

1 H.467

2 Introduced by Representatives Lefebvre of Newark, Bancroft of Westford,
3 Dolan of Waitsfield, Morgan of Milton, Page of Newport City,
4 Potter of Clarendon, and Smith of New Haven

5 Referred to Committee on

6 Date:

7 Subject: Conservation and development; public service; land use; Act 250;
8 energy; wind energy

9 Statement of purpose of bill as introduced: This bill proposes to place the
10 siting of wind-powered electric generation facilities under the jurisdiction of
11 the State land use law, Act 250, and to allow municipal land use regulation of
12 such a facility.

13 An act relating to siting jurisdiction over wind-powered electric generation

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

15 * * * Act 250 Jurisdiction * * *

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

17 § 6001. DEFINITIONS

18 In this chapter:

19 * * *

20 (3)(A) "Development" means each of the following:

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* * *

(xi) The construction of improvements for the purpose of generating electricity from wind.

* * *

(D) The word “development” does not include:

* * *

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under 30 V.S.A. § 248, except for an electric generation facility powered by wind, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

* * *

Sec. 2. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(b) A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248, except for electric generation facilities powered by wind.

* * *

1 * * * Removal of Public Utility Commission Jurisdiction * * *

2 Sec. 3. 30 V.S.A. § 248 is amended to read:

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

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

6 * * *

7 (2) Except for the replacement of existing facilities with equivalent
8 facilities in the usual course of business, and except for electric generation
9 facilities that are operated solely for on-site electricity consumption by the
10 owner of those facilities, for wind-power facilities, and for hydroelectric
11 generation facilities subject to licensing jurisdiction under the Federal Power
12 Act, 16 U.S.C. chapter 12, subchapter 1:

13 * * *

14 (F) The following shall apply to the participation of the Agency of
15 Agriculture, Food and Markets in proceedings held under this subsection:

16 (i) In any proceeding regarding an electric generation facility that
17 will have a capacity greater than 500 kilowatts and will be sited on a tract
18 containing primary agricultural soils as defined in 10 V.S.A. § 6001, except a
19 wind-power facility, the Agency shall appear as a party and provide evidence
20 and recommendations concerning any findings to be made under subdivision

21 (b)(5) of this section on those soils, and may provide evidence and

1 recommendations concerning any other matters to be determined by the
2 Commission in such a proceeding.

3 * * *

4 (J) This subdivision (J) applies to an application for an electric
5 generation facility with a capacity that is greater than 50 kilowatts, unless the
6 facility is located on a new or existing structure the primary purpose of which
7 is not the generation of electricity or the facility is powered by wind. In
8 addition to any other information required by the Commission, the application
9 for such a facility shall include information that delineates:

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 Commission shall require the plant to install radar controlled~~
14 ~~obstruction lights on all wind turbines for which the Federal Aviation~~
15 ~~Administration (FAA) requires obstruction lights, if the plant includes four or~~
16 ~~more wind turbines and the FAA allows the use of radar controlled lighting~~
17 ~~technology.~~

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

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

1 ~~General Assembly finds that wind turbine obstruction lights that remain~~
2 ~~illuminated through the night create light pollution. Radar-controlled~~
3 ~~obstruction lights are only illuminated when aircraft are detected in the area,~~
4 ~~and therefore the use of these lights will reduce the negative environmental~~
5 ~~impacts of obstruction lights. [Repealed.]~~

6 * * *

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

14 * * *

15 (r) The Commission may provide that, in any proceeding under subdivision
16 (a)(2)(A) of this section for the construction of a renewable energy plant, not
17 including a facility powered by wind, a demonstration of compliance with
18 subdivision (b)(2) of this section, relating to establishing need for the plant,
19 shall not be required if all or part of the electricity to be generated by the plant
20 is under contract to one or more Vermont electric distribution companies and if
21 no part of the plant is financed directly or indirectly through investments, other

1 than power contracts, backed by Vermont electricity ratepayers. In this
2 subsection, “plant” and “renewable energy” shall be as defined in section 8002
3 of this title.

4 * * *

5 Sec. 4. 30 V.S.A. § 8002 is amended to read:

6 § 8002. DEFINITIONS

7 * * *

8 (18) “Plant” means an independent technical facility that generates
9 electricity from renewable energy. A group of facilities, ~~such as wind turbines,~~
10 shall be considered one plant if the group is part of the same project and uses
11 common equipment and infrastructure such as roads, control facilities, and
12 connections to the electric grid. Common ownership, contiguity in time of
13 construction, and proximity of facilities to each other shall be relevant to
14 determining whether a group of facilities is part of the same project. However,
15 it shall not include facilities that generate electricity from wind.

16 * * *

17 Sec. 5. 30 V.S.A. § 8007 is amended to read:

18 § 8007. SMALL RENEWABLE ENERGY PLANTS; SIMPLIFIED

19 PROCEDURES

20 (a) The same application form, rules, and procedures that the Commission
21 applies to net metering systems of 150 kilowatts (kW) or less under sections

1 248 and 8010 of this title shall apply to the review under section 248 of this
2 title of any renewable energy plant with a plant capacity of 150 kW or less and
3 to the interconnection of such a plant with the system of a Vermont retail
4 electricity provider, except for wind generation facilities. This requirement
5 includes any waivers of criteria under section 248 of this title made pursuant to
6 section 8010 of this title.

7 * * *

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

9 § 8010. SELF-GENERATION AND NET METERING

10 * * *

11 (e) If a hydroelectric generation plant seeking approval as a net metering
12 system is subject to licensing jurisdiction under the Federal Power Act, 16
13 U.S.C. chapter 12, subchapter 1, the Commission shall require the plant to
14 obtain such approval through means other than by application for a certificate
15 of public good under section 248 of this title. If a wind generation facility
16 seeking approval as a net metering system is subject to jurisdiction under 10
17 V.S.A. chapter 151, the Commission shall require the facility to obtain such
18 approval through means other than by application for a certificate of public
19 good under section 248 of this title.

1 Sec. 7. INTERCONNECTION; RULES OF THE COMMISSION

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

7 (b) Commission Rule 5.700 (sound levels from wind generation) is
8 repealed.

9 (c) The provisions of this act shall supersede any conflicting provision of
10 the rules of the Commission.

11 (d) On or before September 1, 2020, the Commission shall propose
12 amendments to its rules, including Rules 5.100 (net metering) and 5.400 (§ 248
13 petitions), that conform the rules to this act. On or before May 1, 2021, the
14 Commission shall finally adopt these rule amendments, unless such deadline is
15 extended by the Legislative Committee on Administrative Rules pursuant to
16 3 V.S.A. § 843(c).

17 Sec. 8. 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 a wind generation facility subject
3 to such a certificate shall require amendments in accordance with 10 V.S.A.
4 chapter 151 and the rules of the Natural Resources Board (NRB).

5 (b) Notwithstanding any contrary provision of this act, the Public Utility
6 Commission shall have authority to complete its consideration of each petition
7 to issue a certificate of public good for a wind 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 Commission 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 Utility Commission shall transfer existing certificates of
13 public good for wind generation facilities and associated documents to the
14 NRB as the NRB directs.

15 * * * Effective Date * * *

16 Sec. 9. EFFECTIVE DATE

17 This act shall take effect on July 1, 2019.