

§ 202b. State Comprehensive Energy Plan

(a) The Department of Public Service, in conjunction with other State agencies designated by the Governor, shall prepare a State Comprehensive Energy Plan covering at least a 20-year period. The Plan shall seek to implement the State energy policy set forth in section 202a of this title, including meeting the State's greenhouse gas emissions reductions requirements pursuant to 10 V.S.A. § 578, and shall be consistent with the relevant goals of 24 V.S.A. § 4302 and with the Vermont Climate Action Plan adopted and updated pursuant to 10 V.S.A. § 592. The State Comprehensive Energy Plan shall include:

(1) a comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont;

(2) recommendations for State implementation actions, regulation, legislation, and other public and private action to carry out the Comprehensive Energy Plan, including recommendations for State agency energy plans under 3 V.S.A. § 2291 and transportation planning under Title 19; and as a supplemental appendix within one year of adopting or readopting the Comprehensive Energy Plan;

(3) recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance pursuant to 24 V.S.A. § 4352.

§ 4348. Adoption and amendment of regional plan

(a) A regional planning commission shall adopt a regional plan. Any plan for a region, and any amendment, shall be prepared by the regional planning commission. At the outset of the planning process and throughout the process, regional planning commissions shall solicit the participation of each of their member municipalities, local citizens, and organizations by holding informal working sessions that suit the needs of local people. The purpose of these working sessions is to allow for meaningful participation as defined in 3 V.S.A. § 6002, provide consistent information about new statutory requirements related to the regional plan, explain the reasons for new requirements, and gather information to be used in the development of the regional plan and future land use element.

(b) 60 days prior to holding the first public hearing on a regional plan, a regional planning commission shall submit a draft regional plan to the Land Use Review Board review and comments related to conformance of the draft with sections 4302 and 4348a of this title and chapter 139 of this title, and, if it seeking an optional determination of energy compliance, to the Department of Public Service for review and comments related to conformance of the draft plan with section 4352 of this title. The Board shall coordinate with other State agencies and respond within 60 days unless more time is granted by the regional planning commission.

(c) The regional planning commission shall hold two or more public hearings within the region after public notice on any proposed plan or amendment. The minimum number of

Commented [A1]: Allows Department to issue standards up to a year after issuance of the CEP

Commented [A2]: Potential for some alignment with the LURB process, and helps avoid duplicative processes - RPCs would submit their draft plans to us when they submit them to the LURB. Reviewing drafts is essential and something we encourage now bc if a plan is not going to meet the standards, it gives the region a chance to fix the deficiency. Otherwise they would get a negative determination and not get substantial deference in a siting proceeding without amending the plan and starting the process over.

required public hearings may be specified within the bylaws of the regional planning commission.

(d)(1) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, a report documenting conformance with the goals established in section 4302 of this chapter and the plan elements established in section 4348a of this chapter, and a description of any changes to the Regional Future Land Use Map with a request for general comments and for specific comments with respect to the extent to which the plan or amendment is consistent with the goals established in section 4302 of this title, shall be delivered physically or electronically with proof of receipt or sent by certified mail, return receipt requested, to each of the following:

(A) the chair of the legislative body, or municipal manager, if any, of each municipality within the region;

(B) the executive director of each abutting regional planning commission;

(C) the Department of Housing and Community Development within the Agency of Commerce and Community Development and the Community Investment Board for a formal review and comment;

(D) business, conservation, low-income advocacy, and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned; and

(E) the Agency of Natural Resources; the Agency of Agriculture, Food and Markets; the Agency of Transportation; the Department of Public Service; the Department of Public Safety's Division of Emergency Management; and the Land Use Review Board.

(2) At least 30 days prior to the first hearing, the regional planning commission shall provide each of its member municipalities with a written description of map changes within the municipality, a municipality-wide map showing old versus new areas with labels, and information about the new Tier structure under 10 V.S.A. chapter 151, including how to obtain Tier 1A or 1B status, and the process for updating designated area boundaries. The regional planning commission shall, if it is seeking an optional determination of energy compliance, solicit feedback on it enhanced energy plan, including consistency with section 4352 of this chapter and the enhanced energy planning standards.

(e) Any of the foregoing bodies, or their representatives, may submit comments on the proposed regional plan or amendment to the regional planning commission, and may appear and be heard in any proceeding with respect to the adoption of the proposed plan or amendment.

