

**Act 174 of 2016 (S.260): Energy Development Improvement Act**  
Office of Legislative Council Sep. 21, 2016

§	DESCRIPTION
<i>Designation</i>	
1	Designates the act as the Energy Development Improvement Act
<i>Planning Sections</i>	
2	<p>24 V.S.A. § 4302. Purpose; goals</p> <p>Amends energy goal of 24 V.S.A. chapter 117 to state a goal to make efficient use of energy, provide for development of renewable energy, and reduce emissions of greenhouse gases</p> <ul style="list-style-type: none"> <li>• Describes general strategies for achieving these goals, such as building efficiency and renewable generation</li> <li>• State that specific strategies are in the State energy plans</li> </ul>
3	<p>24 V.S.A. § 4345. Optional powers and duties of regional planning commissions</p> <p>Strikes optional powers related to making studies and recommendations on energy conservation and development of renewable energy resources; moves these optional powers to Sec. 4 as mandatory duties</p>
4	<p>24 V.S.A. § 4345a. Duties of regional planning commissions</p> <ul style="list-style-type: none"> <li>• Clarifies that regional planning commissions (RPC) have the right to appear and participate in proceedings before the Public Service Board (PSB or Board) under 30 V.S.A. § 248 and the duty to do so when requested by the Board</li> <li>• Inserts, as mandatory duties, the optional powers deleted in Sec. 3</li> </ul>
5	<p>24 V.S.A. § 4348a. Elements of a regional plan</p> <p>Amends energy plan element to enable analysis across all energy sectors, a statement of policy on conservation and efficient use of energy and the development and siting of renewable energy resources, and identification of potential areas for renewable energy resources and areas unsuitable for siting those resources or categories or sizes of those resources</p>
6	<p>24 V.S.A. § 4352. Optional determination of energy compliance; enhanced energy planning</p> <p>Allows regional and municipal plans to obtain a determination of energy compliance</p> <ul style="list-style-type: none"> <li>• Regional plan determination is by the Commissioner of Public Service</li> <li>• If a regional plan is determined energy compliant, then municipal plan can receive determination from RPC</li> <li>• To receive affirmative determination: <ul style="list-style-type: none"> <li>▶ Regional plan must have energy element per Sec. 5</li> <li>▶ Municipal plan must have same energy element as required for regional plan and must</li> </ul> </li> </ul>

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	<p>be confirmed as consistent with planning goals and regional plan</p> <ul style="list-style-type: none"> <li>▶ Plans to be consistent with statutes on greenhouse gas reduction goals, building efficiency goals, renewable energy goals, State energy policy, and the distributed generation and energy transformation categories of the Renewable Energy Standard; and with recommendations in State energy plans</li> <li>▶ Plan must meet standards issued by the Department of Public Service (DPS) in State energy plans for issuing affirmative determination of compliance</li> </ul> <ul style="list-style-type: none"> <li>• State energy plans must contain: <ul style="list-style-type: none"> <li>▶ Recommendations for regional and municipal planning that provide strategies and options to employ in meeting the statutory goals and policies</li> <li>▶ Standards for issuing energy compliance determination to consist of criteria to ensure consistency with the statutory goals and policies and with the energy plan recommendations</li> </ul> </li> <li>• Sets out process for issuing determinations of energy compliance</li> <li>• Allows for RPC appeal of DPS decision to the Natural Resources Board under contested case provisions of the Administrative Procedure Act, with timelines</li> <li>• Until July 1, 2018, allows municipalities to seek a determination of energy compliance from DPS if their region has not received a determination; may appeal DPS to Natural Resources Board</li> <li>• Affirmative determination lasts until plan expires</li> </ul>
7	<p>30 V.S.A. § 202. Electrical energy planning</p> <p>Requires the 20-year electric plan by DPS to:</p> <ul style="list-style-type: none"> <li>• Include the recommendations and standards described in Sec. 6</li> <li>• Take into the account the relevant planning goals at 24 V.S.A. § 4302</li> <li>• Provide municipalities and regions with information on the location and capacity of grid infrastructure</li> </ul> <p>In developing the plan, DPS to consult with municipal and regional planning commissions</p> <p>Date for future issuance of plans changed from every sixth January 1 to every sixth January 15</p>
8	<p>30 V.S.A. § 202b. State comprehensive energy plan</p> <p>Requires Comprehensive Energy Plan issued by DPS to:</p> <ul style="list-style-type: none"> <li>• Include the recommendations and standards described in Sec. 6</li> <li>• Be consistent with the relevant planning goals at 24 V.S.A. § 4302</li> </ul> <p>Date for future issuance of plans changed from every sixth January 1 to every sixth January 15</p>
9	<p>Initial implementation; recommendations; standards (session law)</p> <p>Directs DPS to adopt the recommendations and standards called for in Sec. 6 by Nov. 1, 2016</p> <ul style="list-style-type: none"> <li>• Before issuance, DPS must consult with affected parties and conduct a public process</li> </ul>

