

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 230 entitled “An act relating to improving the siting of energy
4 projects” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Designation * * *

8 Sec. 1. DESIGNATION OF ACT

9 This act shall be referred to as the Energy Development Improvement Act.

10 * * * Integration of Energy and Land Use Planning * * *

11 Sec. 2. 24 V.S.A. § 4302 is amended to read:

12 § 4302. PURPOSE; GOALS

13 * * *

14 (c) In addition, this chapter shall be used to further the following specific
15 goals:

16 (1) To plan development so as to maintain the historic settlement pattern
17 of compact village and urban centers separated by rural countryside.

18 (A) Intensive residential development should be encouraged
19 primarily in areas related to community centers, and strip development along
20 highways should be discouraged.

1 (A) significant natural and fragile areas;

2 (B) outstanding water resources, including lakes, rivers, aquifers,
3 shorelands, and wetlands;

4 (C) significant scenic roads, waterways, and views;

5 (D) important historic structures, sites, or districts, archaeological
6 sites, and archaeologically sensitive areas.

7 (6) To maintain and improve the quality of air, water, wildlife, and land
8 resources.

9 (A) Vermont's air, water, wildlife, mineral, and land resources
10 should be planned for use and development according to the principles set
11 forth in 10 V.S.A. § 6086(a).

12 (B) Vermont's water quality should be maintained and improved
13 according to the policies and actions developed in the basin plans established
14 by the Secretary of Natural Resources under 10 V.S.A. § 1253.

15 (7) To encourage the efficient use of energy and the development of
16 renewable energy resources, consistent with the following:

17 (A) Vermont's greenhouse gas reduction goals under 10 V.S.A.
18 § 578(a);

19 (B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A.
20 § 580;

21 (C) Vermont's building efficiency goals under 10 V.S.A. § 581;

1 Sec. 3. 24 V.S.A. § 4345 is amended to read:

2 § 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING
3 COMMISSIONS

4 Any regional planning commission created under this chapter may:

5 * * *

6 (6) Undertake studies and make recommendations on land development,
7 urban renewal, transportation, economic, industrial, commercial, and social
8 development, urban beautification and design improvements, historic and
9 scenic preservation, ~~the conservation of energy and the development of~~
10 ~~renewable energy resources~~, State capital investment plans, and wetland
11 protection.

12 * * *

13 Sec. 4. 24 V.S.A. § 4345a is amended to read:

14 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

15 A regional planning commission created under this chapter shall:

16 * * *

17 (14) Appear before the Public Service Board to aid the Board in making
18 determinations under 30 V.S.A. § 248 and shall have the right to appear and
19 participate in proceedings under that statute.

20 * * *

1 (19) Undertake studies and make recommendations on the conservation
2 of energy and the development of renewable energy resources.

3 Sec. 5. CLARIFICATION OF EXISTING LAW

4 Sec. 4 of this act, amending 24 V.S.A. § 4345a(14) (participation in Section
5 248 proceedings), clarifies existing law.

6 Sec. 6. 24 V.S.A. § 4348a is amended to read:

7 § 4348a. ELEMENTS OF A REGIONAL PLAN

8 (a) A regional plan shall be consistent with the goals established in section
9 4302 of this title and shall include the following:

10 (1) A statement of basic policies of the region to guide the future growth
11 and development of land and of public services and facilities, and to protect the
12 environment.

13 (2) A land use element, which shall consist of a map and statement of
14 present and prospective land uses:

15 (A) indicating those areas proposed for forests, recreation, agriculture
16 (using the agricultural lands identification process established in 6 V.S.A. § 8),
17 residence, commerce, industry, public, and semi-public uses, open spaces, and
18 areas identified by the State, regional planning commissions or municipalities,
19 which require special consideration for aquifer protection, wetland protection,
20 or for other conservation purposes;

1 (B) indicating those areas within the region that are likely candidates
2 for designation under sections 2793 (downtown development districts), 2793a
3 (village centers), 2793b (new town centers), and 2793c (growth centers) of this
4 title;

5 (C) indicating locations proposed for developments with a potential
6 for regional impact, as determined by the regional planning commission,
7 including flood control projects, surface water supply projects, industrial parks,
8 office parks, shopping centers and shopping malls, airports, tourist attractions,
9 recreational facilities, private schools, public or private colleges, and
10 residential developments or subdivisions;

11 (D) setting forth the present and prospective location, amount,
12 intensity, and character of such land uses and the appropriate timing or
13 sequence of land development activities in relation to the provision of
14 necessary community facilities and services;

15 (E) indicating those areas that have the potential to sustain agriculture
16 and recommendations for maintaining them which may include transfer of
17 development rights, acquisition of development rights, or farmer assistance
18 programs.

19 (3) An energy element, which may include ~~an~~ a comprehensive analysis
20 of ~~energy~~ resources, needs, scarcities, costs, and problems within the region;
21 across all energy sectors, including electric, thermal, and transportation; a

1 statement of policy on the conservation and efficient use of energy and the
2 development and siting of distributed and utility-scale renewable energy
3 resources, ~~and~~; a statement of policy on patterns and densities of land use ~~and~~
4 ~~control devices~~ likely to result in conservation of energy; and a statement of
5 policy on and identification of potential areas for the development and siting of
6 renewable energy resources and areas that are inappropriate for siting those
7 resources or particular categories or sizes of those resources.

8 (4) A transportation element, which may consist of a statement of
9 present and prospective transportation and circulation facilities, and a map
10 showing existing and proposed highways, including limited access highways,
11 and streets by type and character of improvement, and where pertinent,
12 anticipated points of congestion, parking facilities, transit routes, terminals,
13 bicycle paths and trails, scenic roads, airports, railroads and port facilities, and
14 other similar facilities or uses, and recommendations to meet future needs for
15 such facilities, with indications of priorities of need, costs, and method of
16 financing.

