

## Senate proposal of amendment

### H. 133

An act relating to miscellaneous energy subjects

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Report Consolidation \* \* \*

Sec. 1. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

\* \* \*

~~(c) Report. On or before January 15, 2010, and annually thereafter, the Department of Public Service shall report to the General Assembly on the expenditure of funds from the Fuel Efficiency Fund to meet the public's needs for energy efficiency services. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. [Repealed.]~~

\* \* \*

Sec. 2. 2012 Act and Resolves No. 165, Sec. 2 is amended to read:

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL  
HYDROELECTRIC PROJECTS

\* \* \*

~~(e) No later than January 15, 2014 and annually by each second January 15 thereafter, the commissioner shall submit a written report to the general assembly detailing the progress of the MOU program, including an identification of each hydroelectric project participating in the program. After five hydroelectric projects participating in the program are approved and commence operation, reports filed under this subsection shall evaluate and provide lessons learned from the program, including recommendations, if any, on how to improve procedures for obtaining approval of micro hydroelectric projects (100 kilowatts capacity or less). The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection. [Repealed.]~~

\* \* \*

Sec. 3. 30 V.S.A. § 8105 is amended to read:

§ 8105. REPORTING

~~(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the Commission and~~

~~the Commissioner of Public Service by December 31 of each year following certification. The report shall contain such information as is required by the Commission and the Commissioner. The report shall include at a minimum sufficient information for the Commissioner of Public Service to submit the report required by subsection (b) of this section.~~

~~(b) Beginning on March 1, 2010, and annually thereafter, the Commissioner of Public Service shall submit a report to the Senate Committees on Economic Development, Housing and General Affairs, on Finance, and on Natural Resources and Energy, and the House Committees on Ways and Means, on Commerce and Economic Development, and on Energy and Technology, and the Governor, which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. [Repealed.]~~

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

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

\* \* \*

(e) The Commissioner of Public Service (Commissioner) shall file an annual report on progress in meeting the goals of the Plan. The report shall address each of the following sectors of energy consumption in the State: electricity, nonelectric fuels for thermal purposes, and transportation. In preparing the report, the Commissioner shall consult with the Secretaries of Administration, of Agriculture, Food and Markets, of Natural Resources, and of Transportation and the Commissioner of Buildings and General Services.

\* \* \*

(7) The report shall include any activity that occurs under the Vermont Small Hydropower Assistance Program, the Vermont Village Green Program, and the Fuel Efficiency Fund.

Sec. 5. 30 V.S.A. § 8005b is amended to read:

§ 8005b. RENEWABLE ENERGY PROGRAMS; REPORTS

(a) The Department shall file reports with the General Assembly in accordance with this section.

\* \* \*

(2) The Department shall file the report under include the components of subsection (b) of this section annually each January 15 in its Annual Energy

Report required under subsection 202b(e) of this title commencing in 2018 2020 through 2033.

(3) The Department shall ~~file the report under~~ include the components of subsection (c) of this section biennially each March 1 in its Annual Energy Report required under subsection 202b(e) of this title biennially commencing in 2017 2020 through 2033.

\* \* \*

(c) The biennial report under this section shall include at least each of the following:

\* \* \*

(2) Commencing with the report to be filed in 2019, each retail electricity provider's required amount of renewable energy during the two preceding calendar years using the most recent available data for each category of the RES as set forth in section 8005 of this title.

\* \* \*

Sec. 6. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

\* \* \*

~~(d) On or before January 15, 2020 and every third January 15 thereafter Commencing in 2021 and biennially thereafter, the Department shall submit to the Commission a report that evaluates its evaluation of the current state of net metering in Vermont, which shall be included within the Department's Annual Energy Report required under subsection 202b(e) of this title and shall also be submitted to the Committees listed under subdivision 202b(e)(2) of this title. The Department shall make this report publicly available. The report evaluation shall:~~

\* \* \*

\* \* \* Connectivity Fund \* \* \*

Sec. 7. 30 V.S.A. § 202f is amended to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY BOARD

