

NO. 92. AN ACT RELATING TO THE VERMONT ENERGY
EFFICIENCY AND AFFORDABILITY ACT.

(S.209)

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 efficiency and affordability act.”

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

(1) Global climate change, which is threatening our environment and perhaps ultimately our existence, has been caused in part by an energy policy that is largely dependent on the burning of fossil fuels.

(2) In order to reduce greenhouse gas emissions and environmental degradation, it is essential that we reduce or eliminate our dependency on fossil fuels by significantly improving energy efficiency and shifting to nonpolluting benign forms of energy such as wind, sun, and water power.

(3) In order for Vermont to meet the greenhouse gas reduction goals set by the conference of the New England governors and Eastern Canadian premiers’ climate change action plan, Vermont needs to provide effective weatherization services, new funding strategies, green building practices, and installation of renewable energy systems.

(4) The “Vermont energy efficiency potential study for non-regulated fuels” recently completed by the department of public service indicates that

Vermont has cost-effective potential energy savings of \$486 million over the next ten years with 63 percent of those savings from building shell improvements.

(5) Although workforce development in the field of green building, renewable energy, and energy efficiency is an essential component of the battle to combat global climate change, there are few trained applicants to fill the new well-paying jobs being created in this field.

* * * Agriculture Development Funds * * *

Sec. 3. 6 V.S.A. § 4710(g)(3) is amended to read:

(3) Assistance from the agricultural economic development special account shall be available ~~for~~ in order to produce agricultural energy, harvest biomass, convert biomass into energy, or enable installation and usage of wind, solar, or other technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate pursuant to 30 V.S.A. § 8002(2), including:

(A) Business and technical assistance for research and planning to aid a farmer or a group of farmers in developing business enterprises ~~that harvest biomass, convert biomass to energy, or produce biofuel;~~

(B) ~~Implementation~~ Cost-effective implementation assistance to leverage other sources of capital to assist a farmer or group of farmers in purchasing equipment, technology, or other assistance ~~to produce agricultural energy, harvest biomass, or convert biomass into energy;~~ and

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* * * Act 250 Definition of Farming * * *

Sec. 4. 10 V.S.A. § 6001(22) is amended to read:

(22) “Farming” means:

(A) the cultivation or other use of land for growing food, fiber,

Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or

bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products

principally produced on the farm; or

(F) the on-site storage, preparation, production, and sale of fuel or

power from agricultural products or wastes principally produced on the farm;

or

(G) the raising, feeding, or management of four or more equines

owned or boarded by the farmer, including training, showing, and providing

instruction and lessons in riding, training, and the management of equines.

* * * Renewable Energy Goal * * *

Sec. 5. 10 V.S.A. § 579 is added to read:

§ 579. 25 BY 25 STATE GOAL

(a) It is a goal of the state, by the year 2025, to produce 25 percent of the energy consumed within the state through the use of renewable energy sources, particularly from Vermont's farms and forests.

(b) By no later than January 15, 2009, the secretary of agriculture, food and markets, in consultation with the commissioner of public service and the commissioner of forests, parks and recreation, shall present to the committees on agriculture and natural resources and energy of the general assembly a plan for attaining this goal. Plan updates shall be presented no less frequently than every three years thereafter, and a progress report shall be due annually on January 15.

(c) By no later than January 15, 2009, the department of public service shall present to the legislative committees on natural resources and energy an updated comprehensive energy plan which shall give due consideration to the public engagement process required under 30 V.S.A. § 254 and under Sec. 2 of No. 208 of the Acts of the 2005 Adj. Sess. (2006). By that time, the department of public service shall incorporate plans adopted under this section into the state comprehensive energy plan adopted under 30 V.S.A. § 202b.

* * * Building Efficiency Goals * * *

Sec. 6. 10 V.S.A. § 581 is added to read:

§ 581. BUILDING EFFICIENCY GOALS

It shall be goals of the state:

(1) To improve substantially the energy fitness of at least 20 percent of the state's housing stock by 2017 (more than 60,000 housing units), and 25 percent of the state's housing stock by 2020 (approximately 80,000 housing units).

(2) To reduce annual fuel needs and fuel bills by an average of 25 percent in the housing units served.

(3) To reduce total fossil fuel consumption across all buildings by an additional one-half percent each year, leading to a total reduction of six percent annually by 2017 and 10 percent annually by 2025.

(4) To save Vermont families and businesses a total of \$1.5 billion on their fuel bills over the lifetimes of the improvements and measures installed between 2008 and 2017.

(5) To increase weatherization services to low income Vermonters by expanding the number of units weatherized, or the scope of services provided, or both, as revenue becomes available in the home weatherization assistance trust fund.

* * * Clean Energy Development Fund * * *

Sec. 7. 10 V.S.A. § 6523(d)(6) is added to read:

(6) The sum of \$20,000.00 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.

