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S.230

Senator ____ moves that the Senate concur in the House proposal of amendment with a further proposal of amendment as follows:

First: In Sec. 6, 24 V.S.A. § 4352, by striking out subsections (a) (regional plan) and (b) (municipal plan) and inserting in lieu thereof new subsections (a) and (b) to read:

(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.

1 Second: In Sec. 6, 24 V.S.A. § 4352, in subsection (c) (enhanced energy
2 planning; requirements), in the first full sentence after the subheading and
3 before the colon, by striking out “a determination” and inserting in lieu thereof
4 an affirmative determination

5 Third: In Sec. 6, 24 V.S.A. § 4352, in subsection (e) (process for issuing
6 determinations of energy compliance), by striking out the second sentence after
7 the subheading and inserting in lieu thereof the following:

8 The Commissioner or regional planning commission shall issue the
9 determination in writing within two months of the receipt of a request for a
10 determination.

11 Fourth: In Sec. 6, 24 V.S.A. § 4352, in subsection (f) (appeal), after the
12 first sentence, by inserting The provisions of 10 V.S.A. § 6024 regarding
13 assistance to the Board from other departments and agencies of the State shall
14 apply to this subsection.

15 Fifth: In Sec. 6, 24 V.S.A. § 4352, in subsection (g) (municipality;
16 determination from DPS; time-limited option), in subdivision (1), by striking
17 out the first sentence and inserting in lieu thereof The Commissioner shall
18 issue an affirmative determination of energy compliance for the municipal plan
19 on finding that the plan meets the requirements of subsection (c) of this
20 section.

1 Sixth: By striking out Sec. 10 in its entirety and inserting in lieu thereof a
2 new Sec. 10 to read:

3 Sec. 10. TRAINING

4 Following publication of the recommendations and standards under
5 Sec. 9(a) of this act, the Department of Public Service, the Vermont League of
6 Cities and Towns, and the Vermont Association of Planning and Development
7 Agencies shall collaborate on the development and presentation of training
8 sessions for municipal and regional planning commissions to assist them in the
9 development of municipal and regional plans that are eligible to receive a
10 determination of energy compliance under Sec. 6 of this act, 24 V.S.A. § 4352,
11 with at least one such session to be held in the area of each regional planning
12 commission after notice of the session to the regional planning commission
13 and its member municipalities.

14 Seventh: After Sec. 10, by inserting Sec. 10a to read:

15 Sec. 10a. PLANNING SUPPORT; ALLOCATION OF COSTS

16 (a) During fiscal year 2017, the Commissioner of Public Service, in
17 consultation with the Commissioner of Housing and Community
18 Development, shall ~~disburse award~~ the amount of \$300,000.00 to regional
19 planning commissions established under 24 V.S.A. chapter 117 and to
20 municipalities for ~~one or more of the following purposes~~ purpose:

1 ~~(1) implementation of Secs. 5 (energy element; regional plan) and 6~~
2 ~~(optional determination of energy compliance) of this act;~~

3 ~~(2) the implementation by a regional planning commission of~~
4 ~~24 V.S.A. § 4345a (studies and recommendations on energy);~~

5 ~~(3) participation in the development of recommendations and~~
6 ~~standards pursuant to Sec. 9 (initial implementation; recommendations;~~
7 ~~standards) of this act; and~~

8 ~~(4) assistance by a regional planning commission to the Department~~
9 ~~of Public Service (the Department) in of providing training under Sec. 10~~
10 ~~(training) of this act or to assisting municipalities in the implementation of this~~
11 ~~act.~~

12 (b) In disbursing funds under this section, the Commissioners shall
13 consider the need and size of a municipality or region and the availability, if
14 any, of other assistance, expertise, or funds to a municipality or region to
15 implement this act.

16 (c) The Commissioner of Public Service shall allocate costs under
17 subsection (a) of this section to the electric distribution utilities subject to its
18 supervision under Title 30 of the Vermont Statutes Annotated based on their
19 pro rata share of total Vermont retail kilowatt-hour sales for the previous fiscal
20 year. Each of these utilities shall pay its allocation into the State Treasury at
21 such time and in such manner as the Commissioner may direct.

1 of this section, and may provide evidence and recommendations concerning
2 any other matters to be determined by the Board in such a proceeding.