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	<ul style="list-style-type: none"> <li>• Lists specific elements that the standards must address, including analysis of existing energy use and resources; establishment of targets over time for energy efficiency, and use of renewable energy; pathways and recommendation to achieve these targets; and identification of areas suitable and, if any, unsuitable for siting renewable energy resources</li> <li>• Standards to comply with Sec. 6 and be consistent with current energy plans</li> <li>• On adoption, considered an appendix to the current plans</li> </ul>
10	<p>Training (session law)</p> <p>Requires DPS to collaborate with the Vermont League of Cities and Towns (VLCT) and Vermont Association of Planning and Development Agencies (VAPDA) on training sessions for municipal and regional planning commissions, with at least one in the area of each regional planning commission</p>
10a	<p>Planning Support; Allocation of Costs (session law)</p> <p>Requires DPS to disburse, in FY 2017, up to \$300,000.00 to regional planning commissions and municipalities for training under Sec. 10 or assisting municipalities in implementing act; DPS to allocate costs to electric utilities</p>
<i>Sections on Siting Process</i>	
11	<p>30 V.S.A. § 248. New gas and electric purchases, investments, and facilities; certificate of public good</p> <p>Clarifies that CPG is not required for a hydroelectric generation plant that is subject to FERC licensing jurisdiction</p> <p>Participation in siting process:</p> <ul style="list-style-type: none"> <li>• Requires Agency of Agriculture, Food and Markets (AAFM) to participate if the proceeding concerns a generation facility greater than 500 kW to be located on a tract with primary agricultural soils; otherwise, AAFM has the right to appear and participate</li> <li>• Clarifies that RPCs have the right to participate</li> <li>• Grants adjacent RPCs and municipalities the right to participate if the facility will be within a distance of 500 feet or 10 times the height of the facility, whichever is greater</li> <li>• A person with the right to appear and participate may exercise that right by filing a letter</li> </ul> <p>For generation facilities greater than 50 kW:</p> <ul style="list-style-type: none"> <li>• Requires that the application include certain information, including the full limits of physical disturbance, the presence and disturbance of primary agricultural soils and any other proposed impacts to those soils, and all visible infrastructure</li> <li>• Does not apply if facility is on new or existing structure built for a purpose other than generating electricity</li> </ul> <p>PSB to address standard conditions on the following through rulemaking:</p> <ul style="list-style-type: none"> <li>• Postconstruction maintenance of aesthetic mitigation</li> </ul>

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	<ul style="list-style-type: none"> <li>• Decommissioning</li> </ul> <p>Requires wind generation for which the Federal Aviation Administration (FAA) requires obstruction lighting to use radar-controlled lighting if allowed by the FAA and facility includes four or more wind turbines</p> <p>For in-state electric generation facility, certificate holder to record notice of the certificate of public good on the land records, using a one-page form prescribed by the PSB</p> <p>Amends the Section 248 criteria:</p> <ul style="list-style-type: none"> <li>• Substantial deference to municipal and regional plan provisions if the plan has received an affirmative determination of energy compliance under Sec. 6 <ul style="list-style-type: none"> <li>▶ PSB to apply plan provision according to its terms unless there is a clear and convincing demonstration that it is outweighed by a factor affecting the general good of the state</li> <li>▶ PSB may not consider whether energy compliance determination should have been affirmative</li> </ul> </li> <li>• Requires the PSB to give due consideration to impacts to primary agricultural soils</li> </ul> <p>Requires that the petitioner's application address comments made during the 45-day preapplication process</p> <p>If a solar generation facility is built on primary agricultural soils, requires soils to remain classified as primary agricultural, with review of any change of use to be as if facility was never built</p>
11a	<p>Rules; petition (session law)</p> <p>Provides a timeline for rulemaking on postconstruction maintenance of aesthetic mitigation; and on decommissioning</p> <ul style="list-style-type: none"> <li>• DPS to file petition for rulemaking by Nov. 1, 2016</li> <li>• PSB to complete rulemaking by Aug. 15, 2017, with ability to obtain extension from Legislative Committee on Administrative Rules (LCAR)</li> </ul>
12	<p>Sound standards; wind generation facilities (session law)</p> <p>Directs PSB to issue final rules by July 1, 2017 on sound from wind generation facilities</p> <ul style="list-style-type: none"> <li>• LCAR may extend deadline</li> <li>• In developing rules, PSB to consider standards that apply to all such facilities, a methodology for determining sound levels on a case-by-case basis, or a combination thereof</li> </ul> <p>Also directs PSB to issue temporary rules on the same subject within 45 days of the section's effective date, which is on passage</p> <ul style="list-style-type: none"> <li>• These temporary rules apply to applications for wind generation facilities filed on or after</li> </ul>

