

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: H. 199 Name of Bill: Act relating to siting approvals for energy facilities

Agency/ Dept: Public Service Dept. Author of Bill Review: Geoff Commons

Date of Bill Review: 02-26-2015 Related Bills and Key Players S. 48 and H. 100

Status of Bill: (check one): ☒ Upon Introduction ☐ As passed by 1<sup>st</sup> 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.*

Two changes to § 248 proposed: a new subsection of 248(a)(4) and revised language in 248(b)(1). The first would raise the evidentiary burden on the petitioner from "preponderance of the evidence" to "clear and convincing evidence" on any issue raised by a municipality, planning commission, or resident of the host municipality and related to § 248 review. Subsection 248(b)(1) relates to orderly development; the second revision would require facilities (except electric transmission facilities) to conform to local and regional plans. Existing provision for "due consideration" of plans would still apply to electric transmission. The bill would also delete the current last sentence of (b)(1) relating to natural gas transmission lines (which would have to conform to local/regional plans pursuant to the language proposed to be added).

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

Perhaps something like it, if one believes that the local voice over utility facility siting ought to be enhanced. The change in evidentiary burden seems clunky, especially since it would apply to any issue raised by any resident of the host municipality (some of whom can be quite imaginative). While giving more weight to local/regional plans may be useful, it would be more useful to do so in the context of a more comprehensive re-make of the regulatory structure (such as that envisioned by the Siting Commission report). Enhancing the importance of local entities, including residents, in the § 248 process might prompt greater pre-application community outreach by developers.

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

This could slow the flow of applications for renewable generation, and would add some new issues to § 248 proceedings. PSD bills back staff time to merchant generators in complex proceedings; by introducing more issues this could increase the number of these bill-backs, though not significantly. To the extent that increasing the burden on developers actually results in fewer approved projects, this bill could hamper progress toward the CEP's goals.

**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?**

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ANR is involved in most § 248 dockets. Fewer applications and/or an increase in substantive issues would likely have effects on ANR similar to the effects on PSD.

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)*  
Local and regional planners may appreciate the requirement that energy facilities conform to their plans. Neighbors and municipalities opposed to energy projects will like the requirement that petitioners have to respond to their issues and meet a heightened evidentiary burden to overcome them. Project developers will find the permitting process incrementally more expensive and time-consuming.

6. **Other Stakeholders:**

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

VLCT may support the increased weight given to local plans. Vermonters for a Clean Environment will likely support both revisions, particularly the extra burden to be carried in overcoming opposition from neighbors.

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

REV and renewable-energy developers and advocates will oppose both proposed revisions.

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

Overall this bill would impede deployment of renewable resources, and complicate litigation under § 248 by introducing different evidentiary standards for different issues and introducing new issues regarding conformance to local and regional plans.

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.*  
The proposed revision to § 248(a) (increasing evidentiary burden) is a non-starter, and can't really be fixed. The proposal to require conformance to local plans could be acceptable if (a) we wanted to go in that direction, and (b) it was fleshed out to require energy planning by local and regional planning commissions.
9. **Gubernatorial appointments to board or commission?** No.

Secretary/Commissioner has reviewed this document:



Date: 3/6/15