* * * Residential Building Energy Standards (RBES) * * *

Sec. 8. 21 V.S.A. § 266(c) is amended to read:

(c) Revision and interpretation of energy standards. ~~On or about January 1, 1999, and at least every three years thereafter, the~~ 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 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). 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 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.

* * * Commercial Building Energy Standards * * *

Sec. 9. 21 V.S.A. § 268 is amended to read:

§ 268. COMMERCIAL BUILDING ENERGY STANDARDS

(a) Definitions. For purposes of this subchapter, “commercial buildings” means all buildings that are not residential buildings as defined in subdivision 266(a)(2) of this title or farm structures as defined in 24 V.S.A. § 4413.

(1) The following commercial buildings, or portions of those buildings, separated from the remainder of the building by thermal envelope assemblies complying with this section shall be exempt from the building thermal envelope provisions of the standards:

(A) Those that do not contain conditioned space.

(B) Those with a peak design rate of energy usage less than an amount specified in the commercial building energy standards (CBES) adopted under subsection (b) of this section.

(2) These standards shall not apply to equipment or portions of building energy systems that use energy primarily to provide for industrial; or manufacturing; or commercial processes.

(b) Adoption of commercial building energy standards. Commercial building construction with respect to which ~~no state or~~ any local building permit application or application for construction plan approval by the commissioner of public safety pursuant to 20 V.S.A. chapter 173 has been submitted on or after January 1, 2007 shall be designed and constructed in substantial compliance with the standards contained in the 2005 Vermont Guidelines for Energy Efficient Commercial Construction, as those standards

may be amended by administrative rule adopted by the commissioner of public service.

(c) Revision and interpretation of energy standards. On or about January 1, 2009, and at least every three years thereafter, 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). At least a year 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 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 submitting an application for any ~~state or~~ 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 ~~any state or local permit authorizing~~ commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

(3) The advisory committee convened under this subsection, in preparing for the CBES updates, shall advise the department of public service with respect to the coordination of the CBES amendments with existing and proposed demand-side management programs offered in the state.

(4) The commissioner of public service is authorized to adopt rules interpreting and implementing the CBES.

(5) The commissioner of public service may grant written variances or exemptions from the CBES or rules adopted under this section where strict compliance would entail practical difficulty or unnecessary hardship, or is otherwise found unwarranted, provided that:

(A) Any such variance or exemption shall be consistent with state energy policy, as specified in 30 V.S.A. § 202a.

(B) Any petitioner for such a variance or exemption can demonstrate that the methods, means, or practices proposed to be taken in lieu of compliance with the rule or rules provide, in the opinion of the commissioner, equal energy efficiency to that attained by compliance with the rule or rules.

(C) A copy of any such variance or exemption shall be recorded by the petitioner in the land records of the city or town in which the building is located.

(D) A record of each variance or exemption shall be maintained by the commissioner, together with the certifications received by the commissioner.

(d) Certification requirement. ~~Commercial~~

(1) The design of commercial buildings shall be certified by the primary designer as compliant with CBES in accordance with this subsection, except as compliance is excused by a variance or exemption issued under subdivision (c)(5) of this section. A certification may be issued by a builder, a licensed professional engineer, or a licensed architect. If applicable law requires that the primary designer be a licensed professional engineer, licensed architect, or other licensed professional, a member of a pertinent licensed profession shall issue this certification. If one or more licensed professional engineers or licensed architects is involved in the design of the project, one of these licensees shall issue this certificate. If certification is not issued by a licensed professional engineer or a licensed architect is not involved in designing the

project, a certification shall be issued by the builder. Any certification shall be accompanied by an affidavit and shall certify that the designer acted in accordance with the designer's professional duty of care in designing the building, and that the commercial construction meets building was designed in substantial compliance with the requirements of the CBES. The department of public service will develop and make available to the public a certificate that lists key features requirements of the CBES, sets forth certifying language in accordance with this subdivision, and requires disclosure of persons relied upon by the primary designer who have contracted to indemnify the primary designer for damages arising out of that reliance. Any person certifying under this subdivision shall use this certificate or one substantially like it to certify compliance with CBES satisfy these certification obligations. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. The certificate shall certify that the building has been constructed in compliance with the requirements of the CBES. The person certifying under this subsection shall provide a copy of each certificate to the department of public service and shall assure that a certificate is recorded and indexed in the town land records. A builder may contract with a licensed professional engineer or a licensed architect to issue certification and to indemnify the builder from any liability to the owner of the commercial

~~construction caused by noncompliance with the CBES.~~ In certifying under this subsection, the certifying person may reasonably rely on one or more supporting affidavits received from other persons that contributed to the design affirming that the portions of the design produced by them were properly certifiable under this subsection. The certifying person may contract for indemnification from those on which the person relies pursuant to this subdivision (1) against damages arising out of that reliance. This indemnification shall not limit any rights of action of an aggrieved party.