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	<p>the section's effective date</p> <ul style="list-style-type: none"> <li>• PSB may not issue a CPG for wind generation facility until it adopts the temporary rules</li> <li>• The temporary rules remain in effect until the adoption of permanent rules or the July 1, 2017 deadline for adoption of the permanent rules</li> </ul>
<i>Standard Offer Pilot and Net Metering</i>	
12a	<p>30 V.S.A. § 8005a. Standard offer program</p> <p>Creates a one-year pilot project within the Standard Offer Program to encourage siting renewable generation facilities in preferred locations, allocating the pilot project to:</p> <ul style="list-style-type: none"> <li>• Facilities at a preferred location other than a parking lot or parking lot canopy</li> <li>• Facilities to be located on a parking lot or parking lot canopy</li> </ul>
12b	<p>Standard offer pilot; report (session law)</p> <p>By 1/15/18, PSB to report to standing committees on the progress of the standard offer pilot authorized by Sec. 15</p>
13	<p>30 V.S.A. § 8010. Self-generation and net metering</p> <p>Adds, to existing direction that PSB simplify application and review process, language to include simplifying the process for group net metering systems that are at least 50 percent customer owned</p> <p>With respect to Section 248 applications for net metering systems exceeding, directs the PSB not to waive:</p> <ul style="list-style-type: none"> <li>• The information required in the application for systems greater than 50 kW, as described in Sec. 11 above</li> <li>• For systems greater than 15 kW not located on a structure whose primary purpose is other than electric generation: <ul style="list-style-type: none"> <li>▶ Notice to AAFM, ANR, DPS, DHP, the municipal legislative body; and the municipal and regional planning commissions</li> <li>▶ Requirements in Sec. 11 on preapplication submittals to local and regional bodies</li> <li>▶ Waiver allowed if facility is on new or existing structure built for a purpose other than generating electricity</li> </ul> </li> </ul> <p>Provides that, if a hydroelectric plant is subject to FERC jurisdiction, net metering approval is to be obtained through means other than application for a Section 248 CPG</p>
<i>Municipal Electric Utilities; Hydro Facilities; Renewable Energy Standard</i>	
14	<p>30 V.S.A. § 8005(a)(1). Total renewable energy</p> <p>Allows a municipal electric utility to petition for reduction in the "total renewable energy" requirement of the Renewable Energy Standard for one period of up to three years if an environmental permit or certification requires reduction in the electric energy generated by a hydroelectric facility owned by the utility</p>

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<i>Access to Public Service Board Working Group</i>	
15	<p>Access to Public Service Board Working Group; report</p> <p>Creates a working group to report by Dec. 15, 2016 on recommendations to increase the ease of citizen participation in PSB proceedings</p>
<i>Alternative Regulation; System Expansion Funds</i>	
15a	<p>30 V.S.A. § 218d(d). Alternative regulation</p> <p>Limits the authority of the PSB to allow ratepayer funds to be set aside for a future expansion or upgrade of the transmission or distribution network of an electric or natural gas utility and states conditions under which such a setaside may occur, including limiting the amount to 20 percent of the estimated project cost</p>
<i>Effective Dates</i>	
16	<p>The act took effect on July 1, 2016, except that:</p> <ul style="list-style-type: none"> <li>• The effective dates section and Secs. 9 (initial implementation; recommendations; standards), 11 (30 V.S.A. § 248), 11a (rules; petition), 12 (sound standards; wind generation) and 15 (Access to Public Service Board Working Group) took effect on passage (June 13, 2016)</li> <li>• Sec. 13 (net metering systems) takes effect in January 2017</li> </ul>