

1 H.455

2 Introduced by Representative Hooper of Montpelier

3 Referred to Committee on

4 Date:

5 Subject: Energy; public service; land use; natural resources; generation;

6 transmission; telecommunications

7 Statement of purpose of bill as introduced: This bill proposes to give greater  
8 weight to local and regional plans and the criteria of 10 V.S.A. chapter 151  
9 (Act 250) in Public Service Board (PSB) siting review and to require that the  
10 PSB hear land use and environmental issues jointly with the Natural Resources  
11 Board.

12 An act relating to the siting process for facilities subject to Public Service  
13 Board review

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

15 Sec. 1. 30 V.S.A. § 248 is amended to read:

16 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND  
17 FACILITIES; CERTIFICATE OF PUBLIC GOOD

18 (a)(1) No company, as defined in section 201 of this title, may:

19 \* \* \*

(3) No company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or commence construction of any natural gas facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business, unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect pursuant to this section.

VT LEG #306138 v.4

1           (4)(A) With respect to a facility located in the State, the Public Service  
2           Board (PSB or Board) shall hold a nontechnical public hearing, jointly with the  
3           Natural Resources Board (NRB) as defined in 10 V.S.A. § 6001, on each  
4           petition for such finding and certificate in at least one county in which any  
5           portion of the construction of the facility is proposed to be located.

6           (B) The ~~Public Service Board~~ PSB shall hold technical hearings at  
7           locations which it selects. When a technical hearing will pertain to matters  
8           related to subdivision (b)(5) of this section, the PSB shall hold the technical  
9           hearing jointly with the NRB.

10          (C) At the time of filing its application with the Board, copies shall  
11          be given by the petitioner to the Attorney General and the Department of  
12          Public Service, and, with respect to facilities within the State, the Department  
13          of Health, Agency of Natural Resources, Natural Resources Board, Division  
14          for Historic Preservation Division, Agency of Transportation, Agency of  
15          Agriculture, Food and Markets, and to the chairperson or director of the  
16          municipal and regional planning commissions and the municipal legislative  
17          body for each town and city in which the proposed facility will be located. At  
18          the time of filing its application with the Board, the petitioner shall give the  
19          Byways Advisory Council notice of the filing.

20          (D) Notice of the public hearing shall be published and maintained  
21          on the Board's website for at least 12 days before the day appointed for the

1 hearing. Notice of the public hearing shall be published once in a newspaper  
2 of general circulation in the county or counties in which the proposed facility  
3 will be located, and the notice shall include an Internet address where more  
4 information regarding the proposed facility may be viewed.

5 (E) The Agency of Natural Resources shall appear as a party in any  
6 proceedings held under this subsection, shall provide evidence and  
7 recommendations concerning any findings to be made under subdivision (b)(5)  
8 of this section, and may provide evidence and recommendations concerning  
9 any other matters to be determined by the Board in such a proceeding.

10 (F) The legislative body and the planning commission for the  
11 municipality in which a facility is located shall have the right to appear and  
12 participate on any application under this section seeking a certificate of public  
13 good for the facility.

14 (G) With respect to an application under this section for an in-state  
15 facility, the Board shall allow as a party any adjoining property owner or other  
16 person who demonstrates that the person has a particularized interest protected  
17 under this section and there is a reasonable possibility that the interest may be  
18 affected by an act or decision of the Board on the application.

19 (i) The Board may allow any other person as a party as its rules  
20 may provide.

1                   (ii) The Board shall adopt and make publicly available one or  
2                   more forms that a person may complete in order to move to participate as a  
3                   party.

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

7                   (1) ~~with~~ With respect to an in-state facility, will not unduly interfere  
8                   with the orderly development of the region ~~with due consideration having been~~  
9                   ~~given to,~~ and will comply with the recommendations of the municipal and  
10                  regional planning commissions, the recommendations of the municipal  
11                  legislative bodies, and the land conservation measures contained in the plan of  
12                  any affected municipality, unless the Board concludes that a factor affecting  
13                  the general good substantially outweighs the measure or recommendation.

14                  However, with respect to a natural gas transmission line subject to Board  
15                  review, the line shall be in conformance with any applicable provisions  
16                  concerning such lines contained in the duly adopted regional plan; and, in  
17                  addition, upon application of any party, the Board shall condition any  
18                  certificate of public good for a natural gas transmission line issued under this  
19                  section so as to prohibit service connections that would not be in conformance  
20                  with the adopted municipal plan in any municipality in which the line is  
21                  located;

\* \* \*

(5) ~~with~~ With respect to an in-state facility, will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, ~~with due consideration having been given to~~ and will comply with the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) ~~and~~, with due consideration having been given to greenhouse gas impacts; An affirmative finding under this subdivision shall require the concurrence of the NRB.

\* \* \*

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An

1 application under this section shall include a copy of each other State and local  
2 permit, certificate, or approval that has been issued for the facility under a  
3 statute, ordinance, or bylaw pertaining to the environment or land use.

