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**Sent:** Tuesday, May 12, 2015 6:36 PM

**To:** Springer, Darren

**CC:** Christopher Bray

**Subject:** H.40 - possible changes re setbacks and screening

**Attachments:** GENERAL-#309059-v1-H\_40;\_SNREC;\_substitute\_amendment.pdf

Below is a block copy of the three amendments just discussed that may be agreeable. Attached also is a copy of the Sen. Natural substitute report for ease of reference.

- a. In Sec. 26b, 30 V.S.A. § 248(s), in subdivision (3)(B), by striking out “setback area” and inserting in lieu thereof smaller setback

*Purpose:* clarify that the adjoining property owners with whom to reach agreement on reduced setback are those whose property adjoins that setback.

- b. In Sec. 26d, 24 V.S.A. § 4414(15), in subdivision (A), by striking out “other land development” and inserting in lieu thereof commercial development
- c. In Sec. 26e, 24 V.S.A. § 2291, in subdivision (28), in subdivision (A), by striking out “other land development” and inserting in lieu thereof commercial development

*Purpose of b and c:* This affects the sentence stating that the municipal screening can’t be more restrictive than what is applied to other land development in the municipality. This would clarify that the screening to compare to is what is required for commercial development in the municipality. Towns more often require screening for commercial than for residential (such as single family homes).

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H.40

Senator Bray, on behalf of the Committee on Natural Resources and Energy, moves to substitute an amendment for the amendment of the Committee on Natural Resources and Energy and recommend that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 2, 30 V.S.A. § 8004, in subsection (a), after the second occurrence of “renewable energy credits” by inserting that it owns and retires before the comma.

Second: In Sec. 2, 30 V.S.A. § 8004, by striking out subsection (b) (rules; procedures) and inserting in lieu thereof a new subsection (b) (rules) to read:

~~(d)(b) Rules.~~ The Board shall ~~provide, by order or rule,~~ adopt the ~~regulations and procedures~~ rules that are necessary to allow the Board and the Department to implement and supervise further the implementation and maintenance of ~~a renewable portfolio standard~~ the RESET program.

Third: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3), in subdivision (D), in the first sentence, by striking out “or procedures”, and in subdivision (F), by striking out each occurrence of “or procedures”.

Fourth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(E), after subdivision (ii), by inserting a subdivision (iii) to read:

(iii) To meet the requirements of this subdivision (3), one or more retail electricity providers may jointly propose with an energy efficiency entity

1 appointed under subdivision 209(d)(2) of this title an energy transformation  
2 project or group of such projects. The proposal shall include standards of  
3 measuring performance and methods to allocate savings and reductions in  
4 fossil fuel consumption and greenhouse gas emissions among each  
5 participating provider and efficiency entity.

6 Fifth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(F), by striking out  
7 subdivision (viii) and inserting in lieu thereof a new subdivision (viii) to read:

8 (viii) To ensure that, if an energy transformation project will  
9 increase the use of electric energy, the project incorporates best practices for  
10 demand management, uses technologies appropriate for Vermont, and  
11 encourages the installation of the technologies in buildings that meet minimum  
12 energy performance standards.

13 Sixth: In Sec. 3, 30 V.S.A. § 8005, in subdivision (a)(3)(G)(i), by striking  
14 out “strict”.

15 Seventh: In Sec. 3, 30 V.S.A. § 8005, in subdivision (d)(1), by striking out  
16 “of Portland, Maine”.

17 Eighth: In Sec. 4, 30 V.S.A. § 8005a, in subdivision (k)(3), in the last  
18 sentence, after “purchasing power” by striking out “from” and inserting in lieu  
19 thereof generated by.

20 Ninth: In Sec. 6, 30 V.S.A. § 8005b, by striking out subsection (b) and  
21 inserting in lieu thereof a new subsection (b) to read:

1       (b) The annual report under this section shall include at least each of the  
2       following:

3               (1) An assessment of the costs and benefits of the RESET Program  
4       based on the most current available data, including rate and economic impacts,  
5       customer savings, technology deployment, greenhouse gas emission reductions  
6       actually achieved, fuel price stability, and effect on transmission and  
7       distribution upgrade costs, and any recommended changes based on this  
8       assessment.

9               (2) Projections, looking at least 10 years ahead, of the impacts of the  
10       RESET Program. The Department shall employ an economic model to make  
11       these projections and shall consider at least three scenarios based on high,  
12       mid-range, and low energy price forecasts. The Department shall project, for  
13       the State, the RESET Program's impact in each of the following areas: electric  
14       utility rates; total energy consumption; electric energy consumption; fossil fuel  
15       consumption; and greenhouse gas emissions. The report shall compare the  
16       amount or level in each of these areas with and without the Program.