17 * * *

1 Sec. 7. 24 V.S.A. § 4352 is added to read:

2 § 4352. CERTIFICATION OF ENERGY COMPLIANCE; REGIONAL AND
3 MUNICIPAL PLANS

4 (a) Regional plan certification. A regional planning commission may
5 submit its adopted regional plan to the Commissioner of Public Service
6 appointed under 30 V.S.A. § 1 for a certification of energy compliance. The
7 Commissioner shall issue such a certification on finding that the regional plan
8 is consistent with the statutes, goals, and policies listed in subdivision
9 4302(c)(7) of this title.

10 (b) Municipal plan certification. If the Commissioner of Public Service has
11 certified a regional plan that is in effect, a municipal legislative body within
12 the region may submit its adopted municipal plan to the regional planning
13 commission for a certification of energy compliance. Such a submission may
14 be made separately from or at the same time as a request for review and
15 approval of the municipal plan under section 4350 of this title. The regional
16 planning commission shall issue such a certification on finding that the
17 regional plan is consistent with the statutes, goals, and policies listed in
18 subdivision 4302(c)(7) of this title and the portions of the regional plan that
19 implement those statutes, goals, and policies.

20 (c) Standards. In determining whether to issue a certification of energy
21 compliance under this section, the Commissioner or regional planning

1 commission shall employ the standards for issuing such a certification
2 developed pursuant to 30 V.S.A. §§ 202(b)(6) and 202b(a)(3).

3 (d) Process. Review of whether to issue a certification under this section
4 shall include a public hearing noticed at least 15 days in advance by direct mail
5 to the requesting regional planning commission or municipal legislative body,
6 posting on the website of the entity from which the certification is requested,
7 and publication in a newspaper of general publication in the region or
8 municipality affected. The Commissioner or regional planning commission
9 shall grant or deny certification within two months of the receipt of a request
10 for certification. If certification is denied, the Commissioner or regional
11 planning commission shall state the reasons for denial in writing and, if
12 appropriate, suggest acceptable modifications. Submissions for certification
13 that follow a denial shall receive a grant or denial of certification within
14 45 days.

15 Sec. 8. 24 V.S.A. § 4382 is amended to read:

16 § 4382. THE PLAN FOR A MUNICIPALITY

17 (a) A plan for a municipality ~~may~~ shall be consistent with the goals
18 established in section 4302 of this title and compatible with approved plans of
19 other municipalities in the region and with the regional plan and shall include
20 the following:

1 (1) A statement of objectives, policies, and programs of the municipality
2 to guide the future growth and development of land, public services, and
3 facilities, and to protect the environment.

4 (2) A land use plan:

5 (A) consisting of a map and statement of present and prospective
6 land uses, indicating those areas proposed for forests, recreation, agriculture
7 (using the agricultural lands identification process established in 6 V.S.A. § 8),
8 residence, commerce, industry, public, and semi-public uses and open spaces
9 reserved for flood plain, wetland protection, or other conservation purposes;

10 (B) setting forth the present and prospective location, amount,
11 intensity, and character of such land uses and the appropriate timing or
12 sequence of land development activities in relation to the provision of
13 necessary community facilities and service; and

14 (C) identifying those areas, if any, proposed for designation under
15 chapter 76A of this title, together with, for each area proposed for designation,
16 an explanation of how the designation would further the plan's goals and the
17 goals of section 4302 of this title, and how the area meets the requirements for
18 the type of designation to be sought.

19 (3) A transportation plan, consisting of a map and statement of present
20 and prospective transportation and circulation facilities showing existing and
21 proposed highways and streets by type and character of improvement, and

1 where pertinent, parking facilities, transit routes, terminals, bicycle paths and
2 trails, scenic roads, airports, railroads, and port facilities, and other similar
3 facilities or uses, with indications of priority of need.

4 (4) A utility and facility plan, consisting of a map and statement of
5 present and prospective community facilities and public utilities showing
6 existing and proposed educational, recreational and other public sites,
7 buildings and facilities, including hospitals, libraries, power generating plants
8 and transmission lines, water supply, sewage disposal, refuse disposal, storm
9 drainage, and other similar facilities and activities, and recommendations to
10 meet future needs for community facilities and services, with indications of
11 priority of need, costs and method of financing.

12 (5) A statement of policies on the preservation of rare and irreplaceable
13 natural areas; and scenic and historic features and resources.

14 * * *

15 (9) An energy plan, including ~~an~~ a comprehensive analysis of energy
16 resources, needs, scarcities, costs, and problems within the municipality; across
17 all energy sectors, including electric, thermal, and transportation; a statement
18 of policy on the conservation and efficient use of energy, including programs,
19 such as thermal integrity standards for buildings, to implement that policy; a
20 statement of policy on the development and siting of distributed and
21 utility-scale renewable energy resources; a statement of policy on patterns and

1 densities of land use likely to result in conservation of energy and a statement
2 of policy on and identification of potential areas for the development and siting
3 of renewable energy resources and areas that are inappropriate for siting those
4 resources or particular categories or sizes of those resources.

5 * * *

6 Sec. 9. 30 V.S.A. § 202 is amended to read:

7 § 202. ELECTRICAL ENERGY PLANNING

8 (a) The Department of Public Service, through the Director for Regulated
9 Utility Planning, shall constitute the responsible utility planning agency of the
10 State for the purpose of obtaining for all consumers in the State proper utility
11 service at minimum cost under efficient and economical management
12 consistent with other public policy of the State. The Director shall be
13 responsible for the provision of plans for meeting emerging trends related to
14 electrical energy demand, supply, safety, and conservation.

