

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: H. 9 Name of Bill: An act relating to a statewide land use plan

Agency/ Dept: Public Service Author of Bill Review: Asa Hopkins

Date of Bill Review: Jan. 16, 2013 Status of Bill: (check one):

Upon Introduction As passed by 1st body As passed by both bodies Fiscal

Recommended Position:

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

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

Establishes a requirement for a statewide land use plan, to be prepared by the Natural Resources Board. Plan would include a map with general categories of land use (forestry, recreation, conservation, agriculture, energy, telecommunications, urban, or other purposes). Such a plan would give due consideration to other state plans (such as the electric plan, comprehensive energy plan, and telecommunications plan), and other plans would be required to be consistent with the statewide land use plan. Plan would be required to be consistent with state goals and policies (including state energy policy, renewable energy goals, and GHG reduction targets). Bill contains requirements for public hearings and for receiving comments on draft plans from RPCs, ANR, and PSD. Governor would have the opportunity to approve or reject the plan; no action implies approval. Legislature would need to act to formally adopt the plan. Petitioners may apply to have the plan changed (e.g. for a particular project). PSB would need to find consistency with the land use plan in order to approve a CPG under 30 VSA 248 or 248a, unless it finds that the facility is needed for reliability. This criterion is to be considered at the level of "general good of the state," not as a (b) criterion to be weighed against others. Creates a position of Land Use Planner for the NRB, and appropriates funds.

2. Is there a need for this bill? *Please explain why or why not.*

Yes. Act 250 alone does not have appropriate power to shape state land use, sufficient to meet state goals. Bill would also establish a framework for energy siting decisions beyond the one-off responsive structure under which we currently operate, and sidetrack efforts at technology-specific moratoria or rules.

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

Could dramatically increase the level of effort spent on land-use-related topics in the energy and electric plans, and create a need for additional effort to support PSD involvement in the development of the land use plan. Adds an additional criterion for testimony in 248 proceedings. 248 applications that do comply with the land use plan could have an easier path to approval, if controversy is reduced. Net fiscal implications are undetermined, but likely to be additional cost.

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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?

Likely increase in NRB's workload is greater than 1 additional approved FTE, so it likely creates a net burden on the NRB. Could create a dramatic increase in NRB's influence. Increased burden on RPCs without additional resources. ANR would likely be impacted similarly to PSD, except that land use plan would impact all siting, not just the energy siting that PSD deals with.

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)

Bill would place increased burden on municipalities for planning. In addition, municipalities will react negatively to the loss of control over planning that would come from being required to be consistent with a state plan. Bill will likely see opposition from land owners and developers, particularly in areas that do not currently have strong zoning, due to potential restrictions of what they can do with their land in future, impacts on property values, etc.

6. Other Stakeholders:

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

Environmental groups may support the bill in order to establish enforceable limits on development and growth. A substantive plan that makes concrete the various goals and targets established for GHG reduction, for example, could increase the likelihood that those goals are achieved.

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

VCE or others concerned about energy siting may oppose because this bill sidesteps their concerns and does not place a moratorium or ban on any kind of development *a priori*.

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

The idea of state land use planning has merit, and there is real merit to planning locations for energy generation and other facilities. The challenge will be in implementation, and it's not clear that this bill is the right way. For example, if all local, regional and other state plans must be consistent with the state land use plan, while the state land use plan must take the others into consideration, there is a real risk of stasis – no plan can push for substantial change because it will end up out of line with the others. In some areas stasis may be appropriate, but it is not appropriate in energy or climate change.

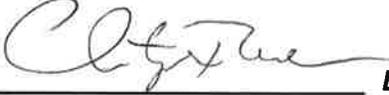
The bill provides much less in the way of resources than will be required by any of the parties directly impacted (towns, RPCs, and state agencies).

Energy planning has been relatively separate from other land use planning, due to the section 248 process and exemption from Act 250. Adding energy planning to a relative well-established land use planning framework is likely to result in energy component to the land use plan being "half baked" compared with other topics. When

combined with the stasis concern above, energy land use planning could be caught both not well-formed and hard to change.

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.*

I don't believe the concerns raised in my answer to #7 have simple answers.

Secretary/Commissioner has reviewed this document:  Date: 2/17/13