(f) The regional planning commission may make revisions to the proposed plan or amendment at any time not less than 30 days prior to the final public hearing held under this section. If the proposal is changed, a copy of the proposed change shall be delivered physically; electronically with proof of receipt; or by certified mail, return receipt requested, to the chair of the legislative

Commented [A3]: Rather than the Department holding separate hearings on regional enhanced energy plans. RPCs would solicit feedback on consistency of their plans with the standards when they hold the hearings they're already required to hold on their regional plans, and they'd submit that feedback to us when they request a determination of energy compliance.

body of each municipality within the region and to any individual or organization requesting a copy at least 30 days prior to the final hearing.

(g) A regional plan or amendment shall be adopted by not less than a 60 percent vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

(h)(1) Within 15 days following adoption, a regional planning commission shall submit its regionally adopted regional plan to the Land Use Review Board for a determination of regional plan compliance with a report documenting conformance with the goals established in section 4302 of this chapter and the plan elements established in section 4348a of this chapter and a description of any changes to the regional plan future land use map. The regional planning commission shall also at this time, if it is seeking an optional determination of energy compliance pursuant to section 4352 of this chapter, submit the plan to the Department of Public Service for review with a description of conformance with the enhanced energy planning standards and with a summary of any comments received during the public hearings.

(2) The Land Use Review Board shall hold a public hearing within 60 days after receiving a plan and provide notice of it at least 15 days in advance by direct mail or electronically with proof of receipt to the requesting regional planning commission, posting on the website of the Land Use Review Board, and publication in a newspaper of general circulation in the region affected. The regional planning commission shall notify its municipalities and post on its website the public hearing notice.

(3) The Land Use Review Board shall issue the determination in writing within 15 days after the close of the hearing on the plan. If the determination is affirmative, a copy of the determination shall be provided to the regional planning commission and the Community Investment Board. If the determination is negative, the Land Use Review Board shall state the reasons for denial in writing and, if appropriate, suggest acceptable modifications. Submissions for a new determination that follow a negative determination shall receive a new determination within 45 days.

(4) The Land Use Review Board's affirmative determination shall be based upon finding the regional plan meets the following requirements:

(A) Consistency with the State planning goals as described in section 4302 of this chapter with consistency determined in the manner described under subdivision 4302(f)(1) of this chapter.

(B) Consistency with the purposes of the regional plan established in section 4347 of chapter.

(C) Consistency with the regional plan elements as described in section 4348a of this chapter, except that the requirements of section 4352 of this chapter related to enhanced energy planning shall be the under the sole authority of the Department of Public Service.

Commented [A4]: Aligns timing of Act 181 LURB determination requests and Act 174 PSD determination requests

(D) Compatibility with adjacent regional planning areas in the manner described under subdivision 4302(f)(2) of this chapter.

(i) Objections of interested parties.

(1) An interested party who has participated in the regional plan adoption process may object to the approval of the plan or approval of the future land use maps by the Land Use Review Board within 15 days following plan adoption by the regional planning commission. Participation is defined as providing written or oral comments stating objections for consideration at a public hearing held by the regional planning commission. Objections shall be submitted using a form provided by the Land Use Review Board.

(2) As used in this section, an “interested party” means any one of the following:

(A) Any 20 persons by signed petition who own property or reside within the region. The petition must designate one person to serve as the representative of the petitioners regarding all matters related to the objection. The designated representative shall have participated in the regional plan adoption process.

(B) A party entitled to notice under subsection (d) of this section.

(3) Any objection under this section shall be limited to the question of whether the regional plan is consistent with the regional plan elements and future land use areas as described in section 4348a of this title. The requirements of section 4352 of this title related to enhanced energy planning shall be under the sole authority of the Department of Public Service and shall not be reviewed by the Land Use Review Board.

(4) The Land Use Review Board shall hear any objections of regional plan adoption concurrently with regional plan review under subsection (h) of this section and 10 V.S.A. § 6033. The Land Use Review Board decision of approval of a regional plan shall expressly evaluate any objections and state the reasons for their decisions in writing. If applicable, the decision to uphold an objection shall suggest modifications to the regional plan.

(j) Minor amendments to regional plan future land use map. A regional planning commission may submit a request for a minor amendment to boundaries of a future land use area for consideration by the Land Use Review Board with a letter of support from the municipality. The request may only be submitted after an affirmative vote of the municipal legislative body and the regional planning commission board. The Land Use Review Board, after consultation with the Community Investment Board and the regional planning commissions, shall provide guidance about what constitutes a minor amendment. Minor amendments may include any change to a future land use area consisting of fewer than 10 acres. A minor amendment to a future land use area shall not require an amendment to a regional plan and shall be included in the next iteration of the regional plan. The Board may adopt rules to implement this section.

(k) An affirmative determination of regional plan compliance issued pursuant to this section shall remain in effect until the end of the period for expiration or readoption of the plan to which it applies.

