

No. 45. An act relating to renewable energy and energy efficiency.

(H.446)

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

Sec. 1. DESIGNATION OF ACT

This act shall be referred to as the Vermont Energy Act of 2009.

* * * SPEED Standard Offer * * *

Sec. 2. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

For purposes of this chapter:

* * *

(10) “Board” means the public service board.

(11) “Commissioned” or “commissioning” means the first time a plant is put into operation following initial construction or modernization if the costs of modernization are at least 50 percent of the costs that would be required to build a new plant including all buildings and structures technically required for the new plant’s operation. However, these terms shall not include activities necessary to establish operational readiness of a plant.

(12) “Plant” means any independent technical facility that generates electricity from renewable energy. A group of newly constructed facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.

(13) “Plant capacity” means the rated electrical nameplate for a plant.

(14) “Plant owner” means a person who has the right to sell electricity generated by a plant.

(15) “SPEED facilitator” means an entity appointed by the board pursuant to section 8005(b)(1) of this title.

Sec. 3. 30 V.S.A. § 8004 is amended to read:

§ 8004. RENEWABLE PORTFOLIO STANDARDS FOR SALES OF
ELECTRIC ENERGY

(a) Except as otherwise provided in section 8005 of this title, in order for Vermont retail electricity providers to achieve the goals established in section 8001 of this title, no retail electricity provider shall sell or otherwise provide or offer to sell or provide electricity in the state of Vermont without ownership of sufficient energy produced by renewable resources as described in this chapter, or sufficient tradeable renewable energy credits that reflect the required renewable energy as provided for in subsection (b) of this section. In the case of members of the Vermont Public Power Supply Authority, the requirements ~~of subsection (b) of this section~~ chapter may be met in the aggregate ~~through all requirements contracts pursuant to section 4002a of this title, or in the aggregate otherwise as approved by the board.~~

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Sec. 4. 30 V.S.A. § 8005 is amended to read:

§ 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE
DEVELOPMENT (SPEED) PROGRAM

* * *

(b) The SPEED program shall be established, by rule, order, or contract, by the public service board by January 1, 2007. As part of the SPEED program, the public service board may, and in the case of subdivisions (1), (2), and (3)~~(5)~~ of this subsection shall:

(1) ~~name~~ Name one or more entities to become engaged in the purchase and resale of electricity generated within the state by means of qualifying SPEED resources or nonqualifying SPEED resources; and shall implement the standard offer required by subdivision (2) of this subsection through this entity or entities. An entity appointed under this subdivision shall be known as a SPEED facilitator.

~~(2) allow the developer of a facility that is one megawatt or less, and is a qualifying SPEED resource or a nonqualifying SPEED resource, to sell that power under a long term contract that is established at a specified price determined by the board to be adequate to promote SPEED resource development while remaining consistent with the principles of least cost energy services under section 218c of this title. For purposes of this section, a~~

~~long term contract should be 15 years or greater unless the board finds good cause for a shorter term;~~

~~(3) encourage Vermont's retail electricity providers to secure long term contracts, at stable prices, for qualifying SPEED resources. The board shall create a standard contract price, or a set of maximum and minimum provisions, or both, for qualifying SPEED resources over 1 MW of capacity. In setting a standard contract price for a qualifying SPEED resource, the board shall consider the goal of developing qualified SPEED resources, least cost provision of energy service under section 218c of this title, and the impact on electric rates. The board may create a competitive bid process through which to select a portion of those contracts; No later than September 30, 2009, put into effect, on behalf of all Vermont retail electricity providers, standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less. These standard offers shall be available until the cumulative plant capacity of all such resources commissioned in the state that have accepted a standard offer under this subdivision (b)(2) equals or exceeds 50 MW; provided, however, that a plant owned and operated by a Vermont retail electricity provider shall count toward this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is commissioned on or after September 30, 2009. The term of a standard offer required by this subdivision (b)(2) shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power~~

shall be 10 to 25 years. The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kilowatt-hour (kWh) generated that shall be set as follows:

(A) Until the board determines the price to be paid to a plant owner in accordance with subdivision (2)(B) of this subsection, the price shall be:

(i) For a plant using methane derived from a landfill or an agricultural operation, \$0.12 per kWh.

(ii) For a plant using wind power that has a plant capacity of 15 kW or less, \$0.20 per kWh.

(iii) For a plant using solar power, \$0.30 per kWh.

(iv) For a plant using hydropower, wind power with a plant capacity greater than 15 kW, or biomass power that is not subject to subdivision (2)(A)(i) of this subsection, a price equal, at the time of the plant's commissioning, to the average residential rate per kWh charged by all of the state's retail electricity providers weighted in accordance with each such provider's share of the state's electric load.

(B) In accordance with the provisions of this subdivision, the board by order shall set the price to be paid to a plant owner under a standard offer, including the owner of a plant described in subdivisions (2)(A)(i)–(iv) of this subsection.

(i) The board shall use the following criteria in setting a price under this subdivision:

(I) The board shall determine a generic cost, based on an economic analysis, for each category of generation technology that constitutes renewable energy. In conducting such an economic analysis the board shall:

(aa) Include a generic assumption that reflects reasonably available tax credits and other incentives provided by federal and state governments and other sources applicable to the category of generation technology. For the purpose of this subdivision (2)(B), the term “tax credits and other incentives” excludes tradeable renewable energy credits.

(bb) Consider different generic costs for subcategories of different plant capacities within each category of generation technology.

