

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S. 48 AND H. 100 Name of Bill: An Act Relating to Setback and Screening Requirements for Solar Generation Plants

Agency/ Dept: Public Service Dept. Author of Bill Review: Anne Margolis and Geoff Commons

Date of Bill Review: 2/22/15 Related Bills and Key Players S. 48 and H. 100 (identical); S. 85 and H. 199; last year's S. 191 and H. 648

Status of Bill: (check one): ☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

- 1. Summary of bill and issue it addresses.** The bill proposes to allow municipalities to adopt setback and screening requirements that apply to solar electric generation plants. The way it does this is by amending the zoning section of Title 24 to allow municipalities to create bylaws that prescribe setback and screening requirements for solar electric plants. The bill is intended to address concerns expressed by a number of towns that they don't have a "say" in the siting of electric generation facilities (in other words, that they can't say no).
- 2. Is there a need for this bill?** This bill appears to create another regulatory requirement for solar projects, by subjecting them to permitting at the local level. Towns already can adopt setback and screening requirements; the problem they have is that those requirements are not controlling in the Section 248 process. The bill amends Title 24 to allow for solar zoning, but it does not amend Title 30 Section 248 to give municipal solar zoning requirements standing in that process. *However, a bill introduced subsequent to this one – S. 85 – proposes to do exactly that.* Instead, this bill creates a new pathway for local solar permitting that is completely distinct from and not usurped by the Section 248 process.

The bill says the setback and screening requirements shall not prohibit or have the effect of prohibiting the installation of such a plant and shall not have the effect of interfering with its intended functional use. The effect on solar deployment in Vermont very much depends on adherence of any town siting requirements to this provision, which is likely to provide fodder for legal arguments. At the very least, the addition of another regulatory hurdle for projects has the potential to result in some slowing of solar deployment, confusion in the market, and uneven/sub-optimal deployment of projects across the state.

Notwithstanding the fact that town zoning bylaws are not controlling in the 248 process, there are ostensibly ways for towns to influence the siting of solar projects, through 248 criterion (b)(1) Orderly Development, which considers the land use measures contained in the town plan as well as the recommendations of the town and regional planning commissions and the town selectboards (conditionally waived for projects < 150 kW), and criterion (b)(5), the Aesthetics piece, which, under the Quechee Analysis,

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looks at whether a project violates a clear, written community standard. The more specific a town plan is, the more influence it is likely to have in 248 proceedings. However, many town plans are aspirational in nature and make only general references to renewable energy (usually in support of it); that at the fact they are only updated every 5 years (and the amendment process is cumbersome) means many towns are unable to address the siting of solar projects being proposed today with the degree of influence they would like to have in 248 proceedings, leading to the criticism of not being able to have a voice in the process.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

It could make progress toward an RPS and the CEP goals more difficult and expensive, depending on the diversity and severity of setback and screening requirements adopted throughout the state. The PSD could also be tasked with drafting model solar siting bylaws (likely including a public process).

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Minimal impact; potentially some involvement from ACCD in terms of planning assistance. AAFM and ANR may seek to add additional requirements to protect natural and agricultural soils resources.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

VLCT would likely support the bill but with changes to make it stronger/more meaningful. They have circulated language this session and in past sessions asking for “substantial consideration” instead of “due consideration” of the recommendations of towns under (b)(1), and this is likely something they’d ask to add to the bill. They may also seek to include language that would allow for towns to regulate the placement of net-metered projects, including roof-mounted arrays on historic buildings. And, they may advocate for broad applicability of local control to all types of energy generation projects. Solar project developers, renewable energy advocates, and utilities with renewable portfolio requirements may be concerned that projects will become much harder/more expensive to site.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

VCE and Energize Vermont and at least some of the RPCs, who advocate for towns to be given greater control in the siting of energy projects and/or see this as a way to prevent certain projects from being built in the first place (they may ask for language to apply more broadly, to all energy projects, including wind).

6.2 Who else is likely to oppose the proposal and why?

REV, VPIRG, potentially VNRC, in terms of any bylaws creating barriers toward clean energy progress in VT. Many communities may oppose the bill to the extent that it impacts grassroots community solar systems.

7. Rationale for recommendation: *Justify recommendation stated above.*

Don’t support as written because it adds another regulatory layer, creates confusion in the marketplace, and could lead to difficulty in achieving state renewable energy and carbon goals. Also, it unjustifiably picks on solar (as bills in past legislative sessions did for wind).

8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

It seems that a serious effort toward solar siting reform will be made this session (though the potential for any real outcome is far from certain). It's possible a compromise could be arrived at, potentially drawing on the recommendations of the Siting Commission. It would be better, if there are siting requirements for solar (or all generation, or all development) to have consistency statewide rather than presenting developers with a complex patchwork of hundreds of different requirements. One idea is to propose such statewide requirements, to ensure that they are not inadvertently (or purposefully) having the effect of prohibiting solar development. Another idea is to allow for a waiver of (b)(1) and (b)(5) aesthetics if a project can demonstrate that it complies with a town's setback and screening requirements. It is important to make sure, however, that net metering projects are not negatively impacted.

9. **Gubernatorial appointments to board or commission?**

Secretary/Commissioner has reviewed this document:

 Date: 3/1/15