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Sent: Wednesday, May 06, 2015 11:56 AM

To: Erika Wolffing; Conor T. Kennedy; Springer, Darren; Christopher Bray; Warren Coleman (warren@mmrvt.com); Adam Necrason

CC: John Campbell

Subject: H.40 siting amendment

Attachments: GENERAL-#308682-v5-H_40;_Campbell;_solar;_setbacks;_screening.DOCX

As a courtesy, here's an electronic copy of the latest draft for the noon meeting.

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1 H. 40

2 Senator ____ moves that the report of the Committee on Natural Resources
3 and Energy be amended as follows:

4 First: In the fourteenth instance of amendment, in Sec. 14b (Joint Energy
5 Committee; recommendation), in subsection (a), by striking out subdivisions
6 (1) through (3) and inserting in lieu thereof new subdivisions (1) and (2) to
7 read:

8 (1) what revisions, if any, the Committee recommends that the General
9 Assembly enact with respect to the statutes applicable to energy efficiency
10 entities appointed and charges imposed under 30 V.S.A. § 209(d); and

11 (2) what legislation, if any, the Committee recommends that the General
12 Assembly enact to clarify or alter the relationship of energy efficiency entities
13 and charges under 30 V.S.A. § 209(d) with the energy transformation category
14 adopted under Sec. 3 of this act, 30 V.S.A. § 8005(a).

15 Second: In the seventeenth instance of amendment, by striking out Secs.
16 26a and 26b and inserting in lieu thereof new Secs. 26a, 26b, 26c, 26d, 26e,
17 and 26f to read:

18 Sec. 26a. 30 V.S.A. § 248(a)(4)(F) is added to read:

19 (F) The legislative body and the planning commission for the
20 municipality in which a facility is located shall have the right to appear as a
21 party in any proceedings held under this subsection.

1 Sec. 26b. 30 V.S.A. § 248(s) is added read:

2 (s) This subsection sets minimum setback requirements that shall apply to
3 in-state ground-mounted solar electric generation facilities approved under this
4 section.

5 (1) The minimum setbacks shall be:

6 (A) from a State or municipal highway, measured from the edge of
7 the traveled way:

8 (i) 100 feet for a facility with a plant capacity exceeding
9 150 kW; and

10 (ii) 40 feet for a facility with a plant capacity less than or equal to
11 150 kW but greater than 15 kW.

12 (B) From each property boundary that is not a State or municipal
13 highway:

14 (i) 50 feet for a facility with a plant capacity exceeding
15 150 kW; and

16 (ii) 25 feet for a facility with a plant capacity less than or equal to
17 150 kW but greater than 15 kW.

18 (2) This subsection does not require a setback for a facility with a plant
19 capacity equal to or less than 15 kW.

20 (3) On review of an application, the Board may:

21 (A) require a larger setback than this subsection requires; or

1 **(B) approve an agreement to a smaller setback among the**
2 **applicant, the municipal legislative body, and each owner of property**
3 **adjoining the setback area.**

4 (4) In this subsection:

5 (A) “kW” and “plant capacity” shall have the same meaning as in
6 section 8002 of this title.

7 (B) “Setback” means the shortest distance between the nearest
8 portion of a solar panel or support structure for a solar panel, at its point of
9 attachment to the ground, and a property boundary or the edge of a highway’s
10 traveled way.

11 Sec. 26c. 30 V.S.A. § 248(b) is amended to read:

12 (b) Before the Public Service Board issues a certificate of public good as
13 required under subsection (a) of this section, it shall find that the purchase,
14 investment or construction:

15 (1) with respect to an in-state facility, will not unduly interfere with the
16 orderly development of the region with due consideration having been given to
17 the recommendations of the municipal and regional planning commissions, the
18 recommendations of the municipal legislative bodies, and the land
19 conservation measures contained in the plan of any affected municipality.