(II) The board shall include a rate of return on equity not less than the highest rate of return on equity received by a Vermont investor-owned retail electric service provider under its board-approved rates as of the date a standard offer goes into effect.

(III) The board shall include such adjustment to the generic costs and rate of return on equity determined under subdivisions (2)(B)(I) and (II) of this subsection as the board determines to be necessary to ensure that the price provides sufficient incentive for the rapid development and

commissioning of plants and does not exceed the amount needed to provide such an incentive.

(ii) No later than September 15, 2009, the board shall open and complete a noncontested case docket to accomplish each of the following tasks:

(I) Determine whether there is a substantial likelihood that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i).

(II) If the board determines that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute such an approximation, set interim prices that constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i). Once the board sets such an interim price, that interim price shall be used in subsequent standard offers until the board sets prices under subdivision (B)(iii) of this subdivision (2).

(iii) Regardless of its determination under subdivision (2)(B)(ii) of this subsection, the board shall proceed to set, no later than January 15, 2010, the price to be paid to a plant owner under a standard offer applying the criteria of subdivision (2)(B)(i) of this subsection.

(C) On or before January 15, 2012 and on or before every second January 15 after that date, the board shall review the prices set under subdivision (2)(B) of this subsection and determine whether such prices are providing sufficient incentive for the rapid development and commissioning of plants. In the event the board determines that such a price is inadequate or excessive, the board shall reestablish the price, in accordance with the requirements of subdivision (2)(B)(i) of this subsection, for effect on a prospective basis commencing two months after the price has been reestablished.

(D) Once the board determines, under subdivision (2)(B) or (C) of this subsection, the generic cost and rate of return elements for a category of renewable energy, the price paid to a plant owner under a subsequently executed standard offer contract shall comply with that determination.

(E) A plant owner who has executed a contract for a standard offer under this section prior to a determination by the board under subdivision (2)(B) or (C) of this subsection shall continue to receive the price agreed on in that contract.

(4)(3) maximize Maximize the benefit to rate payers from the sale of tradeable renewable energy credits or other credits that may be developed in the future, especially with regard to the projects approved those plants that accept the standard offer issued under subdivision (3)(2) of this subsection;

~~(5)(4) encourage~~ Encourage retail electricity provider and third party developer sponsorship and partnerships in the development of renewable energy projects;

~~(6) make available to~~ (5) Require all Vermont retail electricity providers ~~for~~ to purchase through the SPEED program, ~~on a pro rata basis in accordance with subdivision (g)(2) of this section, a specified portion of the power generated by the plants that accept the standard offer required to be issued under subdivisions~~ subdivision (2) and (3) of this subsection. A retail electricity provider that chooses not to purchase a pro rata share of power generated under subdivision (3) of this section must establish, to the satisfaction of the board, that the purchase would impair the provider's ability to meet the public's need for energy services after safety concerns are addressed at the lowest present value life cycle cost, including environmental and economic costs;

~~(7)(6) establish~~ Establish a method for Vermont retail electrical providers to obtain beneficial ownership of the renewable energy credits associated with any SPEED projects, in the event that a renewable portfolio standard comes into effect under the provisions of section 8004 of this title;. It shall be a condition of a standard offer required to be issued under subdivision (2) of this subsection that tradeable renewable energy credits associated with a plant that accepts the standard offer are owned by the retail electric providers

purchasing power from the plant, except that in the case of a plant using methane from agricultural operations, the plant owner shall retain such credits to be sold separately at the owner's discretion.

~~(8)~~(7) ~~create~~ Create a mechanism by which a retail electricity provider may establish that it has a sufficient amount of renewable energy, or resources that would otherwise qualify under the provisions of subsection (d) of this section, in its portfolio so that equity requires that the retail electricity provider be relieved, in whole or in part, from requirements established under ~~subdivision (6) of this subsection that would require a retail electricity provider to purchase SPEED power;~~ provided, however, that this mechanism shall not apply to the requirement to purchase power under subdivision (5) of this subsection unless the retail electricity provider seeking to use the mechanism establishes that it receives at least 25 percent of its energy from qualifying SPEED resources that were in operation on or before September 30, 2009.

~~(9)~~(8) ~~provide~~ Provide that in any proceeding under subdivision 248(a)(2)(A) of this title, a demonstration of compliance with subdivision 248(b)(2) of this title, relating to establishing need for the facility, shall not be required if the facility is a SPEED resource and if no part of the facility is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers; ~~and.~~

~~(10)(9) take~~ Take such other measures as the board finds necessary or appropriate to implement SPEED.

* * *

(g) With respect to executed contracts for standard offers under this section:

(1) Such a contract shall be transferable. The contract transferee shall notify the SPEED facilitator of the contract transfer within 30 days of transfer.

(2) The SPEED facilitator shall distribute the electricity purchased and any associated costs to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for those costs. For the purpose of this subdivision, a Vermont retail electricity provider shall receive a credit toward its share of those costs for any plant with a plant capacity of 2.2 MW or less that it owns or operates and that is commissioned on or after September 30, 2009. The amount of such credit shall be the amount that the plant owner otherwise would be eligible to receive, if the owner were not a retail electricity provider, under a standard offer in effect at the time of commissioning. The amount of any such credit shall be redistributed to the Vermont retail electricity providers on a basis such that all providers pay for a proportionate volume of plant capacity up to the 50 MW ceiling for standard offer contracts stated in subdivision (b)(2) of this section.

(3) The SPEED facilitator shall transfer any tradeable renewable energy credits attributable to electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection, except that in the case of a plant using methane from agricultural operations, the plant owner shall retain such credits to be sold separately at the owner's discretion.