17               (3) An assessment of whether the requirements of the RESET  
18       Program have been met to date, and any recommended changes needed to  
19       achieve those requirements.

1        Tenth: In Sec. 6, 30 V.S.A. § 8005b, in subsection (c), by striking out  
2        subdivision (8) and by renumbering the remaining subdivision to be  
3        numerically correct.

4        Eleventh: By striking out Sec. 8 (Public Service Board rulemaking) and  
5        inserting in lieu thereof a new Sec. 8 to read:

6        Sec. 8. PUBLIC SERVICE BOARD IMPLEMENTATION

7        (a) Commencement. On or before August 31, 2015, the Public Service  
8        Board (the Board) shall commence a proceeding to implement Secs. 2 (sales of  
9        electric energy; RESET Program), 3 (RESET Program categories), and 7  
10       (tradeable renewable energy credits) of this act.

11       (b) Notice; comment; workshop. The proceeding shall include one or more  
12       workshops to solicit the input of potentially affected parties and the public.  
13       The Board shall provide notice of the workshops on its website and directly to  
14       the Department, Vermont's retail electricity providers, Renewable Energy  
15       Vermont, business organizations such as Associated Industries of Vermont,  
16       environmental and consumer advocacy organizations such as the Vermont  
17       Natural Resources Council and the Vermont Public Interest Research Group,  
18       and to any other person that requests direct notice or to whom the Board may  
19       consider direct notice appropriate. The Board also shall provide an  
20       opportunity for submission of written comments, which the notice shall  
21       include.

1        (c) Procedures; order. On or before July 1, 2016, the Board shall by order  
2        adopt initial procedures to implement Secs. 2, 3, and 7 of this act to take effect  
3        on January 1, 2017.

4        (d) On or before July 1, 2017, the Board shall commence rulemaking to  
5        implement Secs. 2, 3, and 7 of this act. The Board shall finally adopt these  
6        rules within eight months of commencing rulemaking, unless this period is  
7        extended by the Legislative Committee on Administrative Rules under  
8        3 V.S.A. § 843.

9        (e) Assistance. The Board and the Department of Public Service may  
10       retain experts and other personnel to assist them with the proceedings and  
11       rulemaking under this section and allocate the costs of these personnel to the  
12       electric distribution utilities in accordance with the process under 30 V.S.A.  
13       § 21.

14       Twelfth: In Sec. 12, 30 V.S.A. § 8010(c), in subdivision (2)(F), by striking  
15       out the third sentence and inserting in lieu thereof:

16       For example, a monthly credit amount may be higher if taken over 10 years  
17       and lower if taken over 20 years.

18       Thirteenth: By striking out Sec. 14a in its entirety and inserting in lieu  
19       thereof the following:

20       Sec. 14a. [Deleted.]

1        Fourteenth: By striking out Sec. 14b in its entirety and inserting lieu  
2 thereof a new Sec. 14b to read:

3        Sec. 14b. JOINT ENERGY COMMITTEE; RECOMMENDATION

4        (a) On or before February 15, 2016, the Joint Energy Committee under  
5 2 V.S.A. chapter 17 shall submit a recommendation to the House Committee  
6 on Commerce and Economic Development, Senate Committee on Finance,  
7 House Committee on Ways and Means, and House and Senate Committees on  
8 Natural Resources and Energy on:

9            (1) what revisions, if any, the Committee recommends that the General  
10 Assembly enact with respect to the statutes applicable to energy efficiency  
11 entities appointed and charges imposed under 30 V.S.A. § 209(d); and

12            (2) what legislation, if any, the Committee recommends that the General  
13 Assembly enact to clarify or alter the relationship of energy efficiency entities  
14 and charges under 30 V.S.A. § 209(d) with the energy transformation category  
15 adopted under Sec. 3 of this act, 30 V.S.A. § 8005(a).

16        (b) Prior to submitting its recommendation under this section, the Joint  
17 Energy Committee shall offer an opportunity for comment by affected State  
18 agencies; utilities; appointed energy efficiency entities; advocates for business,  
19 consumer, and environmental interests; and members of the public.

1        (c) For the purpose of this section, the Joint Energy Committee:

2            (1) may meet no more than four times during adjournment without prior  
3        approval of the Speaker of the House and the President Pro Tempore of the  
4        Senate; and

5            (2) shall have the administrative, technical, and professional assistance  
6        of the Office of Legislative Council and the Joint Fiscal Office.

