

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.577 **Name of Bill:** Public service; municipal electric departments; electric cooperatives; voter approval; out-of-state electricity purchases

Agency/ Dept: Public Service Department **Author of Bill Review:** Carol Flint, Geoff Commons, Jim Porter, Jon Copans

Date of Bill Review: May 23, 2016 **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

Sec. 1 and 2 - Municipal and Cooperative Electric Utilities; Energy Purchases; Voter Approval

Public Service Department has reviewed and is neutral on these provisions. They raise no concerns.

Sec. 3, 4, 5 - Vermont Hydroelectric Power Acquisition; Working Group

Check with Secretary of Administration Justin Johnson. The Department's understanding is that these provisions are not essential. An earlier version of these provisions restricted the Department's ability to purchase power that would have been problematic, but we have confirmed that this language has been removed.

Sec. 5a, 5b - Telecommunications Siting; Local Input; Collocation

This portion only includes the sections related to telecommunications (Sec. 5a, Sec. 5b and 5d.)

Sec. 5d requires VTel to return \$2.6 million it received from the Vermont Telecommunications Authority (VTA) to provide mobile voice service, if by November 1, 2017, VTel is not providing voice service to 2000 customers over its federally funded wireless broadband network. It is likely that this contingency will not occur and VTel will be obligated to return the \$2.6 to the connectivity fund for broadband grants.

The Department has no objection to this section of the bill.

Is there a need for this bill? No.

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

Sec. 5a and 5b of the bill makes changes to 248a (the telecommunications facilities siting process) that strengthens the requirement to collocate on existing towers, strengthens the definition of good cause and substantial deference, and extends the notice filing requirement for proposed cell towers. There is a requirement where the Department would likely have to retain radio frequency experts prior to the petition being filed and bill the cost back to the petitioner.

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?

None.

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)

This bill strengthens the role of towns in cell tower siting. This bill was largely a response to VTel and its poor record of working with towns in cell tower siting proceedings. Particularly this bill was brought by the representative from Calais in response to a particularly unpleasant proceeding in which VTel sought to place a tower in Calais. If VTel were going to continue to construct towers, there might be more of a need for this bill, however, VTel is finished permitting towers. Accordingly, this bill punishes AT&T and Verizon who generally have a good record of working with the parties, including towns, because of the actions of VTel which does not have a good record of working with towns and other parties.

Other Stakeholders:

a. Who else is likely to support the proposal and why?

Towns support this bill as it strengthens the role of the towns and places higher burdens upon the developers.

b. Who else is likely to oppose the proposal and why?

Cell tower developers (AT&T and Verizon) oppose the bill. It places more burdens on the permitting process and may result in increased cost of permitting. 248a sunsets on July 1, 2017, and the wireless providers (AT&T and Verizon) repeatedly asked that if the changes to 248a anticipated in this bill were going to happen, that the sunset date should be extended.

Rationale for recommendation:

The language in this bill was supported by the Department as part of a larger telecom bill. The Department strongly supported an increase in the Vermont Universal Service Fund Assessment

and agreed to the 248a language as a means of getting the larger bill passed. As the other parts of the telecom bill were not passed by the Senate, the Department feels that the bill passed by the Senate is more negative than positive. The Department would likely not have supported the changes to 248a as a stand-alone bill.

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.*

As stated above, the Department supported the 248a changes only as a part of a larger bill that included a fee increase to the VUSF which were not adopted. Accordingly we are more negative in position with regard to the telecom portions of this bill.

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.

Sec. 5c - Department of Public Service; CPG; Complaint Protocol

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

Sec.5c – establishes and implements a protocol for handling complaints about the alleged failure of a company to comply with the terms and conditions of a certificate for public good issued by the Public Service Board under 30 V.S.A. §§ 248 or 248a.

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

Sec.5c – No, however this bill will help by providing a clear process and system for collecting complaint information about companies who do not comply or are thought not to be in compliance with their certificates for public good. The Department could and would likely initiate an effort similar to this regardless of the fate of H.577.

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

Sec.5c – Fiscal impacts are limited to increased costs for additional database programming, training costs for employees to learn about the new protocol and the labor costs for the additional reporting burdens on existing employees to create the protocol and new reporting requirements. Programmatic implications are only minor adjustments in our work activities and reporting procedures referenced previously with the exception of the larger task to write and publish the annual report to the General Assembly.

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?

Sec.5c – potentially there might be minor reduction in costs of the administrative staff at the Public Service Board due to fewer complaint calls. There will need to be coordination with other agencies such as ANR, AAFM, and ACCD as they will have jurisdiction over certain CPG conditions.

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)*

Sec.5c – Regulated entities (utilities, generators) may have some increased costs related to additional reporting burdens. However, they may appreciate a single entity handling complaint calls. The Department will also have bill back authority when complaints require the engagement of outside experts.

Other Stakeholders:

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

This proposal was initiated because those Vermonters who live near and oppose wind and solar generation facilities have had ongoing frustrations about perceived inadequate responses to their complaints. Those neighbors and others who tend to be more concerned or oppositional towards local electric generation and telecommunications facilities will appreciate having greater clarity regarding CPG complaints and how they are handled.