(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection.

(5) All reasonable costs of a Vermont retail electricity provider incurred under this subsection shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits received under subdivisions (2) and (3) of this subsection. Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.

(h) With respect to standard offers under this section, the board shall by rule or order:

(1) Determine a SPEED facilitator's reasonable expenses arising from its role and the allocation of such expenses among plant owners and Vermont retail electricity providers.

(2) Determine the manner and timing of payments by a SPEED facilitator to plant owners for energy purchased under an executed contract for a standard offer.

(3) Determine the manner and timing of payments to the SPEED facilitator by the Vermont retail electricity providers for energy distributed to them under executed contracts for standard offers.

(4) Establish reporting requirements of a SPEED facilitator, a plant owner, and a Vermont retail electricity provider.

(i) With respect to standard offers under this section, the board shall determine whether its existing rules sufficiently address interconnection, metering, and the allocation of metering and interconnection costs, and make such rule revisions as needed to implement the standard offer requirements of this section.

(j) Wood biomass resources that would otherwise constitute qualifying SPEED resources may receive a standard offer under subdivision (b)(2) of this section only if they have a design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) of at least 50 percent.

(k) A Vermont retail electricity provider shall not be eligible for a standard offer contract under subdivision (b)(2) of this section.

(l) The existence of a standard offer under subdivision (b)(2) of this section shall not preclude a voluntary contract between a plant owner and a Vermont retail electricity provider on terms that may be different from those under the standard offer. A plant owner who declines a voluntary contract may still accept a standard offer under this section.

(m) The state shall not be liable to a plant owner or retail electricity provider with respect to any matter related to SPEED, including costs associated with a standard offer contract under this section or any damages arising from breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid.

(n) On or before January 15, 2011 and every second January 15 afterward, the board shall report to the house and senate committees on natural resources and energy concerning the status of the standard offer program under this section. In its report, the board at a minimum shall:

(1) Assess the progress made toward attaining the cumulative statewide capacity ceiling stated in subdivision (b)(2) of this section.

(2) If that cumulative statewide capacity ceiling has not been met, identify the barriers to attaining that ceiling and detail the board's recommendations for overcoming such barriers.

(3) If that cumulative statewide capacity has been met or is likely to be met within a year of the date of the board's report, recommend whether the standard offer program under this section should continue and, if so, whether there should be any modifications to the program.

Sec. 4a. 30 V.S.A. § 8003 is amended to read:

§ 8003. RENEWABLE ENERGY PRICING

(a) ~~Unless the board finds good cause to exempt a utility, by no later than July 1, 2009, each~~ An electric utility, municipal department formed under local charter or chapter 79 of this title, ~~and each~~ or electric cooperative formed under chapter 81 of this title ~~shall~~ may implement a renewable energy pricing program under this section for its customers, or ~~shall~~ offer customers the option of making a voluntary contribution to the Vermont clean energy development fund established under 10 V.S.A. § 6523. Such renewable energy pricing programs may include, but are not limited to, tariffs, standard special contracts, or other arrangements whose purpose is to increase the company's reliance on, or the customer's support of, renewable sources of energy or the type and quantity of renewable energy resources available.

* * *

* * * Clean Energy Development Fund; Thermal; Geothermal; State Energy
Program Appropriation under Federal Stimulus * * *

Sec. 5. 10 V.S.A. § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of all of the following:

(A) ~~the~~ The proceeds due the state under the terms of the memorandum of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.; ~~and~~

(B) All funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(C) ~~any~~ Any other monies that may be appropriated to or deposited into the fund.

(2) Balances in the fund ~~shall be held for the benefit of ratepayers,~~ shall be expended solely for the purposes set forth in this subchapter; and shall not

be used for the general obligations of government. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund. This fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) “Clean energy resources” means electric power supply and demand-side resources, or thermal energy or geothermal resources, that are either “combined heat and power facilities,” “cost-effective energy efficiency resources,” or “renewable energy” resources.

* * *

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources, for the long-term benefit of Vermont ~~electric customers~~ consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The general assembly expects and intends that the public service board, public service department, and the state’s power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit

of Vermont ratepayers and the power system. The fund shall be managed, primarily, to promote:

* * *

(d) Expenditures authorized.

* * *

(4) Projects for funding may include, and in the case of subdivision (4)(E)(ii) of this subsection shall include continuous funding for as long as funds are available, the following:

(A) projects that will sell power in commercial quantities;

(B) among those projects that will sell power in commercial quantities, funding priority will be given to those projects that commit to sell power to Vermont utilities on favorable terms;

(C) projects to benefit publicly owned or leased buildings;

(D) renewable energy projects on farms, which may include any or all costs incurred to upgrade to a three-phase line to serve a system on a farm;

(E) small scale renewable energy in Vermont residences, institutions, and businesses:

(i) generally; and

(ii) through the small-scale renewable energy incentive program;

(F) projects under the agricultural economic development special account established under 6 V.S.A. § 4710(g) to harvest biomass, convert biomass to energy, or produce biofuel;

(G) until December 31, 2008 only, super-efficient buildings; ~~and~~

(H) effective projects that are not likely to be established in the absence of funding under the program; and

(I) projects to develop and use thermal or geothermal energy, regardless of whether they also involve the generation of electricity.