15 (b) The Department, through the Director, shall prepare an electrical energy
16 plan for the State. The Plan shall be for a 20-year period and shall serve as a
17 basis for State electrical energy policy. The Electric Energy Plan shall be
18 based on the principles of “least cost integrated planning” set out in and
19 developed under section 218c of this title. The Plan shall include at a
20 minimum:

1 (1) an overview, looking 20 years ahead, of statewide growth and
2 development as they relate to future requirements for electrical energy,
3 including patterns of urban expansion, statewide and service area economic
4 growth, shifts in transportation modes, modifications in housing types, and
5 design, conservation, and other trends and factors which, as determined by the
6 Director, will significantly affect State electrical energy policy and programs;

7 (2) an assessment of all energy resources available to the State for
8 electrical generation or to supply electrical power, including, among others,
9 fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy
10 and strategies for minimizing the economic and environmental costs of energy
11 supply, including the production of pollutants, by means of efficiency and
12 emission improvements, fuel shifting, and other appropriate means;

13 (3) estimates of the projected level of electrical energy demand;

14 (4) a detailed exposition, including capital requirements and the
15 estimated cost to consumers, of how such demand shall be met based on the
16 assumptions made in subdivision (1) of this subsection and the policies set out
17 in subsection (c) of this section; ~~and~~

18 (5) specific strategies for reducing electric rates to the greatest extent
19 possible in Vermont over the most immediate six-year period, for the next
20 succeeding six-year period, and long-term sustainable strategies for achieving
21 and maintaining the lowest possible electric rates over the full 20-year

1 planning horizon consistent with the goal of maintaining a financially stable
2 electric utility industry in Vermont; and

3 (6) the following for use as guidance to municipal and regional planning
4 commissions in preparing municipal and regional plans under 24 V.S.A.
5 chapter 117 that are consistent with the statutes listed in 24 V.S.A.
6 § 4302(c)(7) and with the Plan and in obtaining a certification of energy
7 compliance under that chapter:

8 (A) specific policies on the conservation and efficient use of electric
9 energy and the development and siting of renewable electric generation,
10 developed in accordance with 24 V.S.A. § 4302(c)(7); and

11 (B) based on 24 V.S.A. § 4302(c)(7) and the policies developed
12 under subdivision (A) of this subdivision (6), a list of standards for use in
13 determining whether municipal and regional plans should receive a certificate
14 of energy compliance under 24 V.S.A. § 4352.

15 (c) In developing the Plan, the Department shall take into account the
16 protection of public health and safety; preservation of environmental quality;
17 the goals of 24 V.S.A. § 4302; the potential for reduction of rates paid by all
18 retail electricity customers; the potential for reduction of electrical demand
19 through conservation, including alternative utility rate structures; use of load
20 management technologies; efficiency of electrical usage; utilization of waste

1 heat from generation; and utility assistance to consumers in energy
2 conservation.

3 (d) In establishing plans, the Director shall:

4 (1) Consult with:

5 (A) the public;

6 (B) Vermont municipal utilities and planning commissions;

7 (C) Vermont cooperative utilities;

8 (D) Vermont investor-owned utilities;

9 (E) Vermont electric transmission companies;

10 (F) environmental and residential consumer advocacy groups active
11 in electricity issues;

12 (G) industrial customer representatives;

13 (H) commercial customer representatives;

14 (I) the Public Service Board;

15 (J) an entity designated to meet the public's need for energy
16 efficiency services under subdivision 218c(a)(2) of this title;

17 (K) other interested State agencies; ~~and~~

18 (L) other energy providers; and

19 (M) the regional planning commissions.

20 * * *

1 (h) The Plans adopted under this section shall become the electrical energy
2 portion of the State Energy Plan.

3 * * *

4 Sec. 10. 30 V.S.A. § 202b is amended to read:

5 § 202b. STATE COMPREHENSIVE ENERGY PLAN

6 (a) The Department of Public Service, in conjunction with other State
7 agencies designated by the Governor, shall prepare a State Comprehensive
8 Energy Plan covering at least a 20-year period. The Plan shall seek to
9 implement the State energy policy set forth in section 202a of this title and
10 shall be consistent with the goals of 24 V.S.A. § 4302. The Plan shall include:

11 (1) a comprehensive analysis and projections regarding the use, cost,
12 supply, and environmental effects of all forms of energy resources used within
13 Vermont; ~~and~~

14 (2) recommendations for State implementation actions, regulation,
15 legislation, and other public and private action to carry out the comprehensive
16 energy plan; and

17 (3) the following for use as guidance to municipal and regional planning
18 commissions in preparing municipal and regional plans under 24 V.S.A.
19 chapter 117 that are consistent with the statutes listed in 24 V.S.A.
20 § 4302(c)(7) and with the Plan and in obtaining a certification of energy
21 compliance under that chapter:

1 (A) specific policies on the conservation and efficient use of energy
2 and the development and siting of energy facilities, developed in accordance
3 with 24 V.S.A. § 4302(c)(7); and

4 (B) based on 24 V.S.A. § 4302(c)(7) and the policies developed
5 under subdivision (A) of this subdivision (3), a list of standards for use in
6 determining whether municipal and regional plans should receive a certificate
7 of energy compliance under 24 V.S.A. § 4352.

8 (b) In developing or updating the Plan’s recommendations, the Department
9 of Public Service shall seek public comment by holding public hearings in at
10 least five different geographic regions of the State on at least three different
11 dates, and by providing notice through publication once a week and at least
12 seven days apart for two or more successive weeks in a newspaper or
13 newspapers of general circulation in the regions where the hearings will be
14 held, and by delivering notices to all licensed commercial radio and television
15 stations with transmitting facilities within the State, plus Vermont Public
16 Radio and Vermont Educational Television.

17 (c) The Department shall adopt a State Energy Plan on or before January 1,
18 2016 and shall readopt the Plan by every sixth January 1 thereafter. On
19 adoption or readoption, the Plan shall be submitted to the General Assembly.
20 The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not
21 apply to such submission.

1 (1) Upon adoption of the Plan, analytical portions of the Plan may be
2 updated and published biennially.

3 (2) Every fourth year after the adoption or re adoption of a Plan under
4 this section, the Department shall publish the manner in which the Department
5 will engage the public in the process of re adopting the Plan under this section.