7            (d) A bill or amendment during the 2016 session to adopt legislation  
8        regarding the issues to be addressed by the Joint Energy Committee under this  
9        section this act shall be in order.

10        Fifteenth: After Sec. 15, by inserting a Sec. 15a to read:

11        Sec. 15a. 30 V.S.A. § 209(j)(5) is added to read:

12            (5) This subdivision applies to a transferee of all or substantially all of  
13        the assets at the served property of an entity approved to participate in the  
14        self-managed energy efficiency program. The Board shall allow the transferee  
15        to continue as a participant in the self-managed energy efficiency program  
16        class in the same manner and under the same terms and conditions that the  
17        transferor participant was authorized to participate, provided:

18            (A) the transferor participant met the requirements of subdivision  
19        (4)(A) of this subsection (j) and the transferee otherwise meets the  
20        requirements of this subsection; and



1           (B) the transferee assumes the obligation to fulfill any outstanding  
2           commitment of the transferor participant under subdivision (4)(D) of this  
3           subsection.

4           Sixteenth: In Sec. 19, 30 V.S.A. § 248(b), by striking out subdivision (9)  
5           and inserting a new subdivision (9) to read:

6                   (9) with respect to a waste to energy facility;

7                   (A) is included in a solid waste management plan adopted pursuant to  
8           24 V.S.A. § 2202a, which is consistent with the State Solid Waste  
9           Management Plan; and

10                   (B) is included in a solid waste management plan adopted pursuant to  
11           24 V.S.A. § 2202a for the municipality and solid waste district from which  
12           1,000 tons or more per year of the waste is to originate, if that municipality or  
13           district owns an operating facility that already beneficially uses a portion of the  
14           waste;

15           Seventeenth: In Sec. 21, 30 V.S.A. § 8001(b), by striking out “and  
16           procedures” and inserting in lieu thereof ~~and procedures~~.

17           Eighteenth: After Sec. 26, by inserting a reader assistance and Secs. 26a  
18           through 26f to read:

19                   \* \* \* Solar Plants; Setback and Screening Requirements \* \* \*

20           Sec. 26a. 30 V.S.A. § 248(a)(4)(F) is added to read:

1           (F) 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.

4           Sec. 26b. 30 V.S.A. § 248(s) is added read:

5           (s) This subsection sets minimum setback requirements that shall apply to  
6           in-state ground-mounted solar electric generation facilities approved under this  
7           section.

8           (1) The minimum setbacks shall be:

9           (A) from a State or municipal highway, measured from the edge of  
10          the traveled way:

11           (i) 100 feet for a facility with a plant capacity exceeding  
12          150 kW; and

13           (ii) 40 feet for a facility with a plant capacity less than or equal to  
14          150 kW but greater than 15 kW.

15           (B) From each property boundary that is not a State or municipal  
16          highway:

17           (i) 50 feet for a facility with a plant capacity exceeding  
18          150 kW; and

19           (ii) 25 feet for a facility with a plant capacity less than or equal to  
20          150 kW but greater than 15 kW.

1           (2) This subsection does not require a setback for a facility with a plant  
2           capacity equal to or less than 15 kW.

3           (3) On review of an application, the Board may:

4                 (A) require a larger setback than this subsection requires; or

5                 (B) approve an agreement to a smaller setback among the applicant,  
6           the municipal legislative body, and each owner of property adjoining the  
7           setback area.

8           (4) In this subsection:

9                 (A) “kW” and “plant capacity” shall have the same meaning as in  
10           section 8002 of this title.

11                 (B) “Setback” means the shortest distance between the nearest  
12           portion of a solar panel or support structure for a solar panel, at its point of  
13           attachment to the ground, and a property boundary or the edge of a highway’s  
14           traveled way.

15           Sec. 26c. 30 V.S.A. § 248(b) is amended to read:

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

19                         (1) with respect to an in-state facility, will not unduly interfere with the  
20           orderly development of the region with due consideration having been given to  
21           the recommendations of the municipal and regional planning commissions, the

1 recommendations of the municipal legislative bodies, and the land  
2 conservation measures contained in the plan of any affected municipality.

