

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

H.596

Introduced by Representatives Gamache of Swanton, Savage of Swanton,
Bancroft of Westford, Batchelor of Derby, Branagan of
Georgia, Browning of Arlington, Burditt of West Rutland,
Canfield of Fair Haven, Christie of Hartford, Cupoli of
Rutland City, Devereux of Mount Holly, Dickinson of
St. Albans Town, Eastman of Orwell, Fagan of Rutland City,
Gage of Rutland City, Graham of Williamstown, Hebert of
Vernon, Helm of Fair Haven, Higley of Lowell, Hubert of
Milton, LaClair of Barre Town, Lefebvre of Newark, Lucke of
Hartford, Martel of Waterford, McFaun of Barre Town,
Morrissey of Bennington, Myers of Essex, Parent of
St. Albans Town, Quimby of Concord, Shaw of Derby, Strong
of Albany, Tate of Mendon, Terenzini of Rutland Town, Van
Wyck of Ferrisburgh, Viens of Newport City, and Willhoit of
St. Johnsbury

Referred to Committee on

Date:

Subject: Energy; conservation and development; natural resources; land use;
public service; electric generation; siting; municipal regulation

1 Statement of purpose of bill as introduced: This bill proposes to enable local
2 bylaws for review and approval or denial of proposed electric generation
3 facilities, except for small solar and wind generation. The review would be by
4 a panel designated by the municipality such as the development review board
5 or planning commission. The panel's decision would be subject to a petition
6 for review by the municipality's legislative body. The bill would bar the
7 Public Service Board from issuing a certificate of public good for an electric
8 generation facility in a municipality that has adopted a bylaw under this act
9 unless the municipality has approved the facility.

10 An act relating to local land use regulation of electric generation facilities

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 * * * Local Review of Electric Generation;

13 Enabling Legislation * * *

14 Sec. 1. 24 V.S.A. § 4414 is amended to read:

15 § 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

16 Any of the following types of regulations may be adopted by a municipality
17 in its bylaws in conformance with the plan and for the purposes established in
18 section 4302 of this title.

19 * * *

1 (ii) “Screening” means reasonable aesthetic mitigation measures
2 to harmonize a facility with its surroundings and includes landscaping,
3 vegetation, fencing, and topographic features.

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

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

19 ~~(B) In this section “plant” shall have the same meaning as in~~
20 ~~30 V.S.A. § 8002 and “screening” means reasonable aesthetic mitigation~~

1 ~~measures to harmonize a facility with its surroundings and includes~~
2 ~~landscaping, vegetation, fencing, and topographic features.~~

3 (C) This subdivision (15)(B) shall not authorize requiring a
4 municipal land use permit for a solar electric generation plant and a municipal
5 action under this subdivision shall not be subject to the provisions of
6 subchapter 11 (appeals) of this chapter. Notwithstanding any contrary
7 provision of this title, enforcement of a bylaw adopted under this subdivision
8 shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of
9 30 V.S.A. § 248.

10 (C) A bylaw under this subdivision (15)(C) may require review and
11 issuance or denial of approval by an appropriate municipal panel of each
12 electric generation facility subject to 30 V.S.A. § 248 that will be located in the
13 municipality, unless the facility constitutes solar generation with a plant
14 capacity of 15 kW or less or wind generation with a plant capacity of 100 kW
15 or less.

16 (i) The bylaw shall identify the appropriate municipal panel to
17 conduct this review. Notwithstanding any contrary provision of section 4303
18 of this title, such a panel shall not be the legislative body of the municipality.

19 (ii) The bylaw shall state the criteria to be applied by the panel in
20 making its determination. These criteria may include one or more of the

1 review criteria set forth in subdivision (3) of this section, 10 V.S.A. § 6086(a),
2 and 30 V.S.A. § 248(b).

3 (iii) In conducting this review, the panel shall give notice, convene
4 a warned public hearing, and issue a written decision pursuant to the provisions
5 of section 4464 of this title applicable to conditional use review and, if the
6 decision is in favor of the applicant, may attach conditions as authorized in that
7 section. The panel shall provide the regional planning commission and the
8 Public Service Board established under 30 V.S.A. § 3 with a copy of its
9 decision.

