

1 S.230

2 Introduced by Senators Bray, Benning, MacDonald, and Nitka

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; natural resources; land use; siting; renewable  
6 generation; net metering

7 Statement of purpose of bill as introduced: This bill proposes various  
8 improvements to the siting of energy projects and the process for siting them:

- 9 (1) establishing a position at the Public Service Board to provide  
10 information and assistance to the public about siting cases;
- 11 (2) disallowing a company subject to the Board's jurisdiction from using  
12 eminent domain power on a project if the company has executed nondisclosure  
13 agreements with landowners in connection with the project;
- 14 (3) passing on to ratepayers the costs of building three-phase lines to  
15 serve renewable generation if the use of the line will allow siting the  
16 generation in a location that reduces its impact on scenic beauty;
- 17 (4) for generation facilities greater than 15 kilowatts, directing the Board  
18 to include decommissioning requirements in the certificate of public good;
- 19 (5) creating a pilot project within the Standard Offer Program to  
20 encourage siting renewable generation facilities in preferred locations; and

1           (6) allowing the colocation of net metering systems on a tract designated  
2 by the municipality.

3           An act relating to improving the siting of energy projects

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

5           Sec. 1. DESIGNATION OF ACT

6           This act shall be referred to as the Energy Development Improvement Act.

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

8           § 3. PUBLIC SERVICE BOARD

9           (a) The ~~public service board~~ Public Service Board shall consist of a  
10 ~~chairperson~~ chair and two members. The ~~chairperson~~ Chair and each member  
11 shall not be required to be admitted to the practice of law in this ~~state~~ State.

12   \* \* \*

13           (g) The ~~chairperson~~ Chair shall have general charge of the offices and  
14 employees of the ~~board~~ Board.

15           (h) The Board shall employ a Public Assistance Officer (PAO) in  
16 accordance with this subsection.

17           (1) The PAO shall provide guidance to and answer questions from  
18 parties and members of the public on all matters under this title concerning the  
19 siting and construction of facilities in the State that generate or transmit  
20 electricity, constitute a meteorological station as defined in section 246 of this

1 title, or constitute a natural gas facility as defined in subdivision 248(a)(3) of  
2 this title. As used in this section:

3 (A) “Contested case” has the same meaning as in 3 V.S.A. § 801.

4 (B) “Matter” means any proceeding before or by the Board, including  
5 an application for a certificate of public good, a petition for condemnation,  
6 rulemaking, and the issuance of guidance or procedures.

7 (2) Guidance and information to be provided by the PAO shall include  
8 the following:

9 (A) An explanation of the proceeding, including its purpose; its type,  
10 such as rulemaking or contested case; and the restrictions or lack of restrictions  
11 applicable to the type of proceeding, such as whether ex parte communications  
12 are prohibited.

13 (B) Answers to procedural questions and direction to the statutes and  
14 rules applicable to the proceeding.

15 (C) How to participate in the proceeding including, if necessary for  
16 participation, how to file to a motion to intervene and how to submit prefiled  
17 testimony. The Board shall create forms for motions to intervene and prefiled  
18 testimony that the PAO shall provide to each person who requests the form and  
19 shall post on the Board’s website.

20 (D) The responsibilities of intervenors and other parties.

1           (E) The status of the proceeding. Examples of a proceeding's status  
2           include: a petition has been filed; the proceeding awaits scheduling a  
3           prehearing conference or hearing; parties are conducting discovery or  
4           submitting prefiled testimony; hearings are concluded and parties are preparing  
5           briefs; and the proceeding is under submission to the Board and awaits a  
6           decision. For each proceeding in which the next action constitutes the issuance  
7           of an order, decision, or proposal for decision by the Board or a hearing  
8           officer, the Chair or assigned hearing officer shall provide the PAO with an  
9           expected date of issuance and the PAO shall provide this expected date to  
10           requesting parties or members of the public.

11           (3) For each proceeding within the scope of subdivision (1) of this  
12           subsection, the PAO shall post, on the Board's website, electronic copies of all  
13           filings and submissions to the Board and all orders of the Board.

14           (4) The Board shall adopt rules or procedures to ensure that the  
15           communications of the PAO with the Board's members and other employees  
16           concerning contested cases do not contravene the requirements of the  
17           Administrative Procedure Act applicable to such cases.