* * *

(f) Notwithstanding any other provision of this section, funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq. shall be disbursed for one or more of the following, if consistent with that act and applicable federal regulations:

(1) The Vermont small-scale renewable energy incentive program currently administered by the renewable energy resource center, for use in residential and business installations. These funds may be used by the program for all forms of renewable energy as that term is defined under 30 V.S.A. § 8002(2), including biomass and geothermal heating.

(2) Grant and loan programs for renewable energy resources, including thermal resources such as district biomass heating that may not involve the generation of electricity.

(3) Grants and loans to thermal energy efficiency incentive programs, community-scale renewable energy financing programs, certification and training for renewable energy workers, promotion of local biomass and geothermal heating, and an anemometer loan program.

* * * Regulatory Incentives for Renewables * * *

Sec. 6. 30 V.S.A. § 218 is amended to read:

§ 218. JURISDICTION OVER CHARGES AND RATES

* * *

(f) Regulatory incentives for renewable generation.

(1) Notwithstanding any other provision of law, an electric distribution utility subject to rate regulation under this chapter shall be entitled to recover in rates its prudently incurred costs in applying for and seeking any certificate, permit, or other regulatory approval issued or to be issued by federal, state, or local government for the construction of new renewable energy to be sited in Vermont, regardless of whether the certificate, permit, or other regulatory approval ultimately is granted.

(2) The board is authorized to provide to an electric distribution utility subject to rate regulation under this chapter an incentive rate of return on

equity or other reasonable incentive on any capital investment made by such utility in a renewable energy generation facility sited in Vermont.

(3) For the purpose of this subsection, “renewable energy” and “new renewable energy” shall be as defined in section 8002 of this title.

* * * Regulatory Review of Renewable Energy Projects * * *

Sec. 7. 30 V.S.A. § 248(o) is added to read:

(o) The board shall not reject as incomplete a petition under this section for a wind generation facility on the grounds that the petition does not specify the exact make or dimensions of the turbines and rotors to be installed at the facility as long as the petition provides the maximum horizontal and vertical dimensions of those turbines and rotors and the maximum decibel level that the turbines and rotors will produce as measured at the nearest residential structure over a 12-hour period commencing at 7:00 p.m.

* * * Wind Energy Generation on State Lands * * *

Sec. 8. 3 V.S.A. § 2840 is added to read:

§ 2840. WIND ENERGY GENERATION; STATE LANDS

(a) Wind energy generation facilities can provide an important combination of environmental, energy, and economic benefits to the state. Given these benefits, and the fact that the state has allowed other types of facilities to be sited on state lands, it is reasonable to site wind energy generation facilities on state lands, including wind energy generation facilities that are of commercial

scale, if such siting does not directly conflict with a specific restriction in federal or state law or with a specific restriction or covenant contained in a conveyance of an interest in the property to the state or one of its agencies or departments, and if sites for wind energy on state lands are chosen and developed in a manner that maximizes energy production and minimizes environmental and aesthetic impacts.

(b) The existing policy of the agency, entitled “Wind Energy and Other Renewable Energy Development on ANR Lands” (Dec. 2004) (the existing policy) shall not bar the agency from considering any proposal to construct a meteorological station or wind energy generation facility, including a wind energy generation facility of commercial scale, on lands that the agency owns or controls. If the agency receives such a proposal, the agency shall review the proposal within a reasonably prompt period and provide the entity making the proposal with information regarding the feasibility of and potential constraints that may apply to the proposal. The agency also shall consider the potential costs and benefits of the proposal to the state of Vermont, including any benefits or impacts that would be derived from leasing state lands to the entity making the proposal.

(c) On receipt of significant new information on the existing policy or on wind energy generation on state lands, the agency shall undertake a review of that policy and determine if a change in the policy is warranted. During that

review, the agency shall solicit the comments and recommendations of wind energy developers, renewable energy organizations, and other potentially affected entities.

(d) No later than February 15, 2010, the agency shall report to the house and senate natural resources and energy committees on at least each of the following:

(1) The agency shall identify whether significant new information on the existing policy or on wind energy generation on state lands was received by the agency after April 2, 2009.

(2) The agency shall state whether, after April 2, 2009, it undertook a review of the existing policy.

(3) If the agency undertook a review of the existing policy after April 2, 2009, the agency shall summarize each conclusion reached by the agency as a result of that review and the reasons for each such conclusion.

(4) The agency shall state whether, after April 2, 2009, it made any changes in the existing policy and summarize each such change.

(5) The agency shall state whether it has received any proposals for construction and operation of meteorological stations or wind energy generation facilities on state lands.

(6) If the agency received any proposals for construction and operation of meteorological stations or wind energy generation facilities on state lands,

the agency shall provide a summary of each such proposal and the agency's response to each such proposal.

Sec. 9. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that, for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project. Any unused business solar energy investment

tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Sec. 9a. 32 V.S.A. § 5930z is amended to read:

§ 5930z. PASS-THROUGH OF FEDERAL ENERGY CREDIT FOR
CORPORATIONS

(a) A taxpayer of this state shall be eligible for a credit against the tax imposed under section 5832 of this title in an amount equal to 100 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from the clean energy development fund created under 10 V.S.A. § 6523 is not eligible to claim the business solar energy tax credit for that project; and provided, further that for investments made on or after October 1, 2009, the tax credit will only apply to project costs not covered by any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project.