10 (iv) A decision by an appropriate municipal panel under this
11 subdivision (C) shall not become final for the purpose of appeal if five percent
12 of the voters of the municipality petition the legislative body of the
13 municipality to review the decision and the petition is filed within 20 days of
14 the decision. In that case, the legislative body shall apply the same procedures
15 used by the appropriate municipal panel in reaching and issuing its decision,
16 except that the legislative body shall base its decision on the facts and evidence
17 presented to the panel and shall not take new evidence. The legislative body's
18 decision shall be subject to appeal under section 4471 of this title and
19 10 V.S.A. § 8504 and the period for filing an appeal shall run from the date on
20 which the legislative body issued its decision.

1 or space or generates electricity. ~~For the purpose of~~ As used in this
2 subdivision, “flat roof” means a roof having a slope less than or equal to five
3 degrees.

4 (2) Prohibit or have the effect of prohibiting the installation of solar
5 collectors ~~not exempted~~ that are not exempt from regulation under subdivision
6 (1) of this subsection or that are not subject to regulation pursuant to
7 subdivision 4414(15)(C) of this title, clotheslines, or other energy devices
8 based on renewable resources.

9 * * *

10 * * * Public Service Board Review * * *

11 Sec. 4. 30 V.S.A. § 248 is amended to read:

12 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND
13 FACILITIES; CERTIFICATE OF PUBLIC GOOD

14 (a)(1) No company, as defined in section 201 of this title, may:

15 (A) in any way purchase electric capacity or energy from outside the
16 State:

17 (i) for a period exceeding five years, that represents more than
18 three percent of its historic peak demand, unless the purchase is from a plant as
19 defined in subdivision 8002(14) of this title that produces electricity from
20 renewable energy as defined under subdivision 8002(17); or

1 (ii) for a period exceeding ten years, that represents more than ten
2 percent of its historic peak demand, if the purchase is from a plant as defined
3 in subdivision 8002(14) of this title that produces electricity from renewable
4 energy as defined under subdivision 8002(17); or

5 (B) invest in an electric generation or transmission facility located
6 outside this State unless the Public Service Board first finds that the same will
7 promote the general good of the State and issues a certificate to that effect.

8 (2) Except for the replacement of existing facilities with equivalent
9 facilities in the usual course of business, and except for electric generation
10 facilities that are operated solely for on-site electricity consumption by the
11 owner of those facilities:

12 (A) no company, as defined in section 201 of this title, and no person,
13 as defined in 10 V.S.A. § 6001(14), may begin site preparation for or
14 construction of an electric generation facility or electric transmission facility
15 within the State which is designed for immediate or eventual operation at any
16 voltage; and

17 (B) no such company may exercise the right of eminent domain in
18 connection with site preparation for or construction of any such transmission or
19 generation facility, unless the Public Service Board first finds that the same
20 will promote the general good of the State and issues a certificate to that effect

1 and, if the facility is subject to a bylaw adopted pursuant to 24 V.S.A.

2 § 4414(15)(C), the municipality has approved the facility under that bylaw.

3 * * *

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

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

12 However:

13 (A) with respect to a natural gas transmission line subject to Board
14 review, the line shall be in conformance with any applicable provisions
15 concerning such lines contained in the duly adopted regional plan; and, in
16 addition, upon application of any party, the Board shall condition any
17 certificate of public good for a natural gas transmission line issued under this
18 section so as to prohibit service connections that would not be in conformance
19 with the adopted municipal plan in any municipality in which the line is
20 located; ~~and~~

1 petition with the Public Service Board. However, with respect to an electric
2 generation facility subject to a bylaw adopted under 24 V.S.A. § 4414(15)(C):

3 (1) The petitioner shall submit the plans no later than the date on which
4 it applies for approval under that bylaw, which shall be not less than 90 days
5 before applying for a certificate under this section.

6 (2) The municipal body receiving the submission shall be the municipal
7 panel that the bylaw identifies to conduct review of the facility and issuance of
8 approval or denial.

9 (3) The regional planning commission shall receive a copy of the plans
10 at the same time as the municipal panel.

11 (g) Notwithstanding the ~~45~~ 90 days' notice required by subsection (f) of
12 this section, plans involving the relocation of an existing transmission line
13 within the State must be submitted to the municipal and regional planning
14 commissions no less than 21 days prior to application for a certificate of public
15 good under this section.

16 * * *

17 * * * EFFECTIVE DATE * * *

18 Sec. 5. EFFECTIVE DATE

19 This act shall take effect on passage.