(l) Regional planning commissions shall be provided up to 18 months from a negative determination by the Land Use Review Board to obtain an affirmative determination of regional plan compliance. If a regional planning commission is unable to obtain affirmative determination of regional plan compliance, the plan shall be considered unapproved and member municipalities shall lose any associated benefits related to designations, such as Act 250 exemptions or eligibility for State infrastructure investments.

(m) Upon approval by the Land Use Review Board, the plan shall be considered duly adopted, shall take effect, and is not appealable. The plan shall be immediately submitted to the entities listed in subsection (d) of this section.

(n) Regional plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the region.

(o) In proceedings under 10 V.S.A. chapter 151, 10 V.S.A. chapter 159, and 30 V.S.A. § 248, in which the provisions of a regional plan or a municipal plan are relevant to the determination of any issue in those proceedings:

(1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan; and

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration in the proceedings would have a substantial regional impact as determined by the definition in the regional plan.

(p) Regional planning commissions shall adopt a regional plan in conformance with this title on or before December 31, 2026.

§ 4350. Review and consultation regarding municipal planning effort

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during an eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan that is consistent with the goals contained in section 4302 of this title;

(2) is engaged in a process to implement its municipal plan, consistent with the program for implementation required under section 4382 of this title; and

(3) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b)(1) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(A) is consistent with the goals established in section 4302 of this title;

(B) is compatible with its regional plan;

(C) is compatible with approved plans of other municipalities in the region; and

(D) contains all the elements included in subdivisions 4382(a)(1)-(12) of this title.

(E) if the municipality is seeking an optional determination of energy compliance pursuant to section 4352 of this chapter, is consistent with § 4352 and the enhanced energy planning standards.

§ 4352. Optional determination of energy compliance; enhanced energy planning

(a) Regional plan. A regional planning commission may submit its adopted regional plan to the Commissioner of Public Service appointed under 30 V.S.A. § 1 for a determination of energy compliance. The Commissioner shall issue an affirmative determination on finding that the regional plan meets the requirements of subsection (c) of this section and allows for the siting in the region of all types of renewable generation technologies.

(b) Municipal plan. If the Commissioner of Public Service has issued an affirmative determination of energy compliance for a regional plan that is in effect, a municipal legislative body within the region may submit its adopted municipal plan to the regional planning commission for issuance of a determination of energy compliance. The regional planning commission shall issue an affirmative determination, signed by the chair of the regional planning commission, on finding that the municipal plan meets the requirements of subsection (c) of this section and is consistent with the regional plan.

Commented [A5]: Added to ensure RPC hearings on municipal plans explicitly consider enhanced energy planning standards (in practice RPCs do this anyway)

(c) Enhanced energy planning; requirements. To obtain an affirmative determination of energy compliance under this section, a plan must:

(1) in the case of a regional plan, include the energy element as described in subdivision 4348a(a)(3) of this title;

(2) in the case of a municipal plan, include an energy element that has the same components as described in subdivision 4348a(a)(3) of this title for a regional plan and be confirmed under section 4350 of this title;

(3) be consistent with the following, with consistency determined in the manner described under subdivision 4302(f)(1) of this title:

(A) Vermont's greenhouse gas reduction ~~goals requirements~~ under 10 V.S.A. § 578(a);

Commented [A6]: These are now requirements

~~(B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A. § 580; Vermont's Renewable Energy Standard under 30 V.S.A. §§ 8004 and 8005~~

Commented [A7]: Replaces an expired goal

(C) Vermont's building efficiency goals under 10 V.S.A. § 581;

(D) State energy policy under 30 V.S.A. § 202a and the recommendations for regional and municipal energy planning pertaining to the efficient use of energy and the siting and development of renewable energy resources contained in the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202b; and

~~(E) the distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard under 30 V.S.A. §§ 8004 and 8005; and~~

Commented [A8]: Moved up to (B)

(4) meet the standards for issuing a determination of energy compliance included in the State energy plans.

(d) State energy plans; recommendations; standards.

(1) ~~The Commissioner of Public Service State energy plans shall include the~~ shall issue recommendations for regional and municipal energy planning and the standards for issuing a determination of energy compliance described in subdivision (c)(3) of this section within one year of adopting or readopting the State Comprehensive Energy Plan adopted pursuant to 30 V.S.A. §§ 202b. These recommendations and standards shall be consistent with the State Comprehensive Energy Plan.

Commented [A9]: Aligns with changes made above to allow an additional year after CEP adoption for issuance of standards

(2) The recommendations shall provide strategies and options for regional planning commissions and municipalities to employ in meeting the goals and policies contained in statutes listed in subdivision (c)(3) of this section.

(3) The standards shall consist of a list of criteria for issuing a determination of energy compliance that ensure consistency with the goals and policies contained in the statutes listed in subdivision (c)(3) of this section and the recommendations developed pursuant to this subsection.