(2) The construction of a commercial building shall be certified as compliant with CBES in accordance with this subsection, except as compliance is excused by a variance or exemption issued under subdivision (c)(5) of this section. This certification shall be issued by the general contractor, construction manager, or other party having primary responsibility for coordinating the construction of the subject building, or in the absence of such a person, by the owner of the building. Any certification shall be accompanied by an affidavit and shall certify that the subject commercial building was constructed in accordance with the ordinary standard of care applicable to the participating construction trades, and that the subject commercial building was constructed substantially in accordance with the construction documents including the plans and specifications certified under subdivision (1) of this subsection for that building. The department of public service will develop and make available to the public a certificate that sets forth certifying language

in accordance with this subdivision, and that requires disclosure of persons who have been relied upon by the person with primary responsibility for coordinating the construction of the building and who have contracted to indemnify that person for damages arising out of that reliance. The person certifying under this subdivision shall use that certificate or one substantially like it to satisfy these certification obligations. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. In certifying under this subdivision, the certifying person may reasonably rely on one or more supporting affidavits received from subcontractors or others engaged in the construction of the subject commercial building affirming that the portions of the building constructed by them were properly certifiable under this subdivision. The certifying person may contract for indemnification from those on which the person relies pursuant to this subdivision (2) against damages arising out of that reliance. This indemnification shall not limit any rights of action of an aggrieved party.

(3) Any person certifying under this subsection shall provide a copy of the person's certificate and any accompanying affidavit to the department of public service.

(4) A certificate issued pursuant to subdivision (1) of this subsection and a certificate issued pursuant to subdivision (2) of this subsection shall be

conditions precedent to issuance by the commissioner of public safety (or a municipal official acting under 20 V.S.A. § 2736) of any final occupancy permit required by the rules of the commissioner of public safety for use or occupancy of a commercial building that is also a public building as defined in 20 V.S.A. § 2730(a).

(e) ~~Action~~ Private right of action for damages against a certifier.

(1) Except as otherwise provided in this subsection, a person aggrieved by ~~noncompliance with this section~~ another person's breach of that other person's representations contained in a certification or supporting affidavit issued or received as provided under subsection (d) of this section, within ten years after the earlier of completion of construction or occupancy of the affected commercial building or portion of that building, may bring a civil action in superior court against a person who has ~~the~~ an obligation of certifying compliance under subsection (d) of this section alleging breach of the representations contained in that person's certification. This action may seek injunctive relief, damages arising from the aggrieved party's reliance on the accuracy of those representations, court costs, and reasonable attorneys' fees in an amount to be determined by the court. As used in this subdivision,

“damages” ~~means:~~

(A) ~~includes~~ includes costs incidental to increased energy consumption; ~~and~~

~~(B) labor, materials, and other expenses associated with bringing the structure into compliance with CBES in effect on the date construction was commenced.~~

(2) A person's failure to affix the certification as required by this section shall not be an affirmative defense in such an action against the person.

(3) The rights and remedies created by this section shall not be construed to limit any rights and remedies otherwise provided by law.

(4) The right of action established in this subsection may not be waived by contract or other agreement.

(5) It shall be a defense to an action under this subsection that either at the time of completion or at any time thereafter, the commercial building or portion of building covered by a certificate under subsection (d) of this section, as actually constructed, met or exceeded the overall performance standards established in the CBES in effect on the date construction was commenced.

~~(f) Violation of section State or local enforcement. Any person who falsely certifies knowingly makes a false certification under subsection (d) of this section, or any builder party who fails to certify under subsection (d) of this section when required to do so, shall be subject to a civil penalty of not more than \$250.00 per day, up to \$10,000.00 for each year the violation continues. Each violation shall constitute a separate offense, and each day that the violation continues shall constitute a separate offense.~~

(g) Title validity not affected. A defect in marketable title shall not be created by a failure to record a variance or exemption pursuant to subdivision (c)(5) of this section, by a failure to issue certification or a certificate, as required under subsection (d) of this section, or by a failure under that subsection to: affix a certificate; or provide a copy of a certificate to the department of public service; ~~or record and index a certificate in the town records.~~

* * * Smart Metering * * *

Sec. 10. SMART METERING INVESTIGATION

(a) The public service board shall continue its investigations of opportunities for Vermont electric utilities cost-effectively to install advanced “smart” metering equipment capable of sending two-way signals and sufficient to support advanced time-of-use pricing during periods of critical peaks or hourly differentiated time-of-use pricing.

(b) The scope of the investigation shall include the following:

(1) The current status of implementing either advanced time-of-use rate designs or advanced metering by Vermont utilities.

(2) Analysis of experience from other state jurisdictions and individual utility experience in planning and implementing programs that promote advanced time-of-use rate designs or advanced metering.

(3) Opportunities for exploring ways to design pilot programs and share experience among Vermont utilities with the deployment of advanced meters and rate designs.