6 (3) The publication requirements of subdivisions (1) and (2) of this
7 subsection may be met by inclusion of the subject matter in the Department's
8 biennial report.

9 (4) The Plan's implementation recommendations shall be updated by the
10 Department no less frequently than every six years. These recommendations
11 shall be updated prior to the expiration of six years if the General Assembly
12 passes a joint resolution making a request to that effect. If the Department
13 proposes or the General Assembly requests the revision of implementation
14 recommendations, the Department shall hold public hearings on the proposed
15 revisions.

16 (d) Distribution of the Plan to members of the General Assembly shall be
17 in accordance with the provisions of 2 V.S.A. § 20(a)-(c).

18 Sec. 11. INITIAL IMPLEMENTATION; CERTIFICATION

19 STANDARDS

20 (a) On or before October 1, 2016, the Department of Public Service shall
21 publish specific policies and standards in accordance with 30 V.S.A.

1 §§ 202(b)(6) and 202b(a)(3) as enacted by Secs. 8 and 10 of this act. Prior to
2 issuing these policies and standards, the Department shall post on its website a
3 draft set of initial policies and standards and provide notice and an opportunity
4 to comment and request a public hearing to all persons listed in 30 V.S.A.
5 § 202(d)(1). The Commissioner may elect to hold one or more public hearings
6 on the Commissioner's own initiative.

7 (b) On publication under subsection (a) of this section, the specific policies
8 and standards shall be considered an appendix to the currently adopted plans
9 under 30 V.S.A. §§ 202 and 202b. After this publication, the Department may
10 revise these policies and procedures in accordance with the procedures for
11 adopting and revising plans under those statutes.

12 Sec. 12. 30 V.S.A. § 248(b) is amended to read:

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

16 (1) With respect to an in-state facility, will not unduly interfere with the
17 orderly development of the region with due consideration having been given to
18 the recommendations of the municipal and regional planning commissions, the
19 recommendations of the municipal legislative bodies, and the land
20 conservation measures contained in the plan of any affected municipality.

21 However:

1 (A) ~~with~~ With respect to a natural gas transmission line subject to
2 Board review, the line shall be in conformance with any applicable provisions
3 concerning such lines contained in the duly adopted regional plan; and, in
4 addition, upon application of any party, the Board shall condition any
5 certificate of public good for a natural gas transmission line issued under this
6 section so as to prohibit service connections that would not be in conformance
7 with the adopted municipal plan in any municipality in which the line is
8 located; ~~and~~.

9 (B) ~~with~~ With respect to a ground-mounted solar electric generation
10 facility, the facility shall comply with the screening requirements of a
11 municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance
12 adopted under 24 V.S.A. § 2291(28), and the recommendation of a
13 municipality applying such a bylaw or ordinance, unless the Board finds that
14 requiring such compliance would prohibit or have the effect of prohibiting the
15 installation of such a facility or have the effect of interfering with the facility's
16 intended functional use.

17 **(C) With respect to an in-state electric generation facility, the**
18 **Board shall give substantial deference to the land conservation measures and**
19 **specific policies contained in a duly adopted regional and municipal plan that**
20 **has received a certificate of energy compliance under 24 V.S.A. § 4352. In**
21 **this subdivision (C), “substantial deference” means that a land conservation**

1 measure or specific policy shall be applied in accordance with its terms unless
2 there is a clear and convincing demonstration that other factors affecting the
3 general good of the State outweigh the application of the measure or policy.

4 * * *

5 (12) With respect to an in-state facility exceeding 150 kilowatts that
6 generates electricity from renewable energy, will be sited at a preferred
7 location as defined in section 8002 of this title or the applicant demonstrates
8 that the facility's other benefits to the State and its residents outweigh the
9 adverse impacts of the facility, if any, under the other criteria of this
10 subsection (b).

11 * * * Regulatory and Financial Incentives; Preferred Locations * * *

12 Sec. 13. 30 V.S.A. § 8002(30) is added to read:

13 (30) "Preferred location" means a site within the State on which a
14 renewable energy plant will be located that is one of the following:

15 (A) A new or existing structure, including a commercial or
16 residential building, a parking lot, or parking lot canopy, whose primary use is
17 not the generation of electricity or providing support for the placement of
18 equipment that generates electricity.

19 (B) A tract previously developed for a use other than siting a plant on
20 which a structure or impervious surface was lawfully in existence and use prior
21 to January 1 of the year in which an application for a certificate of public good

1 under section 248 of this title for the plant is filed or in which the plant seeks
2 an award of a contract under the standard offer program under section 8005a of
3 this title, whichever is earlier. To qualify under this subdivision (B), the limits
4 of disturbance of a proposed renewable energy plant must include either the
5 existing structure or impervious surface and shall not include any headwaters,
6 streams, shorelines, floodways, rare and irreplaceable natural areas, necessary
7 wildlife habitat, wetlands, endangered species, productive forestlands, and
8 primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

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

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

14 (E) The disturbed portion of a gravel pit, quarry, or similar site for
15 the extraction of a mineral resource, provided that all activities pertaining to
16 site reclamation required by applicable law or permit condition are satisfied
17 prior to the installation of the plant.

18 (F) A specific location designated in a duly adopted municipal plan
19 under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or
20 specific type or size of renewable energy plant, provided that the plant meets
21 any siting criteria recommended in the plan for the location. On or after

1 January 1, 2019, to qualify under this subdivision (F), the plan must be
2 certified under 24 V.S.A. § 4352.

3 (G) If the plant constitutes a net metering system, then in addition to
4 subdivisions (A) through (F) of this subdivision (30), a site designated by
5 Board rule as a preferred location.