3 (F) The Agency of Agriculture, Food and Markets shall have the
4 right to appear as a party in proceedings held under this subsection, **may**
5 **provide evidence and recommendations concerning any findings to be**
6 **made under subdivision (b)(5) of this section, and may provide evidence**
7 **and recommendations on any other matters to be determined by the**
8 **Board in such a proceeding.**

9 (G) The regional planning commission for the region in which the
10 facility is located shall have the right to appear as a party in any proceedings
11 held under this subsection. The regional planning commission of an adjacent
12 region shall have the same right if the distance of the facility's nearest
13 component to the boundary of that planning commission is 500 feet or
14 10 times the height of the facility's tallest component, whichever is greater.

15 (H) The legislative body and the planning commission for the
16 municipality in which a facility is located shall have the right to appear as a
17 party in any proceedings held under this subsection. The legislative body and
18 planning commission of an adjacent municipality shall have the same right if
19 the distance of the facility's nearest component to the boundary of that
20 adjacent municipality is 500 feet or 10 times the height of the facility's tallest
21 component, whichever is greater.

1 (I) When a person has the right to appear as a party in a proceeding
2 before the Board under this chapter, the person may exercise this right by filing
3 a letter with the Board stating that the person appears through the person's duly
4 authorized representative, signed by that representative.

5 (J) This subdivision (J) applies to an application for an electric
6 generation facility with a capacity that is greater than 50 kilowatts, unless the
7 facility is located on a new or existing structure the primary purpose of which
8 is not the generation of electricity. In addition to any other information
9 required by the Board, the application for such a facility shall include
10 information that delineates:

11 (i) the full limits of physical disturbance due to the construction
12 and operation of the facility and related infrastructure, including areas
13 disturbed due to the creation or modification of access roads and utility lines
14 and the clearing or management of vegetation;

15 (ii) the presence and total acreage of primary agricultural soils as
16 defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in
17 connection with the construction and operation of the facility ~~and~~, the amount
18 of those soils to be disturbed, and any other proposed impacts to those soils;

19 (iii) all visible infrastructure associated with the facility; and

20 (iv) all impacts of the facility's construction and operation under
21 subdivision (b)(5) of this section, including impacts due to the creation or

1 modification of access roads and utility lines and the clearing or management
2 of vegetation.

3 Ninth: In Sec. 11, 30 V.S.A. § 248, in subsection (b), in subdivision (5),
4 after “(9)(K)” by striking out “impacts to primary agricultural soils as defined
5 in 10 V.S.A. § 6001,”

6 Tenth: After Sec. 11, by inserting a Sec. 11a to read:

7 Sec. 11a. RULES; PETITION

8 (a) On or before ~~August 1~~ **November 1**, 2016, the Department of Public
9 Service shall file a petition for rulemaking with the Public Service Board
10 containing proposed rules to implement 30 V.S.A. § 248(a)(5)
11 (postconstruction inspection of aesthetic mitigation; decommissioning) as
12 enacted by Sec. 11 of this act.

13 (b) On or before ~~October 15~~ **December 15**, 2016, the Public Service Board
14 shall file proposed rules to implement 30 V.S.A. § 248(a)(5) with the Secretary
15 of State under 3 V.S.A. § 838. The Board shall finally adopt such rules on or
16 before ~~June 15~~ **August 15**, 2017, unless such deadline is extended by the
17 Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

18 Eleventh: In Sec. 12, sound standard; wind generation, after subsection (b),
19 by inserting subsection (c) to read:

1 **to new standard offer plants that will be wholly located in one or more**
2 **preferred locations:**

3 **(I) one-sixth of the annual increase, during the first year, to**
4 **preferred locations other than parking lots or parking lot canopies::**

5 (II) one-quarter of the annual increase, during the second
6 year; and

7 (III) one-third of the annual increase, during the third year.

8 **(ii) As part of this pilot project, for the year commencing**
9 **January 1, 2017, the Board separately shall allocate one-sixth of the annual**
10 **increase of the annual increase to new standard offer plants that will be wholly**
11 **located over parking lots or on parking lot canopies.**

12 (iii) To qualify for these allocations, the plant shall not require the
13 construction of a new substation by the interconnecting retail electricity
14 provider or by increasing the capacity of one or more of the provider's existing
15 facilities. To qualify for the allocation to plants wholly located over parking
16 lots or on parking lot canopies, the location shall remain in use as a parking lot.