Sec. 9b. 32 V.S.A. § 5822(d) is amended to read:

(d) A taxpayer shall be entitled to a credit against the tax imposed under this section of 24 percent of each of the credits allowed against the taxpayer's federal income tax for the taxable year as follows: elderly and permanently

totally disabled credit, investment tax credit attributable to the Vermont-property portion of the investment, and child care and dependent care credits. ~~A taxpayer shall also be entitled to a credit against the tax imposed under this section of 76 percent of the Vermont property portion of the business solar energy investment tax credit component of the federal investment tax credit allowed against the taxpayer's federal income tax for the taxable year under Section 48 of the Internal Revenue Code; provided, however, that a taxpayer who receives any grants or similar funding from any public or private program that assists in providing capital investment for a renewable energy project is not eligible to claim the business solar energy tax credit for that project.~~ Any unused business solar energy investment tax credit under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

Sec. 9c. REPEAL

32 V.S.A. § 5930z (related to business solar energy investment tax credits for corporations) is repealed for investments made on or after January 1, 2011.

Sec. 9d. TRANSITION RULES

(a) A taxpayer who claimed the 76-percent business solar energy investment tax credit component of the federal investment tax credit pursuant to 32 V.S.A. § 5822(d) prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

(b) A taxpayer who claimed the business solar energy investment tax credit pursuant to 32 V.S.A § 5930z prior to January 1, 2011 shall be entitled to carry forward the unused portion of the credit for up to five years.

Sec. 9e. 10 V.S.A. § 6523(d)(6) is amended to read:

(6) ~~The~~ A sum of \$20,000.00 equal to the cost of the business solar energy income tax credits authorized in subsections 5822(d) and 5930z(a) of Title 32 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

Sec. 10. Sec. 29 of No. 92 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 29. EFFECTIVE DATE OF BUSINESS ENERGY TAX CREDIT

Secs. 27 and 28 of this act (business energy tax credits) shall apply to ~~carry through and recapture of federal credits, including recapture,~~ related to taxable year 2008 and after.

* * * Building Energy Standards * * *

Sec. 11. 21 V.S.A. § 266 is amended to read:

§ 266. RESIDENTIAL BUILDING ENERGY STANDARDS

(a) Definitions. For purposes of this subchapter, the following definitions apply:

(1) “Builder” means the general contractor or other person in charge of construction, who has the power to direct others with respect to the details to be observed in construction.

(2) “Residential buildings” means one family dwellings, two family dwellings, and multi-family housing three stories or less in height. “Residential buildings” shall not include hunting camps.

(3) “Residential construction” means new construction of residential buildings, and the construction of residential additions that create 500 square feet of new floor space, or more. Before July 1, 1998, this definition shall only apply to residential construction that is subject to the jurisdiction of 10 V.S.A. chapter 151. Effective July 1, 1998, this definition shall apply to residential construction, regardless of whether or not it is subject to the jurisdiction of 10 V.S.A. chapter 151.

(4) “IECC” means the International Energy Conservation Code of the International Code Council.

* * *

(c) Revision and interpretation of energy standards. The commissioner of public service shall amend and update the RBES, by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The No later than January 1, 2011, the commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential

construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. These amendments shall be effective on final adoption. After January 1, 2011, the commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the ~~international energy conservation code (IECC)~~ IECC. The department of public service shall provide technical assistance and expert advice to the commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. ~~At least a year prior~~ Prior to final adoption of each required revision of the RBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner with additional recommendations for revision of the RBES.

(1) Any amendments to the RBES shall be:

- (A) Consistent with duly adopted state energy policy, as specified in 30 V.S.A. § 202a, and consistent with duly adopted state housing policy.
- (B) Evaluated relative to their technical applicability and reliability.
- (C) Cost-effective and affordable from the consumer's perspective.

(2) ~~Each~~ Except for the amendments required by this subsection to be adopted by January 1, 2011, each time the RBES are amended by the commissioner, the amended RBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. ~~Persons~~ Except for the amendments required by this subsection to be adopted by January 1, 2011, persons commencing residential construction before the effective date of the amended RBES shall have the option of complying with the applicable provisions of the earlier or the amended RBES. After the effective date of the original or the amended RBES, any person commencing residential construction ~~in an area subject to the RBES~~ shall comply with the most recent version of the RBES.

* * *

Sec. 12. 21 V.S.A. § 268 is amended to read:

§ 268. COMMERCIAL BUILDING ENERGY STANDARDS

* * *

(c) Revision and interpretation of energy standards. ~~On or about January 1, 2009, and at least every three years thereafter~~ No later than January 1, 2011, the commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC,

whichever provides the greatest level of energy savings. These amendments shall be effective on final adoption. At least every three years after January 1, 2011, the commissioner of public service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for commercial construction under the ~~international energy conservation code (IECC)~~ IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. ~~At least a year prior~~ Prior to final adoption of each required revision of the CBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner of public service with additional recommendations for revision of the CBES.

(1) Any amendments to the CBES shall be:

(A) Consistent with duly adopted state energy policy, as specified in 30 V.S.A. § 202a.

(B) Evaluated relative to their technical applicability and reliability.

(2) ~~Each~~ Except for the amendments required by this subsection to be adopted by January 1, 2011, each time the CBES are amended by the commissioner of public service, the amended CBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. ~~Persons~~ Except for the amendments required by this subsection to be adopted by January 1, 2011, persons submitting an application for any local permit authorizing commercial construction, or an application for construction plan approval by the commissioner of public safety pursuant to 20 V.S.A. chapter 173, before the effective date of the amended CBES shall have the option of complying with the applicable provisions of the earlier or the amended CBES. After the effective date of the original or the amended CBES, any person submitting such an application for commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

* * *

Sec. 13. 21 V.S.A. § 269 is added to read:

§ 269. COMPLIANCE PLAN

The commissioner of public service shall perform all of the following:

(1) No later than September 1, 2011, issue a plan for achieving compliance with the energy standards adopted under this subchapter no later than February 1, 2017 in at least 90 percent of new and renovated residential

and commercial building space. In preparing this plan, the department shall review enforcement mechanisms for building energy codes that have been adopted in other jurisdictions and shall solicit the comments and recommendations of one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; environmental organizations; consumer advocates; energy efficiency experts; the attorney general; and other persons who are potentially affected or have relevant expertise.

