

H.446

An act relating to renewable energy and energy efficiency

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.~~

\* \* \*

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 218e 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 20 years, except that the term of a standard offer for a plant using solar power shall be~~

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.

(v) The prices stated in this subdivision shall be subject to the provisions of subdivision (2)(E) of this subsection.

(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. Within each such category, the board shall consider different generic costs for plants of different plant capacities.

(II) The board shall include a rate of return not less than the highest rate of return 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 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 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 subdivisions (2)(B)(i)–(iii) of this subsection, for effect on a prospective basis commencing on March 1 of the following year.

(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, subject to the provisions of subdivision (2)(E) of this subsection.

(E) The board shall provide that, when a standard offer contract is executed with respect to a particular plant, any tax credits and other incentives provided by federal, state, or local government to a plant are subtracted from the price that would otherwise be paid to the plant owner under that contract. For the purpose of this subdivision (b)(2)(E), the term “tax credits and other incentives” excludes tradeable renewable energy credits.

(F) 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)~~ (2) of this subsection;

~~(5)(4) encourage~~ Encourage retail electricity provider 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 July 15, 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) 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 in accordance with the rate design otherwise applicable to costs included in that revenue requirement.

(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 constitute combined heat and power, producing both electric power and thermal energy, with a design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) of at least 70 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 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 and businesses;

(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) Notwithstanding any other provision of law, an investor-owned electric distribution utility subject to rate regulation under this chapter shall be entitled to the following return on equity on any just and reasonable capital investment made by it in a renewable energy generation facility sited in Vermont: The same return on equity allowed on its other capital investment plus an additional one and one-half percent.

(3) At the request of a municipal electric department created under local charter or chapter 79 of this title or an electric cooperative created under chapter 81 of this title that makes a just and reasonable capital investment in a renewable energy generation facility sited in Vermont, the board shall provide to the municipal electric department or electric cooperative an incentive that it reasonably determines to be comparable in value to a one and one-half percent rate of return on the investment.

(4) 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 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. 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 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.

\* \* \*

(c) Any unused credit for business solar energy investment under this section may be carried forward for no more than five years following the first year in which the credit is claimed.

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. Certification of the project by a licensed professional engineer in the appropriate engineering field shall

suffice as verification of savings. The person performing the savings verification shall be selected by the department and shall not be an employee of the applicant.

(C) An applicant shall demonstrate to the department 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 department annually an accounting of energy investments and energy savings in the form prescribed by the department, which may conduct reasonable audits to ensure accuracy of the data provided.

(G) The department shall report to the board and 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 department, 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 department 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 decision by the department to terminate a participant's membership in the class of self-managed energy efficiency programs may be appealed to the board.

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

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

(M) 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.

(N) 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.

(O) 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. 15. GREEN GROWTH ZONE STUDY; PILOT PROJECT

The department of public service, in consultation with the agencies of natural resources and of commerce and community development and appropriate stakeholders including representatives of the business community, utilities, residential ratepayers, and environmental organizations, shall research and study in detail the concept of establishing “green growth zones,” that is, identifiable, designated areas in which electric generation or district heating is sited for the benefit of new development or development retention within the area. For the purpose of this section, “electric generation” means the production of electricity using renewable energy as defined in 30 V.S.A. § 8002(2) or a combined heat and power facility as defined in 10 V.S.A. § 6523(b)(2). No later than December 15, 2009, the department shall file with the house and senate committees on natural resources and energy a report stating the results of its research, study, and consultation; providing its detailed and fully formed proposal for a green growth zone pilot project that includes at

least one area with a renewable energy source and another area with combined heat and power; and attaching draft legislation to implement that proposal.

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.