(a) There is created the Telecommunications and Connectivity Advisory Board for the purpose of making recommendations to the Commissioner of Public Service regarding his or her telecommunications responsibilities and duties as provided in this section. The Connectivity Advisory Board shall consist of eight members, ~~seven voting and one nonvoting,~~ selected as follows:

(1) the State Treasurer or designee;

(2) the Secretary of Commerce and Community Development or designee;

(3) five at-large members appointed by the Governor, who shall not be employees or officers of the State at the time of appointment; and

(4) the Secretary of Transportation or designee, ~~who shall be a nonvoting member.~~

\* \* \*

(h) ~~On September 15, 2015~~ November 15, 2019, and annually thereafter, the Commissioner shall submit to the Connectivity Advisory Board an accounting of monies in the Connectivity Fund and anticipated revenue for the next year. ~~On or before January 1 of each year, the Commissioner, after consulting with the Connectivity Advisory Board, shall recommend to the relevant legislative committees of jurisdiction a plan for apportioning such funds to the High-Cost Program and the Connectivity Initiative.~~

\* \* \*

Sec. 8. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before ~~September~~ November 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

\* \* \* Dig Safe \* \* \*

Sec. 9. 30 V.S.A. § 7001 is amended to read:

§ 7001. DEFINITIONS

In this chapter:

(1) “Commission” means the Public Utility Commission under section 3 of this title.

(2) “Company” means any public utility ~~company which, municipality, or person that~~ supplies gas, electricity, hot water, steam, or telecommunications service and ~~which that~~ maintains underground utility facilities, and any cable television company operating a cable television system as defined in section 501 of this title ~~and which that~~ maintains underground utility facilities.

(3) “Damage” includes the substantial weakening of structural or lateral support of an underground utility facility; penetration or destruction of any underground utility facility’s protective coating, housing, or device; or the partial or complete severance of any underground utility facility.

(4) “Excavation activities” means any activities involving that will disturb the subsurface of the earth or could damage underground utility facilities and that may involve the removal of earth, rock, or other materials in the ground, disturbing the subsurface of the earth, or the demolition of any structure, by the discharge of explosives or the use of powered or mechanized equipment, including digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, or tunneling, or pavement or concrete slab removal within 100 feet of an underground utility facility. Excavation activities shall not include the tilling of the soil for agricultural purposes, routine home gardening with hand tools outside easement areas and public rights-of-way, activities relating to routine public highway maintenance, or the use of hand tools by a company, or the company’s agent or a contractor working under the agent’s direction, to locate or service the company’s facilities, provided the company has a written damage prevention program.

(5) “Person” means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state State, or any interstate body.

(6) “Public agency” means the State or any political subdivision thereof, including any governmental agency.

(7) “Approximate location of underground utility facilities” means a strip of land extending not more than 18 inches on either side of the underground utility facilities.

(8) “System” means the public utility underground facility damage prevention system referred to in section 7002 of this title.

(9) “Underground utility facility” or “facility” means any pipe, conduit, wire, or cable located beneath the surface of the earth and maintained by a company, including the protective covering of the pipe, conduit, wire, or cable, as well as any manhole, vault, or pedestal, or component maintained by a company.

(10) “Premark” means to identify the general scope of excavation activities using white paint, stakes, or other suitable white markings, in a manner that will enable the operators of the underground utility facilities to know the boundaries of the proposed excavation activities.

(11) “Powered or mechanized equipment” means equipment that is powered or energized by any motor, engine, or hydraulic or pneumatic device and that is used for excavation or demolition work.

(12) “Hand tools” means tools powered solely by human energy.

(13) “Verified” means the location and depth have been ~~physically determined by hand digging~~ visually determined using careful and prudent excavating techniques such as hand digging, water excavation, or other safe means.

(14) “Damage prevention program” means a program established to ensure employees involved in excavation activities are aware of and utilize appropriate and safe excavating practices.