(2) No later than June 30, 2012, by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25:

(A) Establish active training and enforcement programs to meet the energy standards adopted under this subchapter.

(B) Establish a system for measuring the rate of compliance each year with the energy standards adopted under this chapter. Following establishment of this system, the commissioner also shall provide for such annual measurement.

* * * Self-Managed Efficiency Programs * * *

Sec. 14. 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

* * *

(h)(1) No later than September 1, 2009, the department shall recommend to the board a three-year pilot project for a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The board will review the department's recommendation and, by order, enact a class of self-managed energy efficiency programs by December 31, 2009, to take effect for a three-year period beginning January 1, 2010.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate classes shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant under subdivision (d)(3) of this section were a minimum of \$1.5 million during calendar year 2008.

(B) A cost-based fee to be determined by the board shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the board and department. The board shall determine procedures for savings verification. Such procedures shall be consistent with

savings verification procedures established for entities appointed under subdivision (d)(2) of this section.

(C) An applicant shall demonstrate to the board that it has a comprehensive energy management program with annual objectives. Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant shall commit to a three-year minimum energy efficiency investment of an annual average of no less than \$1 million.

(E) Participation in the self-managed program includes efficiency programs and measures applicable to electric and other forms of energy. A participant may balance efficiency investments across all types of energy or fuels without limitations.

(F) A participant shall provide to the board and department annually an accounting of energy investments and energy savings in the form prescribed by the board, which may conduct reasonable audits to ensure accuracy of the data provided.

(G) The board shall report to the general assembly annually by April 30 concerning the prior calendar year's class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments, and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the board, the applicant shall be able to participate in the class of self-managed energy efficiency programs for a three-year period.

(I) On a determination that a participant in the self-managed efficiency program class has not met the commitment required by subdivision (h)(4)(D) of this section, the board shall terminate the participant's eligibility for the self-managed program class and the former participant will be subject to the then existing charges under subdivision (d)(3) of this section applicable to its rate class and within 90 days of such termination shall pay to the electric efficiency fund described in subdivision (d)(3) of this section the difference between the investment it made while in the self-managed energy efficiency program and the charges it would have incurred under subdivision (d)(3) of this section had the entity not been part of that program. An entity may not reapply for membership in the self-managed program after such termination.

(J) A participant in the self-managed program class may request confidentiality of data it reports to the board if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the board shall disclose the data only in accordance with a protective agreement approved by the board and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision (h)(4)(J) of this section will be a public record.

(L) A participant in the self-managed program class may submit projects to the independent system operator of New England, including through recognized aggregators, for payments under that operator's forward capacity market program, and shall invest such payments in electric or fuel efficiency.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity which is not the participant but may not count such funds received as part of the annual commitment to its self-managed energy efficiency program.

(N) If, at the end of the third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (h)(4)(D) of this subsection, the applicant shall pay to the electric efficiency fund described in subdivision (d)(3) of this section the difference between the investment the applicant made while in the self-managed energy efficiency program and the charges the applicant would have incurred under subdivision (d)(3) of this section during the three-year period had the applicant not been a participant in the program. This payment shall be made no later than 90 days after the end of the three-year period.

Sec. 14a. 30 V.S.A. § 209(d)(4) is amended to read:

(4) The charge established by the board pursuant to subdivision (3) of this subsection shall be in an amount determined by the board by rule or order that is consistent with the principles of least cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the board shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the state's transmission and distribution infrastructure; minimizing the costs of electricity; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and the value of targeting efficiency and conservation efforts to locations, markets or customers where they may provide the greatest value. ~~The~~ No later than December 31, 2009, the board, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under subdivision (3) of this subsection of at least \$5,000.00 may apply to the board

to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the board. The remaining portion of the charge shall be used for systemwide energy benefits. The board in its rules or order shall establish criteria for approval of these applications.

* * * Vermont Village Green Renewable Pilot Program * * *

Sec. 15. FINDINGS AND PURPOSE

The general assembly finds all of the following:

(1) The use of fossil fuels for heat and power contributes to emissions of greenhouse gases and climate change.

(2) Fossil fuel prices in recent years have been highly volatile, and significant potential exists for those prices to reach rates that are equal to or greater than the exceptionally high prices seen within the last few years.

(3) Payments for fossil fuels by Vermonters involve the movement of significant sums of money outside the state and the country to pay for heating fuel, draining Vermont's economy.

(4) The state of Vermont seeks to ensure that Vermonters obtain a greater measure of control over the environmental impacts of energy use and energy costs.

(5) The state of Vermont seeks to increase its efforts to limit its emissions of greenhouse gases.

(6) Community energy infrastructure that uses renewable fuels can reduce the environmental impacts of energy use and provide a community with the opportunity to obtain heat and potentially power at stable prices that reduce the economic risks associated with fossil fuels. Local energy purchases recirculate money in the Vermont economy and can provide businesses with competitive energy rates.