(4) Analysis of all costs and benefits of installing advanced metering equipment, giving due consideration to the circumstances that differentiate Vermont utilities.

(5) Analysis of opportunities for reducing rates in the short and long term or mitigating rate impacts of investments in advanced metering and

ancillary equipment through advanced time-of-use rate designs enabled by these investments.

(6) Analysis of constraints or barriers to implementing this subsection, or opportunities presented by further deferring plans or commitments toward advanced metering equipment or rates.

(7) Analysis of all supporting and ancillary equipment, equipment standards, and efficiency programs necessary to ensure that customers are adequately and effectively empowered to use and respond cost-effectively to price signals made possible through advanced metering equipment.

(c) After investigation, in utility territories where the board concludes it appropriate and cost-effective, the board shall require each Vermont utility to file plans for investment and deployment of appropriate technologies and plans and strategies for implementing advanced pricing with a goal of ensuring that all ratepayer classes have an opportunity to receive and participate effectively in advanced time-of-use pricing plans.

(d) By December 31, 2008, the board shall issue a final report and plan for implementation.

Sec. 10a. 26 V.S.A. § 2173 is amended to read:

§ 2173. RULES ADOPTED BY THE BOARD

(a) The plumber's examining board may, pursuant to the provisions of 3 V.S.A. chapter 25 (Administrative Procedure Act), make and revise such plumbing rules as necessary for protection of the public health, except that no

rule of the board may require the installation or maintenance of a water heater at a minimum temperature. To the extent that a rule of the board conflicts with this subsection, that rule shall be invalid and unenforceable. The rules shall be in effect in every city, village, and town having a public water system or public sewerage system and apply to all premises connected to the systems and all public buildings containing plumbing or water treatment and heating specialties whether they are connected to a public water or sewerage system. The local board of health and the commissioner of public safety shall each have authority to enforce these rules. The rules shall be limited to minimum performance standards reasonably necessary for the protection of the public against accepted health hazards. The board may, if it finds it practicable to do so, adopt the provisions of a nationally recognized plumbing code.

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* * * Fuel Efficiency Fund * * *

Sec. 11. 30 V.S.A. § 203a is added to read:

§ 203a. FUEL EFFICIENCY FUND

(a) Fuel efficiency fund. There is established the fuel efficiency fund to be administered by a fund administrator appointed by the board. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The

fund shall contain such sums as appropriated by the general assembly or as otherwise provided by law, in addition to revenues from the sale of credits under the RGGI cap and trade program established under section 255 of this title.

(b) Use of the fund. The fuel efficiency fund shall be used to support the delivery of energy efficiency services to Vermont heating and process fuel consumers and to carry out cost-effective efficiency measures and reductions in greenhouse gas emissions from those sectors. These energy efficiency services shall be delivered by the service provider or providers selected by the public service department under section 235 of this title to perform these functions.

(c) Report. On or before January 15, 2010, and annually thereafter, the public service department shall report to the legislature on the expenditure of funds from the fuel efficiency fund to meet the public's needs for energy efficiency services.

(d) Department costs. Up to five percent of amounts allocated to the public service department from the fund may be used for administrative costs directly related to the fuel efficiency fund.

* * * Efficiency Entity * * *

Sec. 12. 30 V.S.A. § 209(d) and (e) are amended to read:

(d)(1) The public service department, any entity appointed by the board under subdivision (2) of this subsection, all gas and electric utility companies, and the board upon its own motion, are encouraged to propose, develop, solicit, and monitor energy efficiency and conservation programs and measures, including appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable agency of natural resources' air quality standards. Such programs and measures, and their implementation, may be approved by the board if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the board may require by order or by rule. The public service department shall investigate the feasibility of enhancing and expanding the efficiency programs of gas utilities and shall make any appropriate proposals to the board.

(2) In place of utility-specific programs developed pursuant to section 218c of this title, the board ~~may~~ shall, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures including programs and measures delivered in multiple service territories, by one or more entities appointed by the board for these purposes. The board may include appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable agency of

natural resources' air quality standards. ~~The~~ Except with regard to a transmission company, the board may specify that the ~~implementation of these programs and measures~~ appointment of an energy efficiency utility to deliver services within an electric utility's service territory satisfies a that electric utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the board.

(3) In addition to its existing authority, the board may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title. The charge shall be known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund administrator appointed by the board and deposited into an electric efficiency fund. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the board. This notice shall include, at a minimum, a toll free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge. Balances in the electric efficiency fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The board will annually provide the legislature with a report detailing the revenues

collected and the expenditures made for energy efficiency programs under this section.

