Senate proposal of amendment

H. 727

An act relating to sustainable data center deployment.

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:

Sec. 1. 30 V.S.A. chapter 5, subchapter 3 is added to read:

Subchapter 3. Data Centers

§ 281. SHORT TITLE

This subchapter shall be known and may be cited as the "Vermont Sustainable Data Centers Act."

§ 282. PURPOSE

The purpose of this subchapter is to establish a regulatory framework that ensures responsible growth of an emerging industry in a manner that financially benefits existing electric ratepayers and protects them from additional costs and promotes sustainable climate, environmental, community, and equity outcomes consistent with State policies.

§ 283. DEFINITIONS

As used in this subchapter:

(1) "Data center" means a facility that uses or is able to use 20 megawatts or more of power and is engaged in providing data processing, hosting, and related services as described under code 518210 of the 2022 North American Industry Classification System.

(2) "Electric company" means the retail electric company that provides or will provide electric service to a data center pursuant to a large load service equity contract under section 284 of this subchapter.

(3) "Facility" means all buildings, equipment, structures, and other stationary items that are owned or operated by the same person or by any person that controls, is controlled by, or is under common control with such person and that are located on:

(A) a single site or contiguous or adjacent sites; or

(B) multiple nonadjacent sites that function as a single integrated operation by virtue of shared infrastructure or unified operational protocols, under a central management system.

§ 284. LARGE LOAD SERVICE EQUITY CONTRACT; APPROVAL

(a) For the purpose of ensuring just and reasonable rates for all ratepayer classes and precluding the risk of financial exposure to electric companies and

their existing ratepayers, a data center shall be served by an electric company pursuant to a large load service equity contract approved by the Public Utility Commission.

(b) The large load service equity contract shall:

(1) include a method for allocating costs that is equal or proportional to the costs of providing electric service to the data center, including providing for equitable contributions to the embedded costs and the stability, efficiency, reliability, and resiliency of the electricity network;

(2) ensure that other ratepayer classes are insulated from all costs associated with data center deployment, including expenses for new generation, transmission, and distribution infrastructure, as well as energy capacity and resource adequacy costs;

(3) specify the duration of the contract, which shall be for a minimum of 10 years, and the date or the estimated date that the electric company will begin to provide electric service to the data center;

(4) obligate the data center to pay a minimum amount or percentage based on the data center's projected electricity usage for the duration of the contract to ensure compliance with subdivision (1) of this subsection;

(5) include a reasonable charge for demand in excess of the data center's projected electricity demand at the time the contract is entered into;

(6) include a collateral requirement sufficient to prevent the risk of stranded costs;

(7) include provisions requiring implementation of demand-side management operational measures for the purpose of maintaining grid stability, efficiency, reliability, and resiliency, including demand response and flexible load management practices that, at a minimum, satisfy the requirements of section 285 of this subchapter;

(8) address load curtailment procedures and priorities during grid emergencies;

(9) include provisions for the collection of gross receipts taxes, energy efficiency charges, and any other fees or charges that may be applicable to electricity revenues; and

(10) meet any other terms or conditions required by the Commission that are consistent with the purpose of this section and in the public interest.

(c)(1) The Commission shall not approve a large load service equity contract unless the Commission first finds that it will promote the general good of the State and that its terms:

(A) will not adversely affect the stability, efficiency, reliability, and resiliency of the electric power system;

(B) will result in an economic benefit to the State and its residents;

(C) are consistent with the principles for resource selection expressed in the electric company's approved least-cost integrated plan;

(D) are consistent with the Electrical Energy Plan approved by the Department under section 202 of this title, or that there exists good cause to permit a variance;

(E) will ensure that the data center will be served economically by existing or planned transmission facilities without any undue adverse effect on Vermont utilities or other retail ratepayer classes; and

(F) are consistent with environmental justice and equity policy as established pursuant to 3 V.S.A. chapter 72.

(2) The Commission's findings pursuant to this subsection shall be in writing and shall include a stated rationale for each.

(d)(1) The Commission shall conduct a periodic review of a large load service equity contract approved under this section. The purpose of the review shall be to verify the data center's ongoing compliance with all established contract terms, conditions, and regulatory obligations.

(2) Reviews shall be performed at intervals not to exceed two years. However, the Commission may initiate a review at any time upon a finding of good cause or when deemed necessary to protect the public interest.