18           (5) The PAO shall have a duty to provide requesting parties and  
19           members of the public with information that is accurate to the best of the  
20           PAO's ability. The Board and its other employees shall have a duty to transmit

1 accurate information to the PAO. However, the Board and any assigned  
2 hearing officer shall not be bound by statements of the PAO.

3 (6) The PAO shall not be an advocate for any person and shall not have  
4 a duty to assist a person in the actual formation of the person's position or  
5 arguments before the Board or the actions necessary to advance the person's  
6 position or arguments such as the actual preparation of motions, memoranda,  
7 or prefiled testimony.

8 Sec. 3. POSITION; APPROPRIATION

9 The following classified position is created in the Public Service Board: a  
10 permanent, full-time Public Assistance Officer for the purpose of Sec. 2 of this  
11 act. There is appropriated to the Public Service Board for fiscal year 2017  
12 from the special fund described in 30 V.S.A. § 22 the amount of \$100,000.00  
13 for the purpose of this position.

14 Sec. 4. 30 V.S.A. § 110 is amended to read:

15 § 110. EMINENT DOMAIN; COMPANIES AUTHORIZED

16 When it is necessary for a corporation formed under this chapter or a  
17 foreign corporation under the jurisdiction of the ~~public service board~~ Public  
18 Service Board to acquire property within this ~~state~~ State, or some easement or  
19 other limited right in such property in order that it may render adequate service  
20 to the public in the conduct of its business, it may condemn such property or  
21 right, as provided in sections 111-124 of this title. All other companies, as

1 defined in sections 201 and 501 of this title, which are within the scope of  
2 sections 203 and 501 of this title, shall have the same power of condemnation  
3 and be subject to the same procedure as ~~hereinafter~~ provided in sections  
4 111–124 for condemnation by corporations subject to the jurisdiction of the  
5 ~~public service board~~ Public Service Board. However, a company shall forfeit  
6 the right to condemn property in order to construct, reconstruct, or modify a  
7 facility in this State if the company has executed an agreement with an owner  
8 or former owner of property to be used in connection with the facility or any  
9 part of a larger undertaking that includes the facility and the agreement  
10 prohibits or has the effect of prohibiting that owner from disclosing payments  
11 made or to be made by the company to the owner, other consideration provided  
12 or to be provided by the company to the owner, or any other terms or  
13 conditions contained in an agreement between the company and the owner.

14 Sec. 5. 30 V.S.A. § 218 is amended to read:

15 § 218. JURISDICTION OVER CHARGES AND RATES

16 \* \* \*

17 (f) Regulatory incentives for renewable generation.

18 (1) Notwithstanding any other provision of law, an electric distribution  
19 utility subject to rate regulation under this chapter shall be entitled to recover  
20 in rates its prudently incurred costs in applying for and seeking any certificate,  
21 permit, or other regulatory approval issued or to be issued by federal, State, or

1 local government for the construction of new renewable energy to be sited in  
2 Vermont, regardless of whether the certificate, permit, or other regulatory  
3 approval ultimately is granted.

4 (2) The Board is authorized to provide to an electric distribution utility  
5 subject to rate regulation under this chapter an incentive rate of return on  
6 equity or other reasonable incentive on any capital investment made by such  
7 utility in a renewable energy generation facility sited in Vermont.

8 (3) To encourage joint efforts on the part of electric distribution utilities  
9 to support renewable energy and to secure stable, long-term contracts  
10 beneficial to Vermonters, the Board may establish standards for preapproving  
11 the recovery of costs incurred on a renewable energy plant that is the subject of  
12 that joint effort, if the construction of the plant requires a certificate of public  
13 good under section 248 of this title and all or part of the electricity generated  
14 by the plant will be under contract to the utilities involved in that joint effort.

15 (4) On petition of a plant owner or electric distribution utility whose  
16 interest is affected, the Board shall require an electric distribution utility to  
17 provide a three-phase line extension to a plant that constitutes new renewable  
18 energy and is approved under section 248 of this title and shall allow the utility  
19 to recover its prudently incurred costs of this extension in rates if, after notice  
20 and opportunity for hearing, the Board finds each of the following:

1           (A) The plant will be built in a municipality in which one or more  
2           other sites exist on which the plant could be built without a three-phase line  
3           extension or will be built in a municipality adjacent to the municipality in  
4           which such site or sites exist.