17 (iv) These allocations shall apply proportionally to the
18 independent developer block and provider block.

19 (v) If in a given year an allocation under this pilot project is not
20 fully subscribed, the Board in the same year shall allocate the unsubscribed
21 capacity to new standard offer plants outside the pilot project.

1 (6) As used in subdivision (c)(5) of this section, “preferred location”
2 means a site within the State on which a renewable energy plant will be located
3 that is one of the following:

4 (A) A new or existing structure whose primary use is not the
5 generation of electricity or providing support for the placement of equipment
6 that generates electricity.

7 (B) A parking lot canopy over a paved parking lot, provided that the
8 location remains in use as a parking lot.

9 (C) A tract previously developed for a use other than siting a plant on
10 which a structure or impervious surface was lawfully in existence and use prior
11 to July 1 of the year preceding the year in which an application for a certificate
12 of public good under section 248 of this title for the plant net metering system
13 is filed or in which the plant seeks an award of a contract under the standard
14 offer program under this section, whichever is earlier. To qualify under this
15 subdivision (C), the limits of disturbance of a proposed renewable energy plant
16 must include either the existing structure or impervious surface and shall not
17 include any headwaters, streams, shorelines, floodways, rare and irreplaceable
18 natural areas, necessary wildlife habitat, wetlands, endangered species,
19 productive forestlands, and primary agricultural soils, all of which are as
20 defined in 10 V.S.A. chapter 151.

1 (D) Land certified by the Secretary of Natural Resources to be a
2 brownfield site as defined under 10 V.S.A. § 6642.

3 (E) A sanitary landfill as defined in 10 V.S.A. § 6602, provided that
4 the Secretary of Natural Resources certifies that the land constitutes such a
5 landfill and is suitable for the development of the plant.

6 (F) The disturbed portion of a gravel pit, quarry, or similar site for
7 the extraction of a mineral resource, provided that all activities pertaining to
8 site reclamation required by applicable law or permit condition are satisfied
9 prior to the installation of the plant.

10 (G) A specific location designated in a duly adopted municipal plan
11 under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or
12 specific type or size of renewable energy plant, provided that the plant meets
13 any siting criteria recommended in the plan for the location. On or after
14 January 1, 2019, to qualify under this subdivision (F), the plan must receive an
15 affirmative determination of energy compliance under 24 V.S.A. § 4352.

16 (H) A site listed on the National Priorities List (NPL) established
17 under the Comprehensive Environmental Response, Compensation, and
18 Liability Act, 42 U.S.C. chapter 103, if the U.S. Environmental Protection
19 Agency or the Agency of Natural Resources confirms each of the following:

20 (i) The site is listed on the NPL.

1 (A) If the Board uses a market-based mechanism under subdivision
2 (1) of this subsection (f) to determine this price for one or both of the two
3 allocations of capacity, the Board shall compare only the proposals of plants
4 that qualify for the allocation.

5 (B) If the Board uses avoided costs under subdivision (2) of this
6 subsection (f) to determine this price for one or both of the two allocations of
7 capacity, the Board shall apply the definition of “avoided costs” as set forth in
8 subdivision (2)(B) of this subsection with the modification that the avoided
9 energy or capacity shall be from distributed renewable generation that is sited
10 on a location that qualifies for the allocation.

11 (C) With respect to the allocation to the new standard offer plants
12 that will be wholly located **over** parking lots or on parking lot canopies, if in a
13 given year the Board receives only one application or multiple applications for
14 plants owned or controlled by the same person as defined in 10 V.S.A. § 6001,
15 the Board shall investigate each application and shall have discretion to reduce
16 the price to be consistent with the standard offer price for plants outside the
17 pilot project using the same generation technology.

18 Sec. 12b. STANDARD OFFER PILOT; REPORT

19 On or before January 15, 2018, the Public Service Board shall file a report
20 with the House Committee on Commerce and Economic Development, the
21 Senate Committee on Finance, and the House and Senate Committees on

1 Natural Resources and Energy on the progress of the standard offer pilot
2 project on preferred locations authorized in Sec. 15 of this act. This report
3 shall itemize the size, type of preferred location, generation technology, and
4 cost per kilowatt hour of each application received under the pilot project and
5 shall identify each generation facility approved under the pilot and the price
6 awarded to each such facility.