6 Sec. 14. 30 V.S.A. § 8004(g) is added to read:

7 (g) Preferred locations. With respect to a renewable energy plant to be
8 located in the State whose energy or environmental attributes may be used to
9 satisfy the requirements of the RES, the Board shall exercise its authority
10 under this section and sections 8005 and 8006 of this title to promote siting
11 such a plant in a preferred location.

12 Sec. 15. 30 V.S.A. § 8005a is amended to read:

13 § 8005a. STANDARD OFFER PROGRAM

14 (a) Establishment. A standard offer program is established. To achieve the
15 goals of section 8001 of this title, the Board shall issue standard offers for
16 renewable energy plants that meet the eligibility requirements of this section.

17 The Board shall implement these standard offers by rule, order, or contract and
18 shall appoint a Standard Offer Facilitator to assist in this implementation. For
19 the purpose of this section, the Board and the Standard Offer Facilitator
20 constitute instrumentalities of the State.

1 (b) Eligibility. To be eligible for a standard offer under this section, a plant
2 must constitute a qualifying small power production facility under 16 U.S.C.
3 § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under
4 section 219a of this title, and must be a new standard offer plant. In this
5 section, “new standard offer plant” means a renewable energy plant that is
6 located in Vermont, that has a plant capacity of 2.2 MW or less, and that is
7 commissioned on or after September 30, 2009.

8 (c) Cumulative capacity. In accordance with this subsection, the Board
9 shall issue standard offers to new standard offer plants until a cumulative plant
10 capacity amount of 127.5 MW is reached.

11 (1) Pace. Annually commencing April 1, 2013, the Board shall increase
12 the cumulative plant capacity of the standard offer program (the annual
13 increase) until the 127.5-MW cumulative plant capacity of this subsection is
14 reached.

15 (A) Annual amounts. The amount of the annual increase shall be five
16 MW for the three years commencing April 1, 2013, 7.5 MW for the three years
17 commencing April 1, 2016, and 10 MW commencing April 1, 2019.

18 (B) Blocks. Each year, a portion of the annual increase shall be
19 reserved for new standard offer plants proposed by Vermont retail electricity
20 providers (the provider block), and the remainder shall be reserved for new

1 standard offer plants proposed by persons who are not providers (the
2 independent developer block).

3 (i) The portion of the annual increase reserved for the provider
4 block shall be 10 percent for the three years commencing April 1, 2013,
5 15 percent for the three years commencing April 1, 2016, and 20 percent
6 commencing April 1, 2019.

7 (ii) If the provider block for a given year is not fully subscribed,
8 any unsubscribed capacity within that block shall be added to the annual
9 increase for each following year until that capacity is subscribed and shall be
10 made available to new standard offer plants proposed by persons who are not
11 providers.

12 (iii) If the independent developer block for a given year is not
13 fully subscribed, any unsubscribed capacity within that block shall be added
14 to the annual increase for each following year until that capacity is
15 subscribed and:

16 (I) shall be made available to new standard offer plants
17 proposed by persons who are not providers; and

18 (II) may be made available to a provider following a written
19 request and specific proposal submitted to and approved by the Board.

20 (C) Adjustment; greenhouse gas reduction credits. The Board shall
21 adjust the annual increase to account for greenhouse gas reduction credits by

1 multiplying the annual increase by one minus the ratio of the prior year's
2 greenhouse gas reduction credits to that year's statewide retail electric sales.

3 (i) The amount of the prior year's greenhouse gas reduction
4 credits shall be determined in accordance with subdivision 8006a(a) of this
5 title.

6 (ii) The adjustment in the annual increase shall be applied
7 proportionally to the independent developer block and the provider block.

8 (iii) Greenhouse gas reduction credits used to diminish a
9 provider's obligation under section 8004 of this title may be used to adjust the
10 annual increase under this subsection (c).

11 (D) Pilot project; preferred locations. For a period of three years
12 commencing on January 1, 2017:

13 (i) The Board shall allocate the following portions of the
14 annual increase to new standard offer plants that will be wholly located in
15 one or more preferred locations other than parking lots or parking lot
16 canopies:

17 (I) one-sixth of the annual increase, during the first year;

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

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

1 **(ii) The Board separately shall allocate the following portions**
2 **of the annual increase to new standard offer plants that will be wholly**
3 **located on parking lots or parking lot canopies:**

4 **(I) one-sixth of the annual increase, during the first year;**

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 **(iii) To qualify for these allocations, the plant shall not require**
9 **the construction of a new substation by the interconnecting retail**
10 **electricity provider or by increasing the capacity of one or more of the**
11 **provider's existing facilities.**

12 **(iv) These allocations shall apply proportionally to the**
13 **independent developer block and provider block.**

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

18 (2) Technology allocations. The Board shall allocate the 127.5-MW
19 cumulative plant capacity of this subsection among different categories of
20 renewable energy technologies. These categories shall include at least each of
21 the following: methane derived from a landfill; solar power; wind power with a

1 plant capacity of 100 kW or less; wind power with a plant capacity greater than
2 100 kW; hydroelectric power; and biomass power using a fuel other than
3 methane derived from an agricultural operation or landfill.

4 * * *

5 (f) Price. The categories of renewable energy for which the Board shall set
6 standard offer prices shall include at least each of the categories established
7 pursuant to subdivision (c)(2) of this section. The Board by order shall
8 determine and set the price paid to a plant owner for each kWh generated
9 under a standard offer required by this section, with a goal of ensuring timely
10 development at the lowest feasible cost. The Board shall not be required to
11 make this determination as a contested case under 3 V.S.A. chapter 25.

12 (1) Market-based mechanisms. For new standard offer projects, the
13 Board shall use a market-based mechanism, such as a reverse auction or other
14 procurement tool, to obtain up to the authorized amount of a category of
15 renewable energy, if it first finds that use of the mechanism is consistent with:

16 (A) applicable federal law; and

17 (B) the goal of timely development at the lowest feasible cost.

18 (2) Avoided cost.