(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 board, by rule or order, shall establish a process by which a customer ~~may apply to the board for an exemption from some or all of the charges assessed under this subdivision.~~ The board shall establish criteria by which these applications shall be

~~measured. Any such exemption shall extend for a period of time not to exceed one year. In addition, the board may authorize exemptions only if, at a minimum, a customer demonstrates that, during the preceding year, it implemented an extraordinary amount of cost-effective energy efficiency at the customer's own expense or incurred extraordinary costs on those measures and the customer did not and will not receive reimbursement for those measures from the entity designated by the board under this section who pays an average annual energy efficiency charge 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 shall establish criteria for approval of these applications.~~

(5) Appointment of an entity under subdivision (2) of this subsection may be by contract or by an order of appointment. An appointment, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the board deems appropriate to promote the public good. For good cause, after notice and opportunity for hearing, the board may amend or revoke an order of appointment.

(6) Any entity appointed by order of appointment under subdivisions (2) and (5) of this subsection that is not an electric or gas utility already regulated under this title shall not be considered to be a company as defined under section 201 of this title, but shall be subject to the provisions of sections 18, 19, 20, 21, 30, 31, 32, 205, 206, 207, 208, 209(a), 219, 221, and 231(b) of this title, to the same extent as a company as defined under section 201 of this title. The board and the department of public service shall have jurisdiction under those sections over the entity, its directors, receivers, trustees, lessees, or other persons or companies owning or operating the entity and of all plants, equipment, and property of that entity used in or about the business carried on by it in this state as covered and included in this section. This jurisdiction shall be exercised by the board and the department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law. The board and the department each may, when they deem the public good requires, examine the plants, equipment, and property of any entity appointed by order of appointment under subdivisions (2) and (5) of this subsection.

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section.

(e) The board shall:

(1) Ensure that all retail consumers, regardless of retail electricity ~~or~~, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services, including the use of compensation mechanisms for any energy efficiency entity appointed under subdivision (d)(2) of this section that are based upon verified savings in energy usage and demand, and other performance targets specified by the board. The linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the board.

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the state.

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation.

(5) Promote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs.

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures.

(7) Provide a reasonably stable multiyear budget and planning cycle ~~and~~ in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources.

(8) Approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits.

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms.

(10) Provide for the independent evaluation of programs delivered under subsection (d) of this section.

(11) Require that any entity ~~approved~~ appointed by the board under subsection (d) of this section deliver board-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the board's orders in public service board docket 5270, and any relevant board orders in subsequent energy efficiency proceedings.

(12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section.

(13) Ensure that any energy efficiency program approved by the board shall be reasonable and cost-effective.

(14) Consider the impact on retail electric rates and bills of programs delivered under subsection (d) of this section and the impact on fuel prices and bills.

(15) Ensure that the energy efficiency programs implemented under this section are designed to make continuous and proportional progress toward attaining the overall state building efficiency goals established by 10 V.S.A. § 581, by promoting all forms of energy end-use efficiency and comprehensive sustainable building design.

* * * Conservation Rates * * *

Sec. 13. 30 V.S.A. § 218(b) is amended to read:

(b) The department of public service shall propose, and the board through the establishment of rates of return, rates, tolls, charges, or schedules shall encourage the implementation by electric and gas utilities of energy-efficiency and load management measures which will be cost-effective for the utilities and their customers on a life cycle cost basis. The board shall approve rate

designs to encourage the efficient use of natural gas and electricity, including consideration of the creation of an inclining block rate structure for residential rate customers with an initial block of low-cost power available to all residences.

(1) To implement the requirements of this subsection, the public service board shall continue its investigation of the following:

(A) the parameters for residential inclining block rate designs;

(B) alternative rate designs, such as critical peak pricing programs or more widespread use of time-of-day rates, that would encourage more efficient use of electricity;

(C) the possible inclusion of exemptions from otherwise applicable inclining block rates or rate designs to encourage efficiency for situations in which special health needs or another extraordinary situation presents such a significant demand for electricity that the board determines use of those rates would cause undue financial hardship for the customer;

(2) By December 31, 2008, the board shall issue a report and plan for implementation based upon the results of its investigation. The plan shall require each retail company to upgrade its rates as necessary to implement new rate designs appropriate to encourage efficient energy use, which shall include residential inclining block rates, if the board determines that those rates would be appropriate, by a specified date, or as part of its next rate-related appearance before the board, or according to a timetable otherwise specified by the board.

In implementing these rate designs, the board shall consider the appropriateness of phasing in the rate design changes to allow large users of energy a reasonable opportunity to employ methods of conservation and energy efficiency in advance of the full effect of the changes.

* * * Affordability * * *

Sec. 13a. 30 V.S.A. § 218(e) is added to read:

(e) Notwithstanding any other provisions of this section, the board, on its own motion or upon petition of any person, may issue an order approving a rate schedule, tariff, agreement, contract, or settlement that provides reduced rates for low income electric utility consumers better to assure affordability. For the purposes of this subsection, “low income electric utility consumer” means a customer who has a household income at or below 150 percent of the current federal poverty level. When considering whether to approve a rate schedule, tariff, agreement, contract, or settlement for low income electric utility consumers, the board shall take into account the potential impact on, and cost-shifting to, other utility customers.