Sec. 10. 30 V.S.A. § 7003 is amended to read:

§ 7003. RULEMAKING

The Commission shall adopt rules, pursuant to 3 V.S.A. chapter 25 relative to:

(1) minimum requirements for the operation of the System, including notification procedures and the reporting of underground utility facility locations;

(2) procedures for the investigation of complaints;

(3) emergency situations ~~for which notice of excavation activities is not required;~~

(4) uniform standards for the marking of the approximate location of underground utility facilities;

(5) uniform standards for the future installation of underground utility facilities, including the following:

(A) color coding of facilities;

(B) depth requirements for the laying of facilities;

(C) subsurface marking of facilities;

(D) surface marking of facilities;

(E) the filing of as-built plans of facilities with municipalities; and

(F) capability for location of facilities by sensors; and

(6) standards for the granting of exemptions under section 7002 of this title; and

(7) situations where the premarks cannot be found.

Sec. 11. 30 V.S.A. § 7004 is amended to read:

## § 7004. NOTICE OF EXCAVATION ACTIVITIES

(a) No person or company shall engage in excavation activities, except in an emergency situation as defined by the Commission, without premarking the proposed area of excavation activities and giving notice as required by this section.

(b) Prior to notifying the System, the person shall premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities.

(c) At least 48 hours, excluding Saturdays, Sundays, and legal holidays, but not more than 30 days before commencing excavation activities, each person required to give notice of excavation activities shall notify the System referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities and the premarks.

~~(e)~~(d) Notice to the System may be in writing or by telephone. For purposes of this section, the System shall provide a toll-free telephone number.

~~(d) Prior to notifying the System, the person must premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities. Premarking is not required if the actual excavation will be continuous and will exceed 500 feet in length.~~

(e) Notice of excavation activities shall be valid for an excavation site until one of the following occurs:

(1) the excavation is not completed within 30 days of the notification;

(2) the markings become faded, illegible, or destroyed; or

(3) the company installs new underground facilities in a marked area still under excavation.

Sec. 12. 30 V.S.A. § 7006b is amended to read:

## § 7006b. EXCAVATION AREA PRECAUTIONS

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including any substantial weakening of the structural or lateral support of such facilities or penetration, severance, or destruction of such facilities. ~~When excavation activities involve horizontal or directional boring, the~~ The person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work will

cross a facility and at reasonable intervals when paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified.

Sec. 13. 30 V.S.A. § 7007 is amended to read:

§ 7007. NOTICE OF DAMAGE

When any underground utility facility is damaged during excavation activities, the excavator shall immediately notify the affected company. Under no circumstances shall the excavator backfill or conceal the damaged area until the company inspects and repairs the damage, provided that the excavator shall take reasonable and prudent actions to protect the public from serious injury from the damaged facilities until the company or emergency response personnel arrive at the damaged area. An excavator who causes damage to a pipeline that results in a release of natural or other gas or hazardous liquid shall promptly report the release to emergency responders by calling 911.

\* \* \* Thermal Energy Funds \* \* \*

Sec. 14. 30 V.S.A. § 209(e) is amended to read:

(e) Thermal energy and process fuel efficiency funding.

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels. In addition, the Commission may authorize an entity appointed to deliver such services under subdivision (d)(2)(B) of this section to use monies subject to this subsection for the engineering, design, and construction of facilities for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district's energy is from biomass sources, the district's distribution system is highly energy efficient, and such conversion is cost effective.

\* \* \*

\* \* \* Standard Offer Program Small Hydroelectric Power \* \* \*

Sec. 15. 30 V.S.A. § 8005a(p) is amended to read:

(p) Existing hydroelectric plants. Notwithstanding any contrary requirement of this section, no later than January 15, 2013, the Commission shall make a standard offer contract available to existing hydroelectric plants in accordance with this subsection.

(1) In this subsection:

(A) "Existing hydroelectric plant" means a hydroelectric plant of five MW plant capacity or less that is located in the State, that was in service as of January 1, 2009, that is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, and that does not have



an agreement with the Commission's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and Commission rules adopted under subdivision (8). The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement has expired, ~~provided that the expiration date is prior to December 31, 2015.~~

(B) "LIHI" means the Low-Impact Hydropower Institute.