19 (A) The price paid for each category of renewable energy shall be the
20 avoided cost of the Vermont composite electric utility system if the Board
21 finds either of the following:

1 (i) Use of the pricing mechanism described in subdivision
2 (1)(market-based mechanisms) of this subsection (f) is inconsistent with
3 applicable federal law.

4 (ii) Use of the pricing mechanism described in subdivision
5 (1)(market-based mechanisms) of this subsection (f) is reasonably likely to
6 result in prices higher than the prices that would apply under this
7 subdivision (2).

8 (B) ~~For the purpose of~~ As used in this subsection (f), the term
9 “avoided cost” means the incremental cost to retail electricity providers of
10 electric energy or capacity or both, which, but for the purchase through the
11 standard offer, such providers would obtain from distributed renewable
12 generation that uses the same generation technology as the category of
13 renewable energy for which the Board is setting the price. ~~For the purpose of~~
14 As used in this subsection (f), the term “avoided cost” also includes the
15 Board’s consideration of each of the following:

16 (i) The relevant cost data of the Vermont composite electric utility
17 system.

18 (ii) The terms of the contract, including the duration of the
19 obligation.

1 (iii) The availability, during the system’s daily and seasonal peak
2 periods, of capacity or energy purchased through the standard offer, and the
3 estimated savings from mitigating peak load.

4 (iv) The relationship of the availability of energy or capacity
5 purchased through the standard offer to the ability of the Vermont composite
6 electric utility system or a portion thereof to avoid costs.

7 (v) The costs or savings resulting from variations in line losses
8 and other impacts to the transmission or distribution system from those that
9 would have existed in the absence of purchases through the standard offer.

10 (vi) The supply and cost characteristics of plants eligible to
11 receive the standard offer.

12 * * *

13 **(5) Price; preferred location pilots. For the period during which the**
14 **Board allocates capacity to new standard offer plants that will be wholly**
15 **located in one or more preferred locations as set forth in subdivision**
16 **(c)(1)(D) of this section, the following shall apply to the price paid to such**
17 **a plant:**

18 **(A) In using a market-based mechanism such as a reverse auction**
19 **to determine this price for each of the two allocations of capacity, the**
20 **Board shall compare only the proposals of plants that qualify for the**
21 **allocation.**

1 (1) The rules shall establish and maintain a net metering program that:

2 * * *

3 (G) accounts for changes over time in the cost of technology; ~~and~~

4 (H) allows a customer to retain ownership of the environmental
5 attributes of energy generated by the customer’s net metering system and of
6 any associated tradeable renewable energy credits or to transfer those attributes
7 and credits to the interconnecting retail provider, and:

8 (i) if the customer retains the attributes, reduces the value of the
9 credit provided under this section for electricity generated by the customer’s
10 net metering system by an appropriate amount; and

11 (ii) if the customer transfers the attributes to the interconnecting
12 provider, requires the provider to retain them for application toward
13 compliance with sections 8004 and 8005 of this title; and

14 (I) promotes the siting of new metering systems in preferred
15 locations.

16 * * *

17 (3) The rules shall establish standards and procedures governing
18 application for and issuance or revocation of a certificate of public good for net
19 metering systems under the provisions of section 248 of this title. In
20 establishing these standards and procedures, ~~the rules:~~

1 (A) The rules may waive the requirements of section 248 of this title
2 that are not applicable to net metering systems, including criteria that are
3 generally applicable to public service companies as defined in this title;

4 (B) The rules may modify notice and hearing requirements of this
5 title as the Board considers appropriate;

6 (C) The rules shall seek to simplify the application and review
7 process as appropriate; ~~and~~.

8 (D) ~~with~~ With respect to net metering systems that exceed 150 kW in
9 plant capacity, shall apply the so-called “Quechee” test for aesthetic impact as
10 described by the Vermont Supreme Court in the case of In re Halnon, 174 Vt.
11 515 (2002) (mem.). The rules and application form shall state the components
12 of this test.

13 (E) With respect to a net metering system exceeding 15 kW in plant
14 capacity, the rules shall not waive or include provisions that are less stringent
15 than the following, notwithstanding any contrary provision of law:

16 (i) the requirement of subdivision 248(a)(4)(C) of this title to
17 provide a copy of the application to the Agencies of Agriculture, Food and
18 Markets and of Natural Resources; the Department of Public Service; the
19 Division for Historic Preservation; the municipal legislative body; and the
20 municipality and regional planning commissions; and

1 net metering system that is greater than 15 kW in plant capacity and is to be
2 located outside the designated tract.

3 (f) The Board may allow the net metering of a portion of a renewable
4 energy plant whose plant capacity exceeds 500 kW if each of the following
5 applies:

6 (1) The plant meets the definition of net metering system under section
7 8002 of this title but for its plant capacity.

8 (2) The plant has obtained the consent of the interconnecting retail
9 electricity provider.

10 (3) The amount of plant capacity to be net metered does not exceed
11 500 kW.

12 (4) With respect to the amount of the plant capacity to be net metered:

13 (A) The plant will allocate the bill credits to the host municipality or
14 to customers within a five-mile radius of the facility, or both.

15 (B) The plant will transfer the associated environmental attributes
16 and tradeable renewable energy credits to the interconnecting provider, which
17 shall retire them and apply them toward compliance with the RES.

1 (2) Guidance and information to be provided by the PAO shall include
2 the following:

3 (A) An explanation of the proceeding, including its purpose; its type,
4 such as rulemaking or contested case; and the restrictions or lack of restrictions
5 applicable to the type of proceeding, such as whether ex parte communications
6 are prohibited.

7 (B) Answers to procedural questions and direction to the statutes and
8 rules applicable to the proceeding.

9 (C) How to participate in the proceeding including, if necessary for
10 participation, how to file to a motion to intervene and how to submit prefiled
11 testimony. The Board shall create forms and templates for motions to
12 intervene, prefiled testimony, and other types of documents commonly filed
13 with the Board, which the PAO shall provide to a person on request. The
14 Board shall post these forms and templates on the Board’s website.