* * * Net Metering * * *

Sec. 14. 30 V.S.A. § 219a is amended to read:

§ 219a. SELF-GENERATION AND NET METERING

(a) As used in this section:

(1) “Customer” means a retail electric consumer who uses a net metering system.

(2) “Net metering” means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer’s billing period:

(A) using a single, nondemand meter or such other meter that would otherwise be applicable to the customer’s usage but for the use of net metering;
or

(B) on farm or group systems, using multiple meters as specified in this chapter. The calculation will be made by converting all meters to a nondemand, nontime-of-day meter, and equalizing them to the tariffed kilowatt-hour rate.

(3) “Net metering system” means a facility for generation of electricity that:

(A) is of no more than ~~15~~ 250 kilowatts (AC) capacity, ~~or is a farm system;~~

* * *

(E)(i) employs a renewable energy source as defined in subdivision 8002(2) of this title; or

(ii) is a qualified micro-combined heat and power system of 20 kilowatts or fewer that meets the definition of combined heat and power in 10 V.S.A. § 6523(b) and may use any fuel source that meets air quality standards.

(4) “Farm system” means a facility of no more than ~~150~~ 250 kilowatts (AC) output capacity, except as provided in subdivision (k)(5) of this section, that generates electric energy on a farm operated by a person principally engaged in the business of farming, as that term is defined in Regulation 1.175-3 of the Internal Revenue Code of 1986, from the anaerobic digestion of agricultural products, byproducts, or wastes, or other renewable sources as defined in subdivision (3)(E) of this subsection, intended to offset the meters designated under subdivision (g)(1)(A) of this section on the farm or has entered into a contract as specified in subsection (k) of this section.

(b) A customer shall pay the same rates, fees, or other payments and be subject to the same conditions and requirements as all other purchasers from the electric company in the same rate-class, except as provided for in this section, and except for appropriate and necessary conditions approved by the board for the safety and reliability of the electric distribution system.

* * *

(f) Consistent with the other provisions of this title, electric energy measurement for net metering farm or group net metering systems shall be calculated in the following manner:

(1) Net metering customers that are farm or group net metering systems may credit on-site generation against all meters designated to the farm system or group net metering system under subdivision (g)(1)(A) of this section.

(2) Electric energy measurement for farm or group net metering systems shall be calculated by subtracting total usage of all meters included in the farm or group net metering system from total generation by the farm or group net metering system. If the electricity generated by the farm or group net metering system is less than the total usage of all meters included in the farm or group net metering system during the billing period, the farm or group net metering system shall be credited for any accumulated kilowatt-hour credit and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g) of this section.

(3) If electricity generated by the farm or group net metering system exceeds the electricity supplied by the electric company:

(A) The farm or group net metering system shall be billed for the appropriate charges for each meter for that month, in accordance with subsection (b) of this section.

(B) Excess kilowatt-hours generated during the billing period shall be added to the accumulated balance with this kilowatt-hour credit appearing on the bill for the following billing period.

(C) Any accumulated kilowatt-hour credits shall be used within 12 months or shall revert to the electric company without any compensation to the farm or group net metering system. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title.

(g)(1) In addition to any other requirements of section 248 of this title and this section and board rules thereunder, before a ~~net metering~~ farm or group net metering system including more than one meter may be formed and served by an electric company, the proposed ~~net metering~~ farm or group net metering system shall file with the board, with copies to the department and the serving electric company, the following information:

(A) the meters to be included in the farm or group net metering system, which shall be associated with the ~~farm~~ buildings and residences owned or occupied by the person operating the farm or group net metering system, or the person's family or ~~farm~~ employees, or other members of the group, identified by account number and location;

(B) a ~~method~~ procedure for adding and removing meters included in the farm or group net metering system;

(C) a designated person responsible for all communications from the farm or group net metering system to the serving electric company, for receiving and paying bills for any service provided by the serving electric company for the farm or group net metering system, and for receiving any other communications regarding the farm or group net metering system ~~net metering~~; and

(D) a binding process for the resolution of any disputes within the farm or group net metering system relating to net metering that does not rely on the serving electric company, the board, or the department.

(2) The farm or group net metering system shall, at all times, maintain a written designation to the serving electric company of a person who shall be the sole person authorized to receive and pay bills for any service provided by the serving electric company, and ~~for receiving~~ to receive any other communications regarding the farm system, the group net metering system, or net metering.

(3) The serving utility shall implement appropriate changes to the farm ~~system~~ or group net metering system within 30 days after receiving written notification from the designated person. However, written notification of a change in the person designated under subdivision (2) of this subsection shall be effective upon receipt by the serving utility. The serving utility shall not be liable for action based on such notification, but shall make any necessary corrections and bill adjustments to implement revised notifications.

