

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: S. 230 Name of Bill: Energy Development Improvement Act

Agency/ Dept: DPS Author of Bill Review: Anne Margolis, Asa Hopkins, Geoff Commons

Date of Bill Review: 5/11/16 Related Bills and Key Players

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. *Describe what the bill is intended to accomplish and why.*

The bill proposes a new, optional energy planning framework in the state, whereby regions and towns that have undertaken thorough energy planning in line with the state's statutory energy goals and the Comprehensive Energy Plan, and received a determination of energy compliance, will receive "substantial deference" rather than "due consideration" in 248 proceedings. It also proposes a variety of tweaks to current PSB process and siting of renewable energy projects, generally in alignment with recommendations of the Solar Siting Task Force. In addition, it: gives municipal electric utilities temporary relief from requirements of the Renewable Energy Standard if they have to reduce hydropower output due to permit conditions; create a one-year pilot in the Standard Offer program to favor preferred sites, particularly parking lots; creates a working group to examine access to the PSB; limits the authority of the PSB to allow for ratepayer funds to be set aside for future utility infrastructure expansions or upgrades; and directs the PSB to adopt both interim and final rules on sound from wind generation facilities.

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

The bill is attempting to give communities "more say" in where renewable energy projects are sited, in response to concerns expressed in recent years, particularly in response to large wind and solar projects. The proposals are generally constructive and may help to defuse public criticism that, left unaddressed, could result in a backlash against continuing RE development. A bill like this is probably needed, though it will take great effort and resources from DPS, without providing any additional staffing. Several sections are not optimal as written for various reasons explained below, including sound standards, RPS relief for municipal utilities, and the provisions for Standard Offer projects on preferred sites. The removal of the language providing for a Public Assistance Officer at the PSB is unfortunate. And if the funding for municipal planning support isn't added back in, it could undermine much of the planning work.

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

- (1) Planning provisions in Secs. 1-10: these will require an intensive commitment of staff time and Department resources, particularly for convening stakeholders and developing standards that must be issued by November 1. The effort could rival that of development of the Comprehensive Energy Plan, which involved up to 10 planning & energy development staff members for the better part of a year. Five months may not be sufficient time to do the best job on the guidance (note that a similar

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interagency effort to develop new Act 250 guidance on sprawl took over 8 months to complete, and was relatively narrower in scope). The training to regions and towns will also take time and resources, but less so if the Regional Planning Commissions take the lead, which is what we expect if the funding reappears. Programmatically, we expect that the involvement of regions and towns in evaluating and planning for their energy will result in better siting of projects and somewhat less strife in reaching 90% by 2050 than if these provisions didn't exist. In general, tying something of present concern (generation siting) to broader energy planning should result in more comprehensive approaches to energy transition at the regional and local level than might otherwise have occurred.

- (2) Section 248 changes in Secs. 11 and 11a: the provisions related to aesthetics/decommissioning rulemaking and review of 248 petitions under criterion (b)(1) through the new "substantial deference" lens are likely to have the greatest impacts on DPS, particularly on the public advocacy staff. The bill requires DPS to file proposed rules on postconstruction inspection of aesthetic mitigation as well as decommissioning with the PSB by 11/1/16, the development of which will likely entail some degree of stakeholder process. In terms of substantial deference, we will be involved in looking at town and regional plans that have been determined to be energy compliant to understand what those plans say about the project under consideration, which is likely to take more staff time, because of both the greater detail in the plans and the higher stakes. Programmatically, having standard conditions for aesthetics compliance and decommissioning should help address concerns from towns and neighbors about long-term project impacts, again helping to smooth the road to achievement of the state's energy goals. Reviewing projects in light of substantial deference is the lynchpin of the planning effort, and should (eventually) help both towns and developers refine their expectations, though there are likely to be bumps in the road. It will be incumbent on DPS and RPCs in developing the standards for compliance as well as evaluating plans to reconcile the explicit energy portions of the plans with the land conservation measures the PSB looks at in criterion (b)(1), which may or may not specifically consider energy.
- (3) Sound standards for wind facilities (Sec. 12): DPS is likely to be heavily involved in both the 45-day temporary rulemaking and the July 1, 2017 final rulemaking. In previous sound proceedings, DPS has also relied extensively on the expertise of consultants, which is likely to continue. Programmatically, providing clear guidelines to future wind projects should help create some measure of certainty for both developers and communities. How those parties feel about the standards that are developed is another story, which is why the process to develop those standards – both interim and final – is both so important and so likely to be torturous.
- (4) Standard Offer program preferred sites (Sec. 12a): providing incentives for good siting in the Standard Offer program should help to increase public acceptance of these projects, and is in alignment with the Department's recommendations for the 2016 Standard Offer RFP. However, the language in the bill is both far too detailed and ephemeral for comfort. It sets up a complicated set of parameters for the Board to follow in allocating a very small amount of capacity to projects in a bill-defined set of preferred locations, and then restricts it to one year, followed by a report. DPS will be involved in each step, which will take a fair amount of staff time, especially in light of a program that won't continue without further legislative action. At the end of the day, it's probably worth it to learn the little bit we can about the appetite and costs for siting solar on areas other than greenfields, but we should keep our expectations low.
- (5) Net metering (Sec. 13): some DPS staff time will be involved in reconciling requirements here (and in Sec. 11) that relate to net metering with the Board's draft net metering rule. For instance, S. 230 does not allow the Board to waive 45-day notices for projects > 15 kW unless they're on a rooftop; whereas the Board's net metering rule simplifies the process for all projects on preferred locations, including