4 \* \* \*

5 (c) Findings. Before the Public Service Board (PSB or Board) issues a  
6 certificate of public good under this section, it shall find that:

7 (1) The proposed facility will not have an undue adverse effect on  
8 aesthetics, historic sites, air and water purity, the natural environment, and the  
9 public health and safety, and the public's use and enjoyment of the I-89 and  
10 I-91 scenic corridors or of any highway that has been designated as a scenic  
11 road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C.  
12 § 162, ~~with due consideration having been given to the relevant criteria~~  
13 ~~specified in~~ and will comply with the criteria of 10 V.S.A. §§ 1424a(d) and  
14 6086(a)(1) through (8) and (9)(K). An affirmative finding under this  
15 subdivision shall require the concurrence of the Natural Resources Board  
16 (NRB) as defined in 10 V.S.A. § 6001. However, with respect to  
17 telecommunications facilities of limited size and scope, the ~~Board shall~~ PSB  
18 and the NRB may waive all criteria of this subdivision other than 10 V.S.A.  
19 § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites,  
20 rare and irreplaceable natural areas; endangered species; necessary wildlife  
21 habitat) if they determine that these facilities are unlikely to have the potential

1 for significant impact under each waived criterion. ~~Such waiver~~ Any such  
2 waiver shall be on condition that:

3 (A) the Board may determine, pursuant to the procedures described  
4 in subdivision (j)(2)(A) of this section, that a petition raises a significant issue  
5 with respect to any criterion of this subdivision; and

6 (B) a telecommunications facility of limited size and scope shall  
7 comply, at a minimum, with the requirements of the Low Risk Site Handbook  
8 for Erosion Prevention and Sediment Control issued by the Department of  
9 Environmental Conservation, regardless of any provisions in that handbook  
10 that limit its applicability.

11 (2) ~~Unless there is good cause to find otherwise, substantial deference~~  
12 ~~has been given to~~ The proposed facility will comply with the land conservation  
13 measures in the plans of the affected municipalities and the recommendations  
14 of the municipal legislative bodies and the municipal and regional planning  
15 commissions regarding the municipal and regional plans, respectively, unless  
16 the Board concludes that a factor affecting the general good substantially  
17 outweighs the measure or recommendation. Nothing in this section or other  
18 provision of law shall prevent a municipal body from basing its  
19 recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or  
20 bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the  
21 facility is located. A rebuttable presumption respecting compliance with the



1 applicable plan shall be created by a letter from an affected municipal  
2 legislative body or municipal planning commission concerning compliance  
3 with the municipal plan and by a letter from a regional planning commission  
4 concerning compliance with the regional plan.

5 \* \* \*

6 (e) Notice. No less than 45 days prior to filing an application for a  
7 certificate of public good under this section, the applicant shall serve written  
8 notice of an application to be filed with the Board pursuant to this section to  
9 the legislative bodies and municipal and regional planning commissions in the  
10 communities in which the applicant proposes to construct or install facilities;  
11 the Secretary of Natural Resources; the Secretary of Transportation; the  
12 Division for Historic Preservation; the Commissioner of Public Service and its  
13 Director for Public Advocacy; the Natural Resources Board ~~if the application~~  
14 ~~concerns a telecommunications facility for which a permit previously has been~~  
15 ~~issued under 10 V.S.A. chapter 151;~~ and the landowners of record of property  
16 adjoining the project sites. In addition, at least one copy of each application  
17 shall be filed with each of these municipal and regional planning commissions.

18 \* \* \*

19 (j)(1) Telecommunications facilities of limited size and scope. The Board  
20 may, subject to such conditions as it may otherwise lawfully impose, issue a  
21 certificate of public good in accordance with the provisions of this subsection

1 and without the notice and hearings required by any provision other than  
2 subdivision (2) of this subsection if the Board finds that such facilities will be  
3 of limited size and scope, and the application does not raise a significant issue  
4 with respect to the substantive criteria of this section. The Board may make  
5 findings based on the application and the supporting evidence submitted by the  
6 applicant. If an applicant requests approval of multiple telecommunications  
7 facilities in a single application under this section, the Board may issue a  
8 certificate of public good in accordance with the provisions of this subsection  
9 for all or some of the telecommunications facilities described in the  
10 application.

11 (2)(A) Any party seeking to proceed under the procedures authorized by  
12 this subsection shall file a proposed certificate of public good and proposed  
13 findings of fact with its application, and provide notice and a copy of the  
14 application, proposed certificate of public good, and proposed findings of fact  
15 to the Commissioner of Public Service and its Director for Public Advocacy,  
16 the Secretary of Natural Resources, the Division for Historic Preservation, the  
17 Natural Resources Board ~~if the application concerns a telecommunications~~  
18 ~~facility for which a permit previously has been issued under 10 V.S.A. chapter~~  
19 ~~451~~, and each of the legislative bodies and municipal and regional planning  
20 commissions in the communities in which the applicant proposes to construct  
21 or install facilities. At the same time the applicant files the documents

1 specified in this subdivision with the Board, the applicant shall give written  
2 notice of the proposed certificate to the landowners of record of property  
3 adjoining the project site or sites unless the Board has previously determined  
4 on request of the applicant that good cause exists to waive or modify the notice  
5 requirement with respect to such landowners. Such notice shall request  
6 comment to the Board within 21 days of the notice on the question of whether  
7 the application raises a significant issue with respect to the substantive criteria  
8 of this section. If the Board finds that an application raises a significant issue  
9 with respect to the substantive criteria of this section, the Board shall hear  
10 evidence on any such issue. If the substantive criterion is under subdivision  
11 (c)(1) of this section, the Board shall hear the evidence jointly with the NRB,  
12 and an affirmative finding shall require the concurrence of the NRB.

13 \* \* \*

14 Sec. 3. INTERPRETATION

15 The Public Service Board, the Natural Resources Board, a court, and any  
16 other tribunal shall not interpret the amendment of 30 V.S.A. § 248(b)(5) in  
17 Sec. 1 of this act or of 30 V.S.A § 248a(c)(1) in Sec. 2 of this act to restrict the  
18 existing authority under those statutes to apply environmental standards or  
19 impose conditions to protect the environment that are more stringent than the  
20 referenced criteria of Title 10.

1      Sec. 4. EFFECTIVE DATE

2      This act shall take effect on July 1, 2015.