(4) Pursuant to subsection 231(a) of this title, after such notice and opportunity for hearing as the board may require, the board may revoke a certificate of public good issued to a farm or group net metering system.

(5) A group net metering system may consist only of customers that are located within the service area of the same electric company. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility shall be considered in the same group net metering system with buildings of its member municipalities

that are located within the service area of the same electric company that serves the facility. If it determines that it would promote the general good, the board shall permit a noncontiguous group of net metering customers to comprise a group net metering system.

(h)(1) An electric company:

(A) Shall make net metering available to any customer using a net metering system, group net metering system, or farm system on a first-come, first-served basis until the cumulative output capacity of net metering systems equals ~~1.0~~ 2.0 percent of the distribution company's peak demand during 1996; or the peak demand during the most recent full calendar year, whichever is greater. The board may raise the ~~1.0~~ 2.0 percent cap. In determining whether to raise the cap, the board shall consider the following:

(i) the costs and benefits of net metering systems already connected to the system; and

(ii) the potential costs and benefits of exceeding the cap, including potential short and long-term impacts on rates, distribution system costs and benefits, reliability and diversification costs and benefits;

(B) Shall allow net metering systems to be interconnected using a kilowatt-hour meter capable of registering the flow of electricity in two directions or such other comparably equipped meter that would otherwise be applicable to the customer's usage but for the use of net metering;

(C) May, at its own expense, and with the written consent of the customer, install one or more additional meters to monitor the flow of electricity in each direction;

(D) ~~Shall~~ Except as otherwise provided in this section, shall charge the customer a minimum monthly fee that is the same as for other customers of the electric distribution company in the same rate class, but shall not charge the customer any additional standby, capacity, interconnection, or other fee or charge;

(E) May require a customer to comply with generation interconnection, safety, and reliability requirements, as determined by the public service board by rule or order, and may charge reasonable fees for interconnection, establishment, special metering, meter reading, accounting, account correcting, and account maintenance of net metering arrangements of greater than 15 kilowatt (AC) capacity;

(F) May charge, if the capacity of the distribution system is insufficient for the designed generation, subject to determination by the board, a reasonable fee to cover the cost of electric company improvements necessary to distribute power;

(G) May require that all meters included within a farm or group net metering system be read on the same billing cycle;

(H) May book and defer, with carrying costs, additional incremental costs, to the extent that such costs are not recovered through charges,

authorized in subdivisions (D), (E), and (F) of this subdivision (1), directly related to implementing net metering of greater than 15 kilowatt (AC) capacity;

~~(I) Shall receive from a farm system, which is designed to produce less energy than the total annual load of the meters identified in subdivision (g)(1)(A) of this section, any tradeable renewable credits for which the farm system is eligible. All other farm systems shall retain any tradeable renewable credits for which the farm is eligible;~~

(2) All such requirements shall be pursuant to and governed by a tariff approved by the board and any applicable board rule, which tariffs and rules shall be designed in a manner reasonably likely to facilitate net metering.

* * *

~~(j) Notwithstanding the provisions of this section that define a net metering system as being of no more than 15 kilowatts (AC) capacity, the board may allow net metering for up to ten systems per year for customers that produce more than 15 kilowatts (AC) capacity, but do not produce more than 150 kilowatts of power and are not farm systems.~~

(k) Notwithstanding the provisions of subsections (f) and (g) of this section, an electric company may contract to purchase all or a portion of the output products from a farm or group net metering system, provided:

(1) the farm or group net metering system obtains a certificate of public good under the terms of subsections (c) and (d) of this section;

(2) any contracted power shall be subject to the limitations set forth in subdivision (h)(1) of this section;

(3) any contract shall be subject to interconnection and metering requirements in subdivisions (h)(1)(C) and (i)(2) and (3) of this section;

(4) any contract may permit all or a portion of the tradeable renewable energy credits for which the farm system is eligible to be transferred to the electric company;

(5) the output capacity of a system may exceed ~~150~~ 250 kilowatts, provided:

(A) the contract assigns the amount of power to be net metered;

(B) the net metered amount does not exceed ~~150~~ 250 kilowatts; and

(C) only the amount assigned to net metering is assessed to the cap provided in subdivision (h)(1)(A) of this section.

(1) The board shall adopt rules regarding the application of the esthetics criterion established in subdivision 248(b)(5) of this title to an application for a certificate under this section for a single, net metered wind turbine that is less than 150 feet in height.