(4) In developing standards and recommendations under this subsection, the Commissioner of Public Service shall consult with all persons identified under 30 V.S.A. § 202(d)(1); the Secretaries of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation; and other affected persons.

(5) The Commissioner of Public Service shall provide the Commissioner of Housing and Community Development with a copy of the recommendations and standards developed under this subsection for inclusion in the planning and land use manual prepared pursuant to section 4304 of this title.

(e) Process for issuing determinations of energy compliance. Review of whether to issue a determination of energy compliance under this section shall include ~~a public hearing noticed at least 15 days in advance by direct mail or electronically with proof of receipt to the requesting regional planning commission or municipal legislative body, posting on the website of the entity from which the determination is requested, and publication in a newspaper of general publication in the region or municipality affected~~ consideration of comments received by the region or municipality during the plan adoption process on consistency with this section, and with the enhanced energy planning standards. The Commissioner or regional planning commission shall issue the determination in writing within ~~two months~~ 60 days after the receipt of a request for a determination. If the determination is negative, the Commissioner or regional planning commission shall state the reasons for denial in writing and, if appropriate, suggest acceptable modifications. Submissions for a new determination that follow a negative determination shall receive a new determination within 45 days.

Commented [A10]: This allows us to make use of the hearings the RPCs hold on their plans to collect input on whether the plan meets the standards, vs. holding our own separate hearing after the plan is adopted.

(f) Appeal. A regional planning commission aggrieved by an act or decision of the Commissioner of Public Service under this section may appeal to the ~~Natural Resources~~ Land Use Review Board established under 10 V.S.A. chapter 151 within 30 days of the act or decision. The provisions of 10 V.S.A. § 6024 regarding assistance to the Board from other departments and agencies of the State shall apply to this subsection. The Board shall conduct a de novo hearing on the act or decision under appeal and shall proceed in accordance with the contested case requirements of the Vermont Administrative Procedure Act. The Board shall issue a final decision within 90 days of the filing of the appeal.

Commented [A11]: Reflects updated name

~~(g) Municipality; determination from DPS; time limited option. Until July 1, 2018, a municipality whose plan has been confirmed under section 4350 of this title may seek issuance of a determination of energy compliance from the Commissioner of Public Service if it is a member of a regional planning commission whose regional plan has not received such a determination.~~

~~(1) The Commissioner shall issue an affirmative determination of energy compliance for the municipal plan on finding that the plan meets the requirements of subsection (e) of this~~

~~section. The Commissioner's review of the municipal plan shall be for the purpose only of determining whether a determination of energy compliance should be issued because those requirements are met.~~

~~(2) A municipality aggrieved by an act or decision of the Commissioner under this subsection may appeal in accordance with the procedures of subsection (f) of this section.~~

Commented [A12]: Deleted expired provision

(h) Determination; time period. An affirmative determination of energy compliance issued pursuant to this section shall remain in effect until the end of the period for expiration or readoption of the plan to which it applies, ~~with the following exceptions:~~

~~(1) The regional planning commission or municipal legislative body has adopted a plan with an updated energy element and notified the appropriate body of their intent to request a determination of energy compliance at least 30 days prior to the first public hearing on that plan. In this case, the Commissioner of Public Service or regional planning commission may choose to offer the requesting body a provisional affirmative determination of energy compliance which shall remain in effect for two months following the adoption of the new plan.~~

Commented [A13]: Trying to deal with the fact the determination expires when the plan expires, and then there is a 60-day period of exposure for the new plan while the Department reviews it. This would give a time-limited, provisional determination

~~(2) in the event a regional or municipal plan is readopted without updates to the energy element or chapter that impact the plan's existing affirmative determination, the affirmative determination shall be extended to the expiration date of the readopted plan or two years after the issuance of new standards for issuing a determination of energy compliance, whichever comes first. The region or municipality shall seek an opinion from the Department or region that a new determination of energy compliance is not required, and shall seek a new determination of energy compliance if determined necessary by the Department or region. Notwithstanding the opinion, a new determination of energy compliance will be required if the standards for issuing a determination of energy compliance have been revised since the last affirmative determination of energy compliance was issued.~~

Commented [A14]: This would avoid the PSD having to review a plan and issue a determination if a region hasn't updated the energy chapter or anything that would void the previous determination.

(i) Commissioner; consultation. In the discharge of the duties assigned under this section, the Commissioner ~~shall may~~ consult with and solicit the recommendations of the Secretaries of Agriculture, Food and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation.

Commented [A15]: PSD rarely receives comments from these entities, which otherwise also have an opportunity to comment during the plan adoption process