(2) The term of a standard offer contract under this subsection shall be 10 or 20 years, at the election of the plant owner.

(3) Unless inconsistent with applicable federal law, the price of a standard offer contract shall be ~~the lesser of the following~~ the sum of the following elements:

~~(A) \$0.08 per kWh, adjusted for inflation annually commencing January 15, 2013 using the CPI; or~~

~~(B) The sum of the following elements:~~

~~(i)(A)~~ a two-year rolling average of the ISO New England Inc. (ISO-NE) Vermont zone hourly locational marginal price for energy;

~~(ii)(B)~~ a two-year rolling average of the value of the plant's capacity in the ISO-NE forward capacity market;

~~(iii)(C)~~ the value of avoided line losses due to the plant as a fixed increment of the energy and capacity values;

~~(iv)(D)~~ a two-year rolling average of the market value of environmental attributes, including renewable energy credits; and

~~(v)(E)~~ the value of a 10- or 20-year contract.

(4) The Commission shall determine the price to be paid under this subsection (p) ~~no~~ not later than January 15, 2013.

(A)(i) Annually by January 15 commencing in 2014, the Commission shall recalculate and adjust the energy, and capacity, and environmental attribute elements of the price under ~~subdivisions (3)(B)(i) and (ii)~~ subdivision (3) of this subsection (p). The recalculated and adjusted energy, and capacity, and environmental attribute elements shall apply to all contracts executed under this subdivision, whether or not the contracts were executed prior to the adjustments.

(ii) the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.

(B) With respect to the price elements specified in subdivisions ~~(3)(B)(iii)~~(3)(C) (avoided line losses), ~~(iv) (environmental attributes)~~, and ~~(v)(E)~~ (value of long-term contract) of this subsection (p):

(i) These elements shall remain fixed at their values at the time a contract is signed for the duration of the contract, ~~except that the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.~~

(ii) The Commission annually may adjust these elements for inclusion in contracts that are executed after the date any such adjustments are made.

~~(5) In addition to the limits specified in subdivision (3) of this subsection (p), in no event shall an existing hydroelectric plant receive a price in one year higher than its price in the previous year, adjusted for inflation using the CPI, except that if a plant becomes certified by LIHI, the Commission may add to the price any incremental increase in the value of the plant's environmental attributes resulting from such certification.~~

~~(6) Once a plant owner has executed a contract for a standard offer under this subsection (p), the plant owner shall continue to receive the pricing terms agreed on in that contract regardless of whether the Commission subsequently changes any pricing terms under this subsection.~~

~~(7)~~(6) Capacity of existing hydroelectric plants executing a standard offer contract under this subsection shall not count toward the cumulative capacity amount of subsection (c) of this section.

\* \* \* Public Records Exemption \* \* \*

Sec. 16. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

\* \* \*

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

\* \* \*

\* \* \* Certificate of Public Good Hearings \* \* \*

Sec. 17. 30 V.S.A. § 248 is amended to read:

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

\* \* \*

(4)(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a ~~nontechnical~~ nonevidentiary public hearing on each a petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at ~~the~~ a public hearing, the Commission shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

(B) The Public Utility Commission shall hold ~~technical~~ evidentiary hearings at locations that it selects in any case conducted under this section in which contested issues remain or when any party to a case requests that an evidentiary hearing be held. In the event a case is fully resolved and no party requests a hearing, the Commission may exercise its discretion and determine that an evidentiary hearing is not necessary to protect the interests of the parties or the public, or for the Commission to reach its decision on the matter.

\* \* \*

(i)(1) No company, as defined in sections 201 and 203 of this title, without approval by the Commission, after giving notice of such investment, or filing a copy of that contract, with the Commission and the Department at least 30 days prior to the proposed effective date of that contract or investment:

\* \* \*

(3) The Commission, upon its own motion, or upon the recommendation of the Department, may determine to initiate an investigation. If the Commission does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Commission determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the Department, and such other persons as the Commission determines are appropriate. The Commission shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the

Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Commission may hold informal, public, or ~~technical~~ evidentiary hearings on the proposed investment or contract.