waiver of the 45-day notice. Programmatically, it's not the end of the world, but it does add complication to an already complicated rule and makes things a little harder for the types of projects we're trying to encourage.

- (6) RES waiver for municipal utilities (Sec. 14): We never supported this concept, but it was very important to certain lawmakers. For one thing, it's bad precedent to start making loopholes in the RES (especially before compliance even begins). This one may be rather toothless: the alternative compliance payment for this tier is \$10/MWh, and it's hard to see how the MWh reduction in production from a municipal hydro, multiplied by \$10, could result in a utility significantly increasing its rates or really impact least-cost planning. The utility would spend more money making the petition and taking it before the Board than it might save them. At the same time, impact would be minimal on overall goals. This is probably the least supportable provision of S. 230, but clearly not worth vetoing the bill over.
- (7) Access to the PSB Working Group (Sec. 15): This will require a fair amount of DPS Commissioner/designee/PA/CAPi involvement over the next 6 months. Programmatically – and in light of the PAO being axed – it is probably important to do this work.
- (8) Alternative regulation/ratepayer set-asides (Sec. 15a): This section is intended to prevent a repeat of the SERF, which involved diversion of monies owed to ratepayers into a fund for expansion of the Vermont Gas system. Such set-asides are not prohibited, but will now be required to meet a stringent set of criteria. Given this bill and the general unpopularity of the SERF it seems unlikely that we would see a repeat.

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?

The Public Service Board, especially, shoulders a lot of responsibility from S. 230 (substantial deference determinations; aesthetics/decommissioning rulemaking; wind sound rules [especially]; standard offer preferred sites; reconciling changes into the draft net metering rule; and the access working group). They are going to be even more swamped. The Health Dept. will also be involved in the development of wind sound rules in terms of evaluating impacts to public health. AAFM has new responsibilities in terms of project review and participation. A billback provision for AAFM was transferred to the budget bill. ACCD, AAFM, ANR, and VTrans will all be involved in the development of standards and regional plan review, which will require some amount of staff time. ACCD expects communities needing help with their energy plans will seek Municipal Planning Grants for assistance; this program offers around \$430K total each year, and in the last five years has been oversubscribed 2 to 1. It would also require ACCD to overhaul the State Planning Manual that was just completed in February. In general, the relevant state agencies were all following S. 230 and are likely prepared for the responsibilities assigned to them, though each may have a different view of their capacity to manage the work.

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)

The public, municipalities, organizations, businesses, and regulated entities are all probably grudgingly ok with what passed in S. 230, though everyone would change at least something if they could. VLCT would have liked substantial deference w/o any planning requirements. RPCs would have liked greater mandatory planning requirements as a baseline for towns. VNRC/VPIRG would have liked to be able to appeal the determinations regarding regional and town plans. VCE/VCG would have liked strict sound standards for wind in the bill, or the "de facto moratorium" language that existed right up until the last minute. Solar developers probably feel that the new draft net metering rule is complicated enough without further meddling, though rooftop solar installers and anyone out there contemplating a parking lot project may be cautiously optimistic. Utilities are probably not happy with the planning \$ (should it reappear), preferred locations in the standard offer, and the SERF provisions; municipal utilities are probably taking wrongly

placed comfort in the RES relief provisions. Regardless, most of these folks probably see the planning paradigm as an opportunity to steer the siting conversation in a more productive direction.

6. Other Stakeholders:

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

See above

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

See above

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

See above

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.*

N/A (too late now)

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No.

Secretary/Commissioner has reviewed this document:



Date: 5/23/16