7 * * * Net Metering * * *

8 Thirteenth: After Sec. 15, by inserting a new reader guide and Sec. 15a to
9 read:

10 * * * Allocation of AAFM and Postclosure Monitoring Costs * * *

11 § 20. PARTICULAR PROCEEDINGS AND ACTIVITIES; PERSONNEL

12 (a)(1) The Board or the Department of Public Service may authorize or
13 retain legal counsel, official stenographers, expert witnesses, advisors,
14 temporary employees, and other research, scientific, or engineering services:

15 ~~(i)~~(A) To assist the Board or Department in any proceeding listed in
16 subsection (b) of this section.

17 ~~(ii)~~(B) To monitor compliance with any formal opinion or order of
18 the Board.

19 ~~(iii)~~(C) In proceedings under section 248 of this title, to assist other
20 State agencies that are named parties to the proceeding where the Board or
21 Department determines that they are essential to a full consideration of the

1 petition, or for the purpose of monitoring compliance with an order resulting
2 from such a petition.

3 ~~(iv)~~(D) In addition to the ~~above~~ services in subdivisions (1)(A)–(C)
4 of this subsection (a), in proceedings under subsection 248(h) of this title, by
5 contract with the regional planning commission of the region or regions
6 affected by a proposed facility, to assist in determining conformance with local
7 and regional plans and to obtain the ~~commissions~~ commission's data, analysis,
8 and recommendations on the economic, environmental, historic, or other
9 impact of the proposed facility in the region.

10 ~~(v)~~(E) To assist in monitoring the ongoing and future reliability and
11 the postclosure activities of any nuclear generating plant within the State. ~~For~~
12 ~~the purpose of~~ In this subdivision section, “postclosure activities” includes
13 planning for and implementation of any action within the State’s jurisdiction
14 that shall or will occur when the plant permanently ceases generating
15 electricity.

16 (2) The Agency of Natural Resources may authorize or retain legal
17 counsel, official stenographers, expert witnesses, advisors, temporary
18 employees, and other research, scientific, or engineering services to:

19 (A) Assist the Agency of Natural Resources in any proceeding under
20 section 248 of this title.

1 (B) Monitor compliance with an order issued under section 248 of
2 this title.

3 (C) Assist the Board or the Department of Public Service in any
4 proceedings described in subdivisions (b)(9) (Federal Energy Regulatory
5 Commission) and (11) (Nuclear Regulatory Commission) of this section.
6 Allocation of Agency of Natural Resources costs under this subdivision (C)
7 shall be in the same manner as provided under subdivisions (b)(9) and (11) of
8 this section. The Agency of Natural Resources shall report annually to the
9 Joint Fiscal Committee all costs incurred and expenditures charged under the
10 authority of this subsection with respect to proceedings under subdivision
11 (b)(9) of this section and the purpose for which such costs were incurred and
12 expenditures made.

13 (D) Assist in monitoring the postclosure activities of any nuclear
14 generating plant within the State.

15 (3) The Department of Health may authorize or retain legal counsel,
16 official stenographers, expert witnesses, advisors, temporary employees, and
17 other research, scientific, or engineering services to assist in monitoring the
18 postclosure activities of any nuclear generating plant within the State.

19 (4) The Agency of Agriculture, Food and Markets may authorize or
20 retain legal counsel, official stenographers, expert witnesses, advisors,
21 temporary employees, other research, scientific, or engineering services to:

1 pursuant to section 20 of this title to the applicant or the ~~public service~~
2 company or companies involved ~~in these proceedings~~. In this section,
3 “agency” means an agency, board, or department of the State enabled to
4 authorize or retain personnel under section 20 of this title.