(e) A data center shall not be eligible to participate in an energy savings account or a customer credit program pursuant to subdivision 209(d)(3)(C) of this title or a self-managed energy efficiency program pursuant to subsection 209(j) of this title.

§ 285. DEMAND-SIDE MANAGEMENT

(a) Purpose. The purpose of this section is to minimize any adverse impact of data center operations on Vermont's electric system, other ratepayers, and the environment. It aims to minimize peak demand increases, reduce associated costs, and enhance the grid's stability, efficiency, reliability, and resiliency while minimizing climate pollution emissions and maximizing benefits to Vermonters.

(b) Site suitability analysis and project design.

(1) Site suitability analysis. Prior to submitting a permit application under 10 V.S.A. chapter 151, the owner or operator of a proposed data center shall conduct a site suitability analysis. This analysis shall be developed in consultation with the electric company and the efficiency utility appointed by

the Public Utility Commission under subdivision 209(d)(2)(A) of this title. The analysis shall provide a preliminary assessment of the facility's capacity to:

(A) comply with the required commercial building energy standards adopted under section 53 of this title;

(B) maximize the deployment of on-site renewable energy generation, battery storage, and demand response assets; and

(C) implement a waste heat recovery system capable of providing thermal energy to adjacent municipal or residential buildings.

(2) Project design. In the design and construction of the data center, the owner or operator shall ensure compliance with State energy efficiency requirements and best practices and maximize the potential of the site and any structures on the site to host renewable energy.

(c) Combustion-based backup generation.

(1) A data center shall use combustion-based backup generation only during emergency situations involving power failures and interruptions. Otherwise, the data center shall prioritize to the greatest extent practicable the use of battery storage and on-site renewable energy generation.

(2) As used in this subsection, "combustion-based backup generation" includes any electrical generation system that emits air contaminants as defined in 10 V.S.A. § 552 during combustion.

(d) Distributed renewable generation. Taking into consideration the site suitability analysis and project design requirements under subsection (b) of this section and any other relevant factors, a data center shall maximize the construction and operation of on-site renewable energy generation to the greatest extent technically feasible. A renewable energy plant that directly emits air contaminants as defined in 10 V.S.A. § 552(2) from fuel combustion does not qualify under this subsection, unless it is a thermal energy plant. A data center shall transfer any renewable energy certificates or environmental attributes generated from the operation of plants constructed pursuant to this subsection to the electric company.

(e) Energy transformation payment.

(1) Because of the unique and significant demands a data center has on Vermont's electric system, it shall contribute proportionally to State initiatives that reduce fossil fuel consumption and greenhouse gas emissions. Accordingly, a data center shall make an annual payment directly into a fund managed by the electric company. The payments shall be used to finance energy transformation projects as defined in subdivision 8002(28) of this title

and, to the extent practicable, such projects shall be deployed in the community hosting the data center and the surrounding communities.

(2) The amount of the payment shall be equal to 60 percent of the data center's electricity usage for the prior calendar year multiplied by the alternative compliance payment rate established in subdivision 8005(a)(6)(A)(ii) of this title. Payments shall be made in advance at the start of each calendar year based on projected electricity usage. Any difference between projected and actual usage shall be reconciled in the following year's payment.

(3) In the event funds generated by this subsection are used to support projects that are also supported by the electric company under subdivision 8005(a)(3) of this title, or by any other regulated entity, the Commission shall prorate the reduction in fossil fuel consumption and greenhouse gas emissions credited to the regulated entity.

(f) Virtual power plant.

(1) A data center shall participate in a virtual power plant managed by the electric company, if available and technically feasible, otherwise it shall design and implement a self-managed virtual power plant in coordination with the electric company to optimize energy generation and consumption. Data center funds used to develop or implement a virtual power plant under this subsection shall be in addition to any support or incentives provided under subsection (e) of this section or through any ratepayer-funded or State-funded program supporting the deployment or operation of assets participating in such virtual power plant.

(2) As used in this subsection, "virtual power plant" means a network of distributed energy resources, such as batteries, demand response assets, renewable energy generation, and controllable loads, that are coordinated through software to function like a traditional power plant.