20 However,;

(B) with respect to a **ground-mounted** solar electric generation facility, shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Board finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

* * *

Sec. 26d. 24 V.S.A. § 4414(15) is added to read:

(15) Solar plants; screening. Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to establish screening

1 requirements that shall apply to a **ground-mounted** plant that generates
2 electricity from solar energy. **In a proceeding under 30 V.S.A. § 248, the**
3 **municipality may make recommendations to the Public Service Board**
4 **applying the bylaw to such a plant. The bylaw may designate the**
5 **municipal body to make this recommendation. Screening requirements**
6 **and recommendations adopted under this subdivision shall be a condition**
7 **of a certificate of public good issued for the plant under 30 V.S.A. § 248,**
8 **provided that they do not prohibit or have the effect of prohibiting the**
9 **installation of such a plant and do not have the effect of interfering with its**
10 **intended functional use.**

11 **(A) Screening requirements under this subdivision** shall not be
12 more restrictive than screening requirements applied to other land development
13 in the municipality under this chapter or, if the municipality does not have
14 other bylaws except flood hazard, 10 V.S.A. chapter 151.

15 **(B)** In this section, “plant” shall have the same meaning as in
16 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation
17 measures to harmonize a facility with its surroundings and includes
18 landscaping, vegetation, fencing, and topographic features.

19 **(C) This subdivision shall not authorize requiring a municipal**
20 **land use permit for a solar electric generation plant and a municipal**
21 **action under this subdivision shall not be subject to the provisions of**

1 subchapter 11 (appeals) of this chapter. Notwithstanding any contrary
2 provision of this title, enforcement of a bylaw adopted under this
3 subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable
4 to violations of 30 V.S.A. § 248.

5 Sec. 26e. 24 V.S.A. § 2291 is amended to read:

6 § 2291. ENUMERATION OF POWERS

7 For the purpose of promoting the public health, safety, welfare, and
8 convenience, a town, city, or incorporated village shall have the following
9 powers:

10 * * *

11 (28) Notwithstanding any contrary provision of sections 2291a and 4413
12 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt an
13 ordinance to establish screening requirements that shall apply to a **ground-**
14 **mounted** plant that generates electricity from solar energy. **In a proceeding**
15 **under 30 V.S.A. § 248, the municipality may make recommendations to**
16 **the Public Service Board applying the ordinance to such a plant. The**
17 **ordinance may designate the municipal body to make this**
18 **recommendation. Screening requirements and recommendations adopted**
19 **under this subdivision shall be a condition of a certificate of public good**
20 **issued for the plant under 30 V.S.A. § 248, provided that they do not**

1 prohibit or have the effect of prohibiting the installation of such a plant and do
2 not have the effect of interfering with its intended functional use.

3 (A) Screening requirements under this subdivision shall not be
4 more restrictive than screening requirements applied to other land development
5 in the municipality under chapter 117 of this title or, if the municipality does
6 not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

7 (B) In this section, “plant” shall have the same meaning as in
8 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation
9 measures to harmonize a facility with its surroundings and includes
10 landscaping, vegetation, fencing, and topographic features.

11 (C) This subdivision shall not authorize requiring a municipal
12 permit for a solar electric generation plant. Notwithstanding any
13 contrary provision of this title, enforcement of an ordinance adopted
14 under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30
15 applicable to violations of 30 V.S.A. § 248.

16 Sec. 26f. REPORT; TOWN ADOPTION OF SOLAR SCREENING

17 (a) On or before January 15, 2017, the Commissioners of Housing and
18 Community Development and Public Service (the Commissioners) jointly
19 shall submit a report to the House and Senate Committees on Natural
20 Resources and Energy that:

1 (1) identifies the municipalities that have adopted screening
2 requirements pursuant to Sec. 26d of this act, 24 V.S.A. § 4414(15), or Sec.
3 26e of this act, 24 V.S.A. § 2291(28);

4 (2) summarizes these adopted screening requirements; and

5 **(3) provides the number of proceedings before the Public Service**
6 **Board in which these screening requirements were applied and itemizes**
7 **the disposition and status of those proceedings.**

8 (b) Each municipality adopting a bylaw under 24 V.S.A. § 4414(15) or 24
9 V.S.A. § 2291(28) shall provide the Commissioners, on request, with
10 information needed to complete the report required by this section.

11 Second: In the eighteenth instance of amendment, in Sec. 28 (effective
12 dates), by striking out subsection (c) and inserting in lieu thereof a new
13 subsection (c) to read:

14 (c) Secs. 26a (municipal party status), 26b (setbacks), 26c (certificate of
15 public good), 26d (solar screening bylaw), 26e (solar screening ordinance), and
16 26f (report) shall take effect on passage.