\* \* \*

\* \* \* Rate Change Hearings \* \* \*

Sec. 18. 30 V.S.A. § 225 is amended to read:

§ 225. RATE SCHEDULES

\* \* \*

(b) Immediately upon receipt of notice of a change in a rate schedule filed by a company, the Department shall investigate the justness and reasonableness of that change. ~~At least 15 days prior to the date on which the change is to become effective~~ Within 30 days of receipt of this notice, the Department shall either report to the Commission the results of its investigations together with its recommendation for acceptance of the change, or it shall notify the Commission and other parties that it opposes the change. If the Department of Public Service reports its acceptance of the change in rates, the Commission may accept the change, or it may on its own motion conduct an investigation into the justness and reasonableness of the change, or it may order the Department to appear before it to justify its recommendation to accept the change. In no event shall a change go into effect without the approval of the Commission, except when a rate change is suspended and temporary or permanent rates are allowed to go into effect pursuant to subsection 226(a) or 227(a) of this title. The Commission shall consider the Department's recommendation and take action pursuant to sections 226 and 227 of this title ~~before the date on which the changed rate is to become effective~~ within 45 days of receipt of notice of a change in a rate schedule. In the event that the Department opposes the change, the Commission shall hear evidence on the matter and make such orders as justice and law require. In any hearing on a change in rates, whether or not opposed by the Department, the Commission may request the appearance of the Attorney General or appoint a member of the Vermont bar to represent the public or the State.

Sec. 19. 30 V.S.A. § 226 is amended to read:

§ 226. RATES, HEARINGS, BOND

\* \* \*

(c) If the Department does not oppose the change as provided in section 225 of this title, five persons adversely affected by the change, or, if the change adversely affects ~~less~~ fewer than five persons, any one person so affected may apply at their own expense to the Commission by petition

alleging why the change is unreasonable and unjust and asking that the Commission investigate the matter and make such orders as justice and law require. The petition shall be filed ~~at least seven days before the date the rates become effective~~ within 38 days of the date of the notice of rate change that was filed pursuant to section 225 of this title. The Commission may suspend the rates as a result of the petition. The Commission may hold a hearing on the petition. Whether or not a hearing is held, the Commission shall make such orders as justice and law require.

Sec. 20. 30 V.S.A. § 227 is amended to read:

§ 227. SUSPENSION, REFUND

(a) If the Commission orders that a change shall not go into effect until final determination of the proceedings, it shall proceed to hear the matter as promptly as possible and shall make its determination within seven months from the date that ~~the change otherwise would have gone into effect~~ it orders the investigation. If a company files for a change in rate design among classes of ratepayers, and the company has a rate case pending before the Commission, the Commission shall make its determination on the rate design change within seven months after the rate case is decided by the Commission. If the Commission fails to make its determination within the time periods set by this subsection, the changed rate schedules filed by the company shall become effective and final.

\* \* \*

Sec. 21. 30 V.S.A. § 11 is amended to read:

§ 11. PLEADINGS; RULES OF PRACTICE; HEARINGS; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules ~~which~~ that include, among other things, provisions that:

\* \* \*

(2) A ~~prehearing~~ scheduling conference shall be ordered in every contested rate case. At such conference the Commission may require the State or any person opposing such rate increase to specify what items shown by the filed exhibits are conceded. Further proof of conceded items shall not be required.

\* \* \*

Sec. 22. 30 V.S.A. § 10 is amended to read:

§ 10. SERVICE OF PROCESS; NOTICE OF HEARINGS; TEMPORARY RESTRAINING ORDERS

\* \* \*

(c) A ~~prehearing~~ scheduling or procedural conference may be held upon any reasonable notice.

\* \* \*

Sec. 23. PUBLIC UTILITY COMMISSION; POSITION

Establishment of a new permanent exempt position of one Deputy Clerk within the Public Utility Commission is authorized in fiscal year 2020.

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2019.