§ 286. QUARTERLY AND ANNUAL REPORTS

(a) Data center quarterly reports. Within three months after a data center becomes operational, and in a form and manner determined by the Commission, the data center shall begin submitting quarterly reports to the Commission and the Department of Public Service. Each quarterly report shall include the data center's water and energy usage, including its peak usage per day, and an itemization of the data center's payments toward shared infrastructure constructed to support the data center. The reports are subject to public inspection and copying under the Public Records Act.

(b) Department annual report. Annually, beginning on or before January 15, 2028, and provided at least one data center has entered into a large load service equity contract pursuant to this subchapter, the Commissioner of Public

Service shall include in the Department's annual report published pursuant to subsection 202b(e) of this title findings and recommendations related to the energy, environmental, and economic impacts of data center construction and operation in Vermont, as well as any significant developments within the region, such as significant laws or regulations with respect to data centers enacted or adopted in other states in the region, known data center construction in the region, and any known impact on ratepayers from such construction in that state or region.

§ 287. RULES

The Commission may adopt rules it deems necessary to implement and enforce the provisions of this subchapter consistent with its purpose and in the public interest.

Sec. 2. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

As used in this chapter:

* * *

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

* * *

(xiv) The construction of improvements on a tract or tracts of land for a data center as defined in 30 V.S.A. § 283(1), including on land within a Tier 1A area, notwithstanding anything to the contrary in section 6034 of this title.

* * *

Sec. 3. 10 V.S.A. § 6086c is added to read:

§ 6086c. WATER USE; COOLING; PERMITTING; QUALITY

(a) As used in this section:

(1) "Closed-loop cooling system" means a sealed cooling process in which the same water or coolant circulates continuously within a data center's cooling system without withdrawal of water from municipal public water supplies, groundwater, or surface water and without discharge of wastewater to municipal wastewater systems, groundwater, or surface waters, except for de minimis discharges authorized under a discharge permit issued by the Agency of Natural Resources.

(2) "Data center" has the same meaning as in 30 V.S.A. § 283(1).

(3) "Per- and polyfluoroalkyl substances" or "PFAS" means any chemical substance or mixture containing a chemical substance that structurally contains at least one of the following three substructures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b)(1) A data center shall identify to the District Commission reviewing the data center's application for a permit under this chapter how the data center will cool the facility.

(2) If water is used to cool a data center, the data center shall use a closed-loop cooling system or an alternative cooling system that is approved by a District Commission and that shall not use more water than a comparable closed-loop cooling system for the data center. Before approving an alternative cooling system, a District Commission shall find that the alternative cooling system will minimize groundwater use or surface water use and will not unreasonably burden a public water supply, surface water, or groundwater resource.

(3) If water is used to cool a data center through a closed-loop cooling system or through an alternative cooling system approved by a District Commission, a data center shall identify where the data center will obtain water to cool the facility and where the cooling water will be discharged.

(c) If a data center proposes to use groundwater to cool the data center, the data center shall obtain a groundwater withdrawal permit under section 1418 of this title for any withdrawal of groundwater by the data center notwithstanding the permitting threshold of withdrawal of more than 57,600 gallons of groundwater a day. A closed-loop cooling system is not exempt from the groundwater withdrawal permit under subdivision 1418(b)(6) of this title.

(d) If a data center proposes to use surface water to cool the facility, the data center shall obtain a surface water withdrawal permit pursuant to section 1043 of this title. The rules adopted by the Secretary to implement section 1043 of this title shall require a data center to cease withdrawals under drought conditions.

(e)(1) A data center shall obtain all applicable water quality and water resource protection permits from the Agency of Natural Resources, including stormwater, stream alteration, direct discharge, surface water withdrawal, groundwater withdrawal, wetland, and river corridor development permits.

(2)(A) If a data center proposes to use more than 150,000 gallons a day of surface water for cooling or other purposes, the Agency in reviewing the application for a surface water withdrawal permit required under section 1042

of this title shall assess the impacts on water quality, aquatic biota, State endangered and threatened species, instream flow habitat, impingement, streambank erosion, littoral habitat, and wetlands.

(B) The issuance of a surface water withdrawal permit by the Agency after completion of the assessments required under subdivision (2)(A) of this subsection (e) shall create a rebuttable presumption that the data center will not result in undue water pollution under the requirements of subdivision 6086(a)(1) of this title.

(C) The Agency may by rule reduce the amount of surface water proposed for withdrawal by a data center for which the Agency would be required to complete the assessment under subdivision (2)(A) of this subsection (e).