15 (D) The responsibilities of intervenors and other parties.

16 (E) The status of the proceeding. Examples of a proceeding’s status
17 include: a petition has been filed; the proceeding awaits scheduling a
18 prehearing conference or hearing; parties are conducting discovery or
19 submitting prefiled testimony; hearings are concluded and parties are preparing
20 briefs; and the proceeding is under submission to the Board and awaits a
21 decision. For each proceeding in which the next action constitutes the issuance

1 of an order, decision, or proposal for decision by the Board or a hearing
2 officer, the Chair or assigned hearing officer shall provide the PAO with an
3 expected date of issuance and the PAO shall provide this expected date to
4 requesting parties or members of the public.

5 (3) For each proceeding within the scope of subdivision (1) of this
6 subsection, the Board shall post, on its website, electronic copies of all filings
7 and submissions to the Board and all orders of the Board.

8 (4) The Board shall adopt rules or procedures to ensure that the
9 communications of the PAO with the Board's members and other employees
10 concerning contested cases do not contravene the requirements of the
11 Administrative Procedure Act applicable to such cases.

12 (5) The PAO shall have a duty to provide requesting parties and
13 members of the public with information that is accurate to the best of the
14 PAO's ability. The Board and its other employees shall have a duty to transmit
15 accurate information to the PAO. However, the Board and any assigned
16 hearing officer shall not be bound by statements of the PAO.

17 (6) The PAO shall not be an advocate for any person and shall not have
18 a duty to assist a person in the actual formation of the person's position or
19 arguments before the Board or the actions necessary to advance the person's
20 position or arguments such as the actual preparation of motions, memoranda,
21 or prefiled testimony.

1 (7) The Board may assign secondary duties to the PAO that do not
2 conflict with the PAO’s execution of his or her duties under this subsection.

3 Sec. 19. POSITION; APPROPRIATION

4 The following classified position is created in the Public Service Board—
5 one permanent, full-time Public Assistance Officer for the purpose of Sec. 2 of
6 this act. There is appropriated to the Public Service Board for fiscal year 2017
7 from the special fund described in 30 V.S.A. § 22 the amount of \$100,000.00
8 for the purpose of this position.

9 Sec. 20. 30 V.S.A. § 248(a)(4) is amended to read:

10 (4)(A) With respect to a facility located in the State, the Public Service
11 Board shall hold a nontechnical public hearing on each petition for such
12 finding and certificate in at least one county in which any portion of the
13 construction of the facility is proposed to be located.

14 (B) The Public Service Board shall hold technical hearings at
15 locations which it selects.

16 (C) At the time of filing its application with the Board, copies shall
17 be given by the petitioner to the Attorney General and the Department of
18 Public Service, and, with respect to facilities within the State, the Department
19 of Health, Agency of Natural Resources, Historic Preservation Division,
20 Agency of Transportation, Agency of Agriculture, Food and Markets, and to
21 the chair or director of the municipal and regional planning commissions and

1 the municipal legislative body for each town and city in which the proposed
2 facility will be located.

3 (D) Notice of the public hearing shall be published and maintained
4 on the Board’s website for at least 12 days before the day appointed for the
5 hearing. Notice of the public hearing shall be published once in a newspaper
6 of general circulation in the county or counties in which the proposed facility
7 will be located, and the notice shall include an Internet address where more
8 information regarding the proposed facility may be viewed.

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

14 (F) The Agency of Agriculture, Food and Markets shall have the
15 right to appear as a party in any proceedings held under this subsection.

16 (G) The regional planning commission for the region in which the
17 facility is located shall have the right to appear as a party in any proceedings
18 held under this subsection. The regional planning commission of an adjacent
19 region shall have the same right if the facility is located within 500 feet of the
20 boundary of that planning commission.

1 (H) The legislative body and the planning commission for the
2 municipality in which a facility is located shall have the right to appear as a
3 party in any proceedings held under this subsection. The legislative body and
4 planning commission of an adjacent municipality shall have the same right if
5 the facility is located within 500 feet of the boundary of that adjacent
6 municipality.

7 (I) When a person has the right to appear and participate in a
8 proceeding before the Board under this chapter, the person may activate this
9 right by filing a letter with the Board stating that the person appears through
10 the person’s duly authorized representative, signed by that representative.

11 (J) With respect to an application for an electric generation facility
12 with a capacity that is greater than 15 kilowatts:

13 (i) In addition to any other information required by the Board, the
14 application shall include information that delineates:

15 (I) the full limits of physical disturbance due to the construction
16 and operation of the facility and related infrastructure, including areas
17 disturbed due to the creation or modification of access roads and utility lines
18 and the clearing or management of vegetation;

19 (II) the presence and total acreage of primary agricultural soils
20 as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in

1 connection with the construction and operation of the facility and the amount
2 of those soils to be disturbed;

3 (III) all visible infrastructure associated with the facility; and

4 (IV) all impacts of the facility's construction and operation
5 under subdivision (b)(5) of this section, including impacts due to the creation
6 or modification of access roads and utility lines and the clearing or
7 management of vegetation.

8 (ii) When all parties to an application for an electric generation
9 facility under this section are known but before any technical hearings are held,
10 the Board shall determine whether the proceeding is appropriate for mediation
11 and, if this determination is affirmative, shall direct the parties to engage in
12 mediation. The parties shall jointly choose and shall share the costs of the
13 mediator.

14 Sec. 21. 30 V.S.A. § 248(f) is amended to read:

15 (f) However, plans for the construction of such a facility within the State
16 must be submitted by the petitioner to the municipal and regional planning
17 commissions no less than 45 days prior to application for a certificate of public
18 good under this section, unless the municipal and regional planning
19 commissions shall waive such requirement.