3 However,;

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

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

20 \* \* \*

21 Sec. 26d. 24 V.S.A. § 4414(15) is added to read:

1           (15) Solar plants; screening. Notwithstanding any contrary provision of  
2           sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a  
3           municipality may adopt a freestanding bylaw to establish screening  
4           requirements that shall apply to a ground-mounted plant that generates  
5           electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the  
6           municipality may make recommendations to the Public Service Board applying  
7           the bylaw to such a plant. The bylaw may designate the municipal body to  
8           make this recommendation. Screening requirements and recommendations  
9           adopted under this subdivision shall be a condition of a certificate of public  
10           good issued for the plant under 30 V.S.A. § 248, provided that they do not  
11           prohibit or have the effect of prohibiting the installation of such a plant and do  
12           not have the effect of interfering with its intended functional use.

13           (A) Screening requirements under this subdivision shall not be more  
14           restrictive than screening requirements applied to other land development in  
15           the municipality under this chapter or, if the municipality does not have other  
16           bylaws except flood hazard, 10 V.S.A. chapter 151.

17           (B) In this section, “plant” shall have the same meaning as in  
18           30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation  
19           measures to harmonize a facility with its surroundings and includes  
20           landscaping, vegetation, fencing, and topographic features.



1 for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have  
2 the effect of prohibiting the installation of such a plant and do not have the  
3 effect of interfering with its intended functional use.

4 (A) Screening requirements under this subdivision shall not be more  
5 restrictive than screening requirements applied to other land development in  
6 the municipality under chapter 117 of this title or, if the municipality does not  
7 have other bylaws except flood hazard, 10 V.S.A. chapter 151.

8 (B) In this section, “plant” shall have the same meaning as in  
9 30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation  
10 measures to harmonize a facility with its surroundings and includes  
11 landscaping, vegetation, fencing, and topographic features.

12 (C) This subdivision (28) shall not authorize requiring a municipal  
13 permit for a solar electric generation plant. Notwithstanding any contrary  
14 provision of this title, enforcement of an ordinance adopted under this  
15 subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to  
16 violations of 30 V.S.A. § 248.

17 Sec. 26f. REPORT; TOWN ADOPTION OF SOLAR SCREENING

18 (a) On or before January 15, 2017, the Commissioners of Housing and  
19 Community Development and of Public Service (the Commissioners) jointly  
20 shall submit a report to the House and Senate Committees on Natural  
21 Resources and Energy that:

1           (1) identifies the municipalities that have adopted screening  
2           requirements pursuant to Sec. 26d of this act, 24 V.S.A. § 4414(15), or  
3           Sec. 26e of this act, 24 V.S.A. § 2291(28);

4           (2) summarizes these adopted screening requirements; and

5           (3) provides the number of proceedings before the Public Service Board  
6           in which these screening requirements were applied and itemizes the  
7           disposition and status of those proceedings.

8           (b) Each municipality adopting an ordinance or bylaw under 24 V.S.A.  
9           § 2291(28) or 4414(15) shall provide the Commissioners, on request, with  
10           information needed to complete the report required by this section.

11           Nineteenth: By striking out Sec. 28 (effective dates), and inserting in lieu  
12           thereof a new Sec. 28 to read:

13           Sec. 28. EFFECTIVE DATES

14           (a) This section and Secs. 8 (Public Service Board rulemaking),  
15           10 (Forests, Parks and Recreation rulemaking), 14b (joint energy committee;  
16           recommendation), 18 (net metering pilot project), and 27 (severability) shall  
17           take effect on passage. Notwithstanding 1 V.S.A. § 214, Sec. 18 shall apply to  
18           facilities for which an application for a certificate of public good is pending as  
19           of its effective date.

20           (b) Secs. 1 through 7, 9, 11, 13, 14, 15 through 17, 19, 20, and 21 through  
21           26 shall take effect on July 1, 2015. Sec. 11 (net metering systems;



1 environmental attributes) shall not apply to complete applications filed prior to  
2 its effective date.

3 (c) Secs. 26a (municipal party status), 26b (setbacks), 26c (certificate of  
4 public good), 26d (solar screening bylaw), 26e (solar screening ordinance), and  
5 26f (report) shall take effect on passage.

6 (d) Sec. 12 (net metering systems; environmental attributes) shall amend  
7 30 V.S.A. § 8010 as added effective January 1, 2017 by 2014 Acts and  
8 Resolves No. 99, Sec. 4. Sec. 12 shall take effect on January 2, 2017, except  
9 that, notwithstanding 1 V.S.A. § 214, the section shall apply to the Public  
10 Service Board process under 2014 Acts and Resolves No. 99, Sec. 5. Sec. 12  
11 shall not affect a net metering system for which a complete application was  
12 filed before January 1, 2017.

13  
14 (Committee vote: \_\_\_\_\_)

15 \_\_\_\_\_

16 Senator \_\_\_\_\_

17 FOR THE COMMITTEE