(f) A data center that discharges waste into a surface water of the State shall monitor the discharge for the maximum number of PFAS that are detectable under U.S. Environmental Protection Agency standard methods approved as of January 1, 2026. A data center shall not discharge waste that exceeds the criteria established under the Vermont Water Quality Standards. If no criteria have been established under the Vermont Water Quality Standards for PFAS and the data center is withdrawing surface water or groundwater for purposes of operating the data center's cooling system, the data center shall monitor the withdrawn water for PFAS at the point of withdrawal. When the data center discharges waste from the cooling system to surface water, PFAS in the discharged waste shall not exceed the level of PFAS detected in the surface water or groundwater withdrawn for purposes of operating the cooling system at the data center.

Sec. 3a. AGENCY OF NATURAL RESOURCES REPORT ON DISCHARGES OF PFAS FROM DATA CENTERS TO SURFACE WATERS OF THE STATE

On or before January 1, 2027, the Secretary of Natural Resources shall submit to the House Committee on Environment and the Senate Committee on Natural Resources and Energy a recommended standard for authorizing per- and polyfluoroalkyl substances in the discharge of waste from the cooling systems of data centers to surface waters of the State.

Sec. 4. REPORT ON REGIONAL RENEWABLE ENERGY MARKET CONDITIONS; PUBLIC UTILITY COMMISSION

(a) On or before January 15, 2027, the Public Utility Commission shall prepare a written report on projected regional renewable electric generation market conditions. In developing the report, the Commission shall examine the cost and availability of new regional renewable electric generation resources during the years 2027–2035.

(b) In preparing the report, the Commission shall provide an opportunity for written input from interested stakeholders, including retail electricity providers, renewable energy developers, regional transmission organizations, consumer advocates, and any other members of the public. In addition, the Commission may consult with the Department of Public Service and other relevant state, regional, or federal entities, as the Commission deems appropriate. Preparation of the report is not subject to the contested case procedures established under 3 V.S.A. chapter 25.

(c) The Commission shall submit the report to the House Committees on Environment and on Energy and Digital Infrastructure and the Senate Committees on Finance and on Natural Resources and Energy.

Sec. 5. RECOMMENDATION ON DATA CENTER DECOMMISSIONING

(a) The Commissioner of Public Service, in consultation with the Secretary of Natural Resources, the Chair of the Land Use Review Board, and any other interested stakeholders deemed appropriate by the Commissioner, shall recommend a regulatory model for data center decommissioning. As used in this section, "data center" has the same meaning as in Sec. 1, 30 V.S.A. § 283(1), of this act.

(b) The recommended regulatory model developed pursuant to this section shall ensure responsible data center decommissioning in a manner that protects and preserves the environment and the public health and welfare. The model shall include standards and procedures that address:

(1) approval of a decommissioning plan by the appropriate regulatory entity, with a clear delineation of authority if more than one entity is involved in the approval process;

(2) regulatory oversight of the decommissioning process, including through site visits and inspections;

(3) a bond requirement or other financial assurance to ensure a data center is solely responsible for the costs associated with implementation of an approved decommissioning plan;

(4) guidelines for data sanitization, the physical destruction of highly sensitive storage devices, and a documented chain of custody for information technology assets, including compliance with the Storage Device Sanitization and Destruction Manual, Policy Manual 9-12, prepared by the National Security Agency and the Central Security Service of the U.S. Department of Defense;

(5) guidelines for environmental compliance, hazardous material handling, environmental remediation, and site restoration;

(6) a timeline for commencing and completing the decommissioning process after the abandonment, closure, destruction, or permanent cessation of operations of a data center; and

(7) any other matters deemed appropriate by the Commissioner.

(c) On or before December 15, 2026, the Commissioner shall submit recommendations for a data center decommissioning regulatory model in the form of draft legislation to the House Committees on Energy and Digital Infrastructure and on Environment and the Senate Committees on Finance and on Natural Resources and Energy.

Sec. 6. EFFECTIVE DATE; APPLICATION

This act shall take effect on passage and shall apply to any data center not operational on the effective date of this act as well as to any data center that uses less than 20 MW of power that is operational on the effective date of this act to the extent such data center seeks to expand its capacity and meet the threshold requirements of Sec. 1, 30 V.S.A. § 283(1).