5           (B) Without mitigation, constructing the plant on the site or sites that  
6           do not require a three-phase line extension would have an undue adverse effect  
7           on the aesthetics and scenic beauty of the area.

8           (C) Constructing the plant on a site that requires a three-phase line  
9           extension would substantially reduce the visual impact of the plant and, if so  
10           constructed, the plant would not have an undue adverse effect on the aesthetics  
11           and scenic beauty of the area.

12           (D) The cost of a three-phase line extension to the plant is less than  
13           the cost of aesthetic mitigation for the site or sites on which the plant could be  
14           built without three-phase power.

15           (5) In this subsection:

16           (A) “plant,” “Plant,” “renewable energy,” and “new renewable  
17           energy” shall be as defined have the same meaning as in section 8002 of this  
18           title.

19           (B) “Three-phase” means the use of three conductors to carry power  
20           from a plant to the transmission or distribution system of a utility.

21

\* \* \*



1 Sec. 6. 30 V.S.A. § 248(t) is added to read:

2 (t) A certificate under this section for an in-state electric generation facility  
3 with a capacity that is greater than 15 kilowatts shall require the  
4 decommissioning or dismantling of the facility and ancillary improvements at  
5 the end of the facility's useful life and the posting of a bond or other security  
6 acceptable to the Board that is sufficient to finance the decommissioning or  
7 dismantling activities in full.

8 Sec. 7. 30 V.S.A. § 8005a is amended to read:

9 § 8005a. STANDARD OFFER PROGRAM

10 (a) Establishment. A standard offer program is established. To achieve the  
11 goals of section 8001 of this title, the Board shall issue standard offers for  
12 renewable energy plants that meet the eligibility requirements of this section.  
13 The Board shall implement these standard offers by rule, order, or contract and  
14 shall appoint a Standard Offer Facilitator to assist in this implementation. For  
15 the purpose of this section, the Board and the Standard Offer Facilitator  
16 constitute instrumentalities of the State.

17 (b) Eligibility. To be eligible for a standard offer under this section, a plant  
18 must constitute a qualifying small power production facility under 16 U.S.C.  
19 § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under  
20 section 219a of this title, and must be a new standard offer plant. In this  
21 section, "new standard offer plant" means a renewable energy plant that is

1 located in Vermont, that has a plant capacity of 2.2 MW or less, and that is  
2 commissioned on or after September 30, 2009.

3 (c) Cumulative capacity. In accordance with this subsection, the Board  
4 shall issue standard offers to new standard offer plants until a cumulative plant  
5 capacity amount of 127.5 MW is reached.

6 (1) Pace. Annually commencing April 1, 2013, the Board shall increase  
7 the cumulative plant capacity of the standard offer program (the annual  
8 increase) until the 127.5-MW cumulative plant capacity of this subsection is  
9 reached.

10 (A) Annual amounts. The amount of the annual increase shall be five  
11 MW for the three years commencing April 1, 2013, 7.5 MW for the three years  
12 commencing April 1, 2016, and 10 MW commencing April 1, 2019.

13 (B) Blocks. Each year, a portion of the annual increase shall be  
14 reserved for new standard offer plants proposed by Vermont retail electricity  
15 providers (the provider block), and the remainder shall be reserved for new  
16 standard offer plants proposed by persons who are not providers (the  
17 independent developer block).

18 (i) The portion of the annual increase reserved for the provider  
19 block shall be 10 percent for the three years commencing April 1, 2013,  
20 15 percent for the three years commencing April 1, 2016, and 20 percent  
21 commencing April 1, 2019.

1           (ii) If the provider block for a given year is not fully subscribed,  
2           any unsubscribed capacity within that block shall be added to the annual  
3           increase for each following year until that capacity is subscribed and shall be  
4           made available to new standard offer plants proposed by persons who are not  
5           providers.

6           (iii) If the independent developer block for a given year is not  
7           fully subscribed, any unsubscribed capacity within that block shall be added  
8           to the annual increase for each following year until that capacity is  
9           subscribed and:

10           (I) shall be made available to new standard offer plants  
11           proposed by persons who are not providers; and

12           (II) may be made available to a provider following a written  
13           request and specific proposal submitted to and approved by the Board.

14           (C) Adjustment; greenhouse gas reduction credits. The Board shall  
15           adjust the annual increase to account for greenhouse gas reduction credits by  
16           multiplying the annual increase by one minus the ratio of the prior year's  
17           greenhouse gas reduction credits to that year's statewide retail electric sales.