(7) The state of Vermont seeks to establish incentives for communities to host energy generation that is renewable and efficiently utilized and that provides heat and potentially power to groups of commercial, industrial, or residential uses, or combinations of such uses, within the community.

Sec. 15a. 30 V.S.A. chapter 93 is added to read:

CHAPTER 93. VERMONT VILLAGE GREEN RENEWABLE
PILOT PROGRAM

§ 8100. DEFINITIONS

In this chapter:

(1) “Board” means the public service board created under section 3 of this title.

(2) “Certification” or “certified,” except when part of the phrase “third party certified,” refers to certification of a Vermont village green renewable project by the department under subsection 8101(b) of this title.

(3) “Combined heat and power “ or “CHP” shall have the meaning stated in 10 V.S.A. § 6523(b), except that:

(A) CHP excludes facilities using fossil fuel.

(B) CHP using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(4) “Department” means the department of public service created under section 1 of this title.

(5) “District heating” means a system for distributing heat generated in a centralized location within a host community to multiple residential, commercial, or industrial uses within that community or a combination of such uses. The source of heat may be a dedicated heat-only facility using renewable energy as a fuel or waste heat from electrical generation that uses renewable energy as a fuel to form a CHP system.

(6) “District power” means a system for distributing electricity generated in a centralized location within a host community to multiple residential, commercial, or industrial uses in that community or a combination of such uses. The electricity must be produced using renewable energy as a fuel source and may include CHP.

(7) “Host community” means the municipality in which a Vermont village green renewable project is to be located.

(8) “Renewable energy” shall have the meaning stated in 10 V.S.A. § 6523(b)(4), except that renewable energy using woody biomass as a fuel must achieve, for that fuel, no less than a 50-percent net annual efficiency of energy utilized and, during the heating season, a minimum energy conversion efficiency of 70 percent considering all energy inputs and outputs at normal load.

(9) “Vermont village green renewable project” means district heating, either with or without district power, to serve a downtown development district designated as such pursuant to 24 V.S.A. § 2793 or a growth center designated as such pursuant to 24 V.S.A. § 2793c. As long as the end uses served by the project are within such a district or center, the generation of heat and power may be outside the district or center.

§ 8101. PILOT PROGRAM; CERTIFICATION

(a) The Vermont village green renewable pilot program is created to consist of no more than two Vermont village green renewable projects, one each in the city of Montpelier and in the town of Randolph. Another municipality may seek certification under this chapter in the event either the city of Montpelier or the town of Randolph or both decline to seek or are denied certification.

(b) On application of a host community, the department may certify a Vermont village green renewable project under this chapter on finding each of the following:

(1) The host community proposes a Vermont village green renewable project.

(2) The host community has submitted an application to the board that includes each of the following:

(A) A description and map of the proposed Vermont village green renewable project, showing its location within the host community.

(B) A complete description of the existing industrial, commercial, or residential uses to be served by the Vermont village green renewable project, of how the project will serve those uses, and of the billing, payment, and customer service arrangements.

(C) A letter submitted by the host community in support of the application and, if the host community has a town plan, the letter shall confirm that the proposed project is consistent with that plan.

(D) A letter issued by the appropriate regional planning commission indicating that the regional impacts of the proposed project and selected site have been considered and that the project conforms with the applicable regional plan.

(E) A letter from the Vermont downtown development board, as described under 24 V.S.A. § 2792(f), that the development board has been notified of the Vermont village green renewable project.

(3) The Vermont village green renewable project is consistent with the purposes of the clean energy development fund as established in 10 V.S.A. § 6523.

(4) The host community will invest in the Vermont village green renewable project the incentive created under section 8102 of this title and has provided a plan that demonstrates that such investment will be made.

(5) The Vermont village green renewable project, if it uses woody biomass as a fuel, will use procurement standards, management practices, and a supply chain that are third party certified using a performance-based audit.

(6) The Vermont village green renewable project will comply with all applicable national ambient air quality standards and air pollution control regulations of the agency of natural resources. If, during 2009, the U.S. Environmental Protection Agency proposes updated emissions standards applicable to wood-fueled boilers to be used in connection with the project, the project shall comply with such proposed standards.

(7) The Vermont village green renewable project meets all applicable requirements of this chapter.

(c) Notwithstanding any other provision of law, certification under this section shall not be subject to the provisions of 3 V.S.A. chapter 25 and shall not be subject to appeal.

(d) A host community does not need to obtain certification unless it seeks its Vermont village green renewable project to be eligible for incentives under section 8102 of this title or rates for electricity as provided under subsection 8104(c) of this title. Certification shall not be required to qualify for net metering under section 219a of this title.

§ 8102. INCENTIVES; CUSTOMER CONNECTIONS

Notwithstanding any other provision of law, the clean energy development fund created under 10 V.S.A. § 6523 shall provide at least \$100,000.00 in incentives to customers who will connect to a certified Vermont village green renewable project. Any such incentive shall be applied by the customer to the cost of constructing the customer's connection to the project.

§ 8103. HEAT AVAILABILITY

All of the heat generated by a Vermont village green renewable project shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

§ 8104. RATES FOR ELECTRICITY

(a) All or a portion of the electricity generated by a Vermont village green renewable project, if it includes district power, shall be made available to the commercial, industrial, and residential users identified in the host community's application to the board under subsection 8101(b) of this title.

(b) If a Vermont village green renewable project includes district power and does not qualify or opt for treatment as a net metering system under section 219a of this title:

(1) On petition of the host community, the board after notice and opportunity for hearing shall create a rate class for the commercial, industrial, and residential uses served by the project, the rates for which class at a minimum shall be consistent with the following principle: An end user shall pay the same share of the distribution utility's fixed costs as a similar end user not served by the project.