5 (1) The Board shall upon petition of an applicant or ~~public service~~
6 company to which costs are proposed to be allocated, review and determine,
7 after opportunity for hearing, having due regard for the size and complexity of
8 the project, the necessity and reasonableness of such costs, and may amend or
9 revise such allocations. Nothing in this section shall confer authority on the
10 Board to select or decide the personnel, the expenses of whom are being
11 allocated, unless such personnel are retained by the Board. Prior to allocating
12 costs, the Board shall make a determination of the purpose and use of the funds
13 to be raised hereunder, identify the recipient of the funds, provide for
14 allocation of costs among companies to be assessed, indicate an estimated
15 duration of the ~~proceedings~~ retention of personnel whose costs are being
16 allocated, and estimate the total costs to be imposed. With the approval of the
17 Board, such estimates may be revised as necessary. From time to time during
18 the progress of the work of such additional personnel, the ~~Board, the~~
19 ~~Department, or the Agency of Natural Resources~~ agency retaining the
20 personnel shall render to the company detailed statements showing the amount
21 of money expended or contracted for in the work of such personnel, which

1 statements shall be paid by the applicant or the ~~public-service~~ company into the
2 State Treasury at such time and in such manner as the ~~Board, the Department,~~
3 ~~or the Agency of Natural Resources~~ agency may reasonably direct.

4 (2) In any proceeding under section 248 of this title, the Agency of
5 Natural Resources may allocate the portion of the expense incurred in retaining
6 additional staff authorized in subsection 21(a) of this title only if the following
7 apply:

8 (A) the Agency of Natural Resources does not have the expertise and
9 the retention of such expertise is required to fulfill ~~the Agency's~~ its statutory
10 obligations in the proceeding; and

11 (B) the Agency of Natural Resources allocates only that portion of
12 the cost for such expertise that exceeds the fee paid by the applicant under
13 section 248b of this title.

14 (b) When regular employees of ~~the Board, the Department, or the Agency~~
15 ~~of Natural Resources~~ an agency are employed in the particular proceedings and
16 activities described in section 20 of this title, the ~~Board, the Department, or the~~
17 ~~Agency of Natural Resources~~ agency may also allocate the portion of ~~their~~ its
18 costs and expenses to the applicant or the ~~public-service~~ company or
19 companies involved ~~in the proceedings~~. The costs of regular employees shall
20 be computed on the basis of working days within the salary period. The
21 manner of assessment and of making payments shall otherwise be as provided

1 for additional personnel in subsection (a) of this section. However, with
2 respect to proceedings under section 248 of this title, the Agency of Natural
3 Resources shall not allocate the costs of regular employees.

4 * * *

5 (e) ~~On or before January 15, 2011, and annually thereafter, the Agency of~~
6 ~~Natural Resources~~ Annually, on or before January 15, each agency shall report
7 to the Senate and House Committees on Natural Resources and Energy the
8 total amount of expenses allocated under this section during the previous fiscal
9 year. The report shall include the name of each applicant or public service
10 company to whom expenses were allocated and the amount allocated to each
11 applicant or company. The Agency of Agriculture, Food and Markets also
12 shall submit a copy of its report to the Senate Committee on Agriculture, and
13 the House Committee on Agriculture and Forests Products.

14 * * *

15 (g) ~~The Board, or the Department with the approval of the Governor, An~~
16 agency may allocate such portion of expense incurred or authorized by it in
17 compensating persons retained in the monitoring of postclosure activities of a
18 nuclear generating plant pursuant to subdivision 20(a)(1)(v) subsection 20(a)
19 of this title to the nuclear generating plant whose activities are being
20 monitored. Except for the Board, the agency shall obtain the approval of the
21 Governor before making such an allocation.

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Fourteenth: By striking out Sec. 16 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 16 to read:

Sec. 16. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except that:

(1) This section and Secs. 9 (initial implementation; recommendations; standards), 11 (30 V.S.A. § 248), 12 (sound standards; wind generation) and 15 (Access to Public Service Board Working Group) shall take effect on passage. Sec. 6 (optional determination of energy compliance) shall apply on passage to the activities of the Department of Public Service under Sec. 9.

(2) Sec. 13 (net metering) shall take effect on January 2, 2017, and shall amend 30 V.S.A. § 8010 as amended by 2015 Acts and Resolves No. 56, Sec. 12. Notwithstanding any contrary provision of 1 V.S.A. § 214, Sec. 13 shall apply to the Public Service Board process under 2014 Acts and Resolves No. 99, Sec. 5.

(3) Sec. 15a shall take effect on July 2, 2016.