18           (i) The amount of the prior year's greenhouse gas reduction  
19           credits shall be determined in accordance with subdivision 8006a(a) of this  
20           title.

1           (ii) The adjustment in the annual increase shall be applied  
2 proportionally to the independent developer block and the provider block.

3           (iii) Greenhouse gas reduction credits used to diminish a  
4 provider's obligation under section 8004 of this title may be used to adjust the  
5 annual increase under this subsection (c).

6           (D) Pilot project; preferred locations. For a period of three years  
7 commencing January 1, 2017, the Board shall allocate one-third of the annual  
8 increase to new standard offer plants that will be wholly located in one or more  
9 preferred locations, provided that using the location does not require the  
10 construction of new substation by the interconnecting retail electricity provider  
11 or increasing the capacity of one or more of the provider's existing facilities.

12           (i) As used in this section, "preferred location" means a gravel pit,  
13 a quarry, a sanitary landfill as defined in 10 V.S.A. § 6602, a brownfield site as  
14 defined in 10 V.S.A. § 6642, or a roof or parking lot that was constructed for a  
15 purpose other than siting a plant and was lawfully in existence prior to  
16 January 1 of the year in which the annual increase is offered.

17           (ii) This allocation shall apply proportionally to the independent  
18 developer block and provider block.

19           (2) Technology allocations. The Board shall allocate the 127.5-MW  
20 cumulative plant capacity of this subsection among different categories of  
21 renewable energy technologies. These categories shall include at least each of

1 the following: methane derived from a landfill; solar power; wind power with a  
2 plant capacity of 100 kW or less; wind power with a plant capacity greater than  
3 100 kW; hydroelectric power; and biomass power using a fuel other than  
4 methane derived from an agricultural operation or landfill.

5 \* \* \*

6 (f) Price. The categories of renewable energy for which the Board shall set  
7 standard offer prices shall include at least each of the categories established  
8 pursuant to subdivision (c)(2) of this section. The Board by order shall  
9 determine and set the price paid to a plant owner for each kWh generated  
10 under a standard offer required by this section, with a goal of ensuring timely  
11 development at the lowest feasible cost. The Board shall not be required to  
12 make this determination as a contested case under 3 V.S.A. chapter 25.

13 (1) Market-based mechanisms. For new standard offer projects, the  
14 Board shall use a market-based mechanism, such as a reverse auction or other  
15 procurement tool, to obtain up to the authorized amount of a category of  
16 renewable energy, if it first finds that use of the mechanism is consistent with:

17 (A) applicable federal law; and

18 (B) the goal of timely development at the lowest feasible cost.

19 (2) Avoided cost.

1           (A) The price paid for each category of renewable energy shall be the  
2 avoided cost of the Vermont composite electric utility system if the Board  
3 finds either of the following:

4           (i) Use of the pricing mechanism described in subdivision  
5 (1)(market-based mechanisms) of this subsection (f) is inconsistent with  
6 applicable federal law.

7           (ii) Use of the pricing mechanism described in subdivision  
8 (1)(market-based mechanisms) of this subsection (f) is reasonably likely to  
9 result in prices higher than the prices that would apply under this  
10 subdivision (2).

11           (B) For the purpose of this subsection (f), the term “avoided cost”  
12 means the incremental cost to retail electricity providers of electric energy or  
13 capacity or both, which, but for the purchase through the standard offer, such  
14 providers would obtain from distributed renewable generation that uses the  
15 same generation technology as the category of renewable energy for which the  
16 Board is setting the price. For the purpose of this subsection (f), the term  
17 “avoided cost” also includes the Board’s consideration of each of the  
18 following:

19           (i) The relevant cost data of the Vermont composite electric utility  
20 system.







1           (2) In a municipality that has designated a tract for colocation of net  
2           metering systems pursuant to this subsection, the Board shall reduce, by three  
3           cents per kWh, the amount of the bill credit that would otherwise apply to each  
4           net metering system that is greater than 15 kW in plant capacity and is to be  
5           located outside the designated tract.

6           Sec. 9. EFFECTIVE DATES

7           This act shall take effect on July 1, 2016, except that Sec. 8 (net metering  
8           systems; colocation) shall take effect on January 2, 2017, and shall amend  
9           30 V.S.A. § 8010 as amended by 2015 Acts and Resolves No. 56, Sec. 12.