20 (1) Such municipal or regional planning commission may hold a public
21 hearing on the proposed plans. Such commissions shall make

1 recommendations, if any, to the Public Service Board and to the petitioner at
2 least seven days prior to filing of the petition with the Public Service Board.

3 (2) The petitioner’s application shall respond to each comment made at
4 the public hearing or received by the petitioner with respect to the submittal
5 made under this subsection.

6 * * * CPG Conditions: Aesthetics Mitigation and Decommissioning * * *

7 Sec. 22. 30 V.S.A. § 248(t) and (u) are added to read:

8 (t) A certificate under this section for an in-state facility shall require the
9 following with respect to all measures to be undertaken to mitigate the impacts
10 of the facility on aesthetics and scenic beauty:

11 **(1) The certificate holder shall obtain a certification from a**
12 **qualified expert that all required mitigation measures have been**
13 **undertaken and all required plantings have been installed.**

14 **(2) The certificate holder shall have control over all vegetation used**
15 **to demonstrate that the facility will not have an undue adverse effect on**
16 **aesthetics and all locations on which mitigation plantings are required to**
17 **be installed. As used in this subdivision, “control” means that the**
18 **certificate holder has an enforceable right to install and maintain**
19 **plantings and to manage vegetation.**

20 **(3) For three years after installation of all required plantings, the**
21 **certificate holder annually shall submit documentation by a qualified**

1 **expert that the plantings have been maintained in accordance with the**
2 **approved plans.**

3 (4) The certificate holder shall have an ongoing duty to maintain the
4 plantings in accordance with the approved plans and replace dead or diseased
5 plantings as soon as seasonably possible.

6 **(5) The Board shall approve each qualified expert employed to issue**
7 **a certification under this subsection. However, a qualified expert retained**
8 **by the Department of Public Service shall be the one to make the**
9 **certification if the Department has retained such an expert during the**
10 **course of the proceeding leading to issuance of the certificate.**

11 (u) A certificate under this section for an in-state electric generation facility
12 with a capacity that is greater than 15 kilowatts shall require the
13 decommissioning or dismantling of the facility and ancillary improvements at
14 the end of the facility's useful life and the posting of a bond or other security
15 acceptable to the Board that is sufficient to finance the decommissioning or
16 dismantling activities in full.

* * * Renewable Energy Credits; Transparency * * *

Sec. 23. 30 V.S.A. § 8006 is amended to read:

§ 8006. TRADEABLE CREDITS; ENVIRONMENTAL ATTRIBUTES;
RECOGNITION, MONITORING, AND DISCLOSURE

(a) The Board shall establish or adopt a system of tradeable renewable energy credits for renewable resources that may be earned by electric generation qualifying for the RES. The system shall recognize tradeable renewable energy credits monitored and traded on the New England Generation Information System (GIS); shall provide a process for the recognition, approval, and monitoring of environmental attributes attached to renewable energy that are eligible to satisfy the requirements of sections 8004 and 8005 of this title but are not monitored and traded on the GIS; and shall otherwise be consistent with regional practices.

(b) The Board shall ensure that the system established under subsection (a) of this section is accessible to the public and that a member of the public may access the system through the Internet and, without difficulty, determine the identity of the current owner of each tradeable renewable energy credit generated by each renewable energy plant located in the State of Vermont; each date, if any, on which such a credit was transferred from one person to another; and, for each such transfer, the identity of the transferor and the transferee.

1 (c) The Board shall ensure that all electricity provider and provider-affiliate
2 disclosures and representations made with regard to a provider’s portfolio are
3 accurate and reasonably supported by objective data. Further, the Board shall
4 ensure that providers disclose the types of generation used and shall clearly
5 distinguish between energy or tradeable energy credits provided from
6 renewable and nonrenewable energy sources and existing and new renewable
7 energy.

8 * * * Fees; Agency of Agriculture, Food and Markets * * *

9 Sec. 24. 30 V.S.A. § 248c is added to read:

10 § 248c. FEES; AGENCY OF AGRICULTURE, FOOD AND MARKETS;

11 PARTICIPATION IN ENERGY SITING PROCEEDINGS

12 (a) Establishment. This section establishes fees for the purpose of
13 supporting the role of the Agency of Agriculture, Food and Markets (the
14 Agency) in reviewing applications for in-state facilities under section 248 of
15 this title. These fees are in addition to the fees under section 248b of this title.

16 (b) Payment. The applicant shall pay the fee into the State Treasury at the
17 time the application for a certificate of public good under section 248 of this
18 title is filed with the Public Service Board in an amount determined in
19 accordance with this section. The fee shall be credited to a special fund that
20 shall be established and managed pursuant to 32 V.S.A. chapter 7,

1 subchapter 5, and which shall be available to the Agency to offset the cost of
2 participation in proceedings under section 248 of this title.

3 (c) Application. The fee established under this section shall apply only if
4 any generation equipment, utility lines, roads, or other improvements
5 associated with an in-state facility seeking a certificate of public good under
6 section 248 of this title will be located on a tract of land that contains primary
7 agricultural soils as defined in 10 V.S.A. § 6001.

8 (c) Amount. The fee shall be 10 percent of the amount calculated in
9 accordance with subsection 248b(d) of this title.

10 * * * Effective Dates * * *

11 Sec. 25. EFFECTIVE DATES

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

13 (1) This section and Sec. 11 (initial implementation; certification
14 standards) shall take effect on passage. The following in Secs. 2, 9, and 10
15 shall apply on passage to the activities of the Department of Public Service
16 under Sec. 11: 24 V.S.A. § 4302(c) and 30 V.S.A. §§ 202(b)(6) and
17 202b(a)(3).

18 (2) Sec. 17 (net metering systems) shall take effect on January 2, 2017,
19 and shall amend 30 V.S.A. § 8010 as amended by 2015 Acts and Resolves
20 No. 56, Sec. 12.

21

1 (Committee vote: _____)

2

3

Senator _____

4

FOR THE COMMITTEE