(2) Excess electricity may be sold to the distribution utility at the market rate or by contract.

§ 8105. REPORTING

(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the board and the commissioner of public service by December 31 of each year following certification. The report shall contain such information as is required by the

board and the commissioner. The report shall include at a minimum sufficient information for the commissioner of public service to submit the report required by subsection (b) of this section.

(b) Beginning March 1, 2010, and annually thereafter, the commissioner of public service shall submit a report to the senate committees on economic development, housing and general affairs, on finance, and on natural resources and energy, the house committees on ways and means, on commerce and economic development, and on natural resources and energy, and the governor which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter.

* * * Voluntary Energy Conservation * * *

Sec. 15b. 24 V.S.A. § 2291a is added to read:

§ 2291a. RENEWABLE ENERGY DEVICES

Notwithstanding any provision of law to the contrary, no municipality, by ordinance, resolution, or other enactment, shall prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

Sec. 15c. 24 V.S.A. § 4413(g) is added to read:

(g) Notwithstanding any provision of law to the contrary, a bylaw adopted under this chapter shall not prohibit or have the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

Sec. 15d. 27 V.S.A. § 544 is added to read:

§ 544. ENERGY DEVICES BASED ON RENEWABLE RESOURCES

(a) No deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements. A property owner may not be denied permission to install solar collectors or other energy devices based on renewable resources by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property with respect to residential dwellings. For purposes of this subsection, that entity may determine the specific location where solar collectors may be installed on the roof within an orientation to the south or within 45° east or west of due south, provided that this determination does not impair the effective operation of the solar collectors.

(b) In any litigation arising under the provisions of this section, the prevailing party shall be entitled to costs and reasonable attorney's fees.

(c) The legislative intent in enacting this section is to protect the public health, safety, and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources by preventing measures which will have the ultimate effect, whether or not intended, of driving the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain. This section shall not apply to patio railings in condominiums, cooperatives, or apartments.

* * * Clean Energy Assessment Districts * * *

Sec. 15e. FINDINGS

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

Sec. 15f. 24 V.S.A. § 1751(3) is amended to read:

(3) "Improvement," shall include, apart from its ordinary signification;

(A) ~~the~~ The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other

improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15g. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

Sec. 15h. SUBCHAPTER DESIGNATION

24 V.S.A. chapter 87 §§ 3251–3256 shall be designated as:

Subchapter 1. General Provisions

Sec. 15i. 24 V.S.A. § 3252 is amended to read:

§ 3252. PURPOSE OF ASSESSMENTS

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other

public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

Sec. 15j. 24 V.S.A. chapter 87, subchapter 2 is added to read:

Subchapter 2. Clean Energy Assessments

§ 3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

§ 3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS;
ENERGY SAVINGS ANALYSIS

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality shall follow underwriting criteria, consistent with responsible underwriting and credit standards as established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating

municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of a transfer of property ownership excepting foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(3) A participating municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to

potential buyers prior to transfer of property of ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in subdivision 317(c)(7) of Title 1.

(e) At least 30 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

(f) The total amount of assessments under this subchapter shall not exceed more than 15 percent of the assessed value of the property. The combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.

(g) In the case of an agreement with the resident owner of a dwelling, as defined in section 103(v) of the federal Truth in Lending Act:

(1) the assessments to be repaid under the agreement, when calculated as the repayment of a loan, shall not violate chapter 4 of Title 9;

(2) the maximum length of time for the owner to repay the loan shall not exceed 20 years; and

(3) the maximum amount to be repaid for the project shall not exceed \$30,000.00 or 15 percent of the assessed value of the property, whichever is less.

§ 3263. COSTS OF OPERATION OF DISTRICT

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

§ 3264. RIGHTS OF PROPERTY OWNERS

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

§ 3265. LIABILITY OF MUNICIPALITY

(a) A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

(b) A municipality that incurs indebtedness for bonding under this subchapter shall pledge the full faith and credit of the municipality.

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

§ 3268. RELEASE OF LIEN

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon:

(1) Full payment of the value of the assessment; or

(2) Demand from a party who has filed an action for foreclosure on a participating property.

(b) If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.

(c) Notice of the release or reinstatement of the lien shall be filed with the clerk of the municipality for recording in the land records of the municipality.

§ 3269. RESERVE FUND

(a) A participating municipality may create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be

funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter and any remaining principal balances on those assessments in the event of a foreclosure upon a participating property.

(b) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures based on good lending practice experience.

(c) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

Sec. 15k. 24 V.S.A. § 4592 is amended to read:

§ 4592. SUPPLEMENTARY POWERS

The bank, in addition to any other powers granted in this chapter, has the following powers:

* * *

(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other

term of bond or note, contract or agreement of any kind to which the bank is a party; ~~and~~

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title. Bonds shall be supported by both the general obligation and the assessment payment revenues of the participating municipality.

Sec. 16. EFFECTIVE DATE

This act shall take effect upon passage with the following exceptions:

(1) Secs. 9 and 9a (relating to business solar energy tax credits) shall apply to credits related to investments made on or after January 1, 2009; and

(2) Sec. 9b (relating to the repeal of the 76-percent portion of the business solar energy tax credit) shall apply to credits related to investments made on or after January 1, 2011.

Date on which the governor allowed the bill to become law without his signature: May 27, 2009