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

Those who hold and will hold Certificates of Public Good, including utilities, developers, and private owners, may be concerned about the complaint process and the likelihood that they will face additional costs and legal process when someone files a complaint about their facility. In particular, those holders of CPG's for existing wind facilities will be concerned about how this new complaint protocol interacts with the existing protocol in place for each facility.

The public reporting requirement could cut both ways. It will demonstrate the magnitude of concern about generation and telecom facilities. For many, this will be an indication that any purported problems with the facility are limited. For others, the report will be used to try to demonstrate that solar, wind, and other facilities are having an impact on Vermonters and the landscape.

Rationale for recommendation: *Justify recommendation stated above.*

The Department is comfortable with the language in Sec. 5c. Modifications were made to this language in response to concerns raised by the Department. We can and will implement this. Much of this will happen with or without passage of H.577. Legislatively, we would be better off with direct enforcement authority of CPG conditions. The report required in this bill may lay the groundwork to that future conversation.

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.*

Sec.5c -- subsection (f) rewrite as follows -- With its report filed under this section on or before January 1, 2018, the Commissioner shall make recommendations to the General Assembly regarding the establishment of and payment for an ongoing process for monitoring a company's compliance with a certificate of public good for the purpose of reducing the filing of individual complaints under this section.

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

Sec. 5d - VTA Grants; Compliance; Refund

This section covered in review of Sec. 5a and Sec. 5b above

Sec. 5e - Communications Union Districts; Budget; Hearing; Date Changes

The Department has reviewed and has no concerns about these minor changes.

Sec. 5f - Public Advocacy; Department of Public Service; Attorney General; Annual Report

What the bill requires

The bill imposes two basic requirements on the Department. The first is to produce an annual report to be filed with the legislature regarding the PSD's activities; the second is to cooperate with the Attorney General's office (AGO), which is required to "monitor and detail at least one rate proceeding annually" and make findings and recommendations.

The report to be submitted to the legislature must summarize significant cases and other matters in which the Public Advocacy Division (PAD) engages. In addition to summaries the report must explain how the PSD's positions in all of these matters align with the PSD's duties under Title 30. The report must also include the terms of any settlements entered into by PSD and explain what benefits the PSD achieved for residential ratepayers and what was conceded to the company's benefit. The required report sunsets after three years. In the last days of the session we proposed changes to the purpose of the report to frame it in a more positive tone. Those changes were not included by the Senate.

The AGO is required to "monitor and detail" one rate proceeding per year for three years, and to make findings and recommendations "related to the effectiveness and independence of the Department's ratepayer advocacy." The bill provides that the AG shall have "full access to the work and work product of the Department" in connection with monitored rate cases, and the AGO's costs will be recovered from ratepayers. The AG's findings and recommendations must be included in the PSD's report to the legislature.

Effect on the Department

The stated purpose of this provision is to address concerns raised by some that the Department's effectiveness and "independence" in representing ratepayers has been compromised. The proceedings around the CVPS/GMP merger, the VGS Addison Expansion Project, and the absence of public disagreement between the PSD and utilities in rate cases and other matters have contributed to these concerns. Given the heavy workload of the PA division's attorneys and their continuing efforts to advance ratepayers' interests in a manner consistent with statute, one significant effect of H. 577 and the debate around it in the Senate Finance Committee was and is a detrimental impact on the morale of staff. Department staff, particularly the Public Advocacy division, work hard and are on the front line of debates about energy siting, and we seem to be getting no credit for that effort.

The annual reporting requirement contained in H.577 was initially proposed by the Department in the final version of the "Ratepayer Advocacy Report." The annual report will provide an opportunity for the Public Advocacy division and the Department as a whole to articulate to Vermonters how their interests were represented before the PSB and in other proceedings in the last year. Department attorneys will now be required to write summaries and statutory analyses for "significant" cases and other matters, in addition to current responsibilities. Added to the substantial effort required to process a large volume of cases, this new task will require additional work on behalf of staff. At least some of that effort will be helpful in summarizing the Department's advocacy and describing our efforts to Vermonters. We plan to do some version of this report with or without the bill.

The potential impacts of the requirement that the Attorney General monitor one rate case annually (the first will likely be the upcoming GMP base rates review) are difficult to surmise. The AG's role could act as a check on the approach the Department has taken in the proceeding and provide additional support for the work of the Department. Alternatively, it could be critical of any compromises reached. There is a possibility that such monitoring may increase the Department's bargaining leverage and therefore might facilitate better outcomes for ratepayers. One concern sometimes heard from the public relates to the extent to which utility matters are settled in private negotiations. AGO monitoring and publication of its findings, as well as the PSD's public explanation of its positions and settlements, may help to alleviate that concern and restore some credibility to the Department in how it handles these cases.

It is unknown how the AGO will approach its task and how a new AG will approach it beginning in 2017. It is conceivable that weighing in on ratemaking proceedings, and possibly also criticizing the PSD, would be perceived as politically advantageous. "Monitoring" could also become an avenue for impeding and complicating the PSD's work, although it is not clear how much of a threat that may be.

Secretary/Commissioner has reviewed this document:



Date:

5/24/16