. chapter 151 and shall be enforceable pursuant to that chapter and  
2     10 V.S.A. chapters 201 and 211. Changes to an electric generation facility  
3     subject to such a certificate shall require amendments in accordance with  
4     10 V.S.A. chapter 151 and the rules of the Natural Resources Board (NRB).

5         (b) Notwithstanding any contrary provision of this act, the Public Service  
6     Board shall have authority to complete its consideration of each petition to  
7     issue a certificate of public good for an electric generation facility under  
8     30 V.S.A. § 248 that is pending before it as of the effective date of this section,  
9     except that each such petition for which the Board has not yet initiated  
10    proceedings shall be transferred to the District Commission under 10 V.S.A.  
11    chapter 151 for the area in which the proposed facility is located.

12         (c) The Public Service Board shall transfer existing certificates of public  
13     good for electric generation facilities and associated documents to the NRB as  
14     the NRB directs.

15                     \* \* \* Effective Date \* \* \*

16     Sec. 11. EFFECTIVE DATE

17         This act shall take effect on July 1, 2017.