* * * Heating Efficiency Program * * *

Sec. 15. 30 V.S.A. § 235 is added to read:

§ 235. HEATING AND PROCESS FUEL EFFICIENCY PROGRAM

(a) After consultation with fuel dealers, any appointed efficiency entity, financial institutions, the board, representatives of the weatherization program,

and other stakeholders, the department of public service shall propose, develop, solicit, and monitor any combination of energy efficiency and conservation programs, measures, and compensation mechanisms to provide fuel efficiency services on a statewide basis for Vermont heating or process fuel consumers. The department shall select one or more service providers as needed and pursuant to a competitive bidding process to implement those programs, measures, or compensation mechanisms by means of Performance-based contracts that are based upon verified savings in energy usage and demand, and other performance targets. The contracts entered into during the first year after the effective date of this section shall be for a period of time of no greater than three years. Those programs, measures, and compensation mechanisms shall include fuel efficiency services that:

(1) produce whole building and process heat efficiency, regardless of the fuel type used;

(2) facilitate appropriate fuel switching; and

(3) promote coordination, to the fullest practical extent, with the electric efficiency programs established and administered pursuant to this chapter, as well as with low income weatherization programs and any utility energy efficiency programs.

(b) Prior to the department of public service entering a contract with service providers under this section and after such notice and hearings as it may require, the public service board shall review the programs, measures, and

compensation mechanisms selected by the department to determine whether these programs, measures, and compensation mechanisms promote the public good. The board may alter or impose conditions on any combination of these programs, measures, or compensation mechanisms as it deems necessary to promote the public good. If the department thereafter changes the programs, measures, or compensation mechanisms, it shall request review under this section by the board prior to implementing those changes.

(c) Funding for the program established under this section shall be provided from the fuel efficiency fund established under section 203a of this title. During fiscal year 2009, any contracts or grants to be made from the fund for other than administrative purposes shall be subject to appropriation by the general assembly. The department shall provide the joint fiscal committee, at the committee's November 2008 meeting, with a preliminary report on the program to be presented to the public service board.

(d) The department, subject to the oversight of the board, shall:

(1) Ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services, including the use of compensation mechanisms that are based upon verified savings in energy

usage and demand, and other performance targets specified by the board. The linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the board.

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the state.

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation.

(5) Promote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs.

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures.

(7) Provide a reasonably stable multiyear budget and planning cycle in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources.

(8) Develop and approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits.

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms.

(10) Provide for the independent evaluation of programs delivered under this section.

(11) Require that any service provider under this section deliver programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the board's orders in public service board docket 5270, and any relevant board orders in subsequent energy efficiency proceedings.

(12) Require verification, on or before January 1, 2011, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity selected to be a service provider under this section.

(13) Ensure that any energy efficiency program implemented under this section shall be reasonable and cost-effective.

(14) Consider the impact of programs delivered under this section on the amount of fuel used, fuel prices, and fuel bills.

(15) Ensure that the energy efficiency programs implemented under this section are designed to make continuous and proportional progress toward attaining the overall state building efficiency goals established by 10 V.S.A. § 581, by promoting all forms of energy end-use efficiency and comprehensive sustainable building design.

(e) Any disputes under this section shall be resolved by the board.

Sec. 16. SELECTION OF SERVICE PROVIDERS

The department of public service shall proceed with all deliberate speed to implement the provisions of 30 V.S.A. § 235. It shall be a goal to issue RFPs by no later than the end of October, 2008. Initial service providers shall be selected no later than April 1, 2009.

* * * Temporary Meteorological Stations * * *

Sec. 17. 30 V.S.A. § 246 is added to read:

§ 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

(a) For purposes of this section, a “meteorological station” consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The public service board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the state

if it is in compliance with the criteria of this section and the board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

(c) In developing rules or orders, the board:

(1) Shall develop a simple application form and shall require that completed applications be filed with the board, the department of public service, the agency of natural resources, and the municipality in which the meteorological station is proposed to be located.

(2) Shall require that if no objections are filed within 30 days of the board's receipt of a complete application and the board determines that the applicant has met all of the requirements of section 248 of this title, the certificate of public good shall be issued for a period that the board finds reasonable, but in no event for more than five years. Upon request of an applicant, the board may renew a certificate of public good. Upon expiration of the certificate, the meteorological station and all associated structures and material shall be removed, and the site shall be restored substantially to its preconstruction condition.

(3) May waive the requirements of section 248 of this title that are not applicable to meteorological stations, including criteria that are generally applicable to public service companies as defined in this title. The board shall not waive review regarding whether construction will have an undue adverse

effect on esthetics, historic sites, air and water purity, the natural environment, and the public health and safety.

(4) Shall seek to simplify the application and review process, as appropriate, in conformance with this section.

(d) A proposal for decision shall be issued within five months of when the board receives a completed application for a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title.

* * * Regional Greenhouse Gas Initiative (RGGI) * * *

Sec. 18. 30 V.S.A. § 255 is amended to read:

§ 255. REGIONAL COORDINATION TO REDUCE GREENHOUSE
GASES

(a) Legislative findings. The general assembly finds:

(1) There is a growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect, resulting in changes in the earth's climate.

(2) Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally, and in Vermont.

(3) A carbon constraint on fossil fuel-fired electricity generation and the development of a CO₂ allowance trading mechanism will create a strong incentive for the creation and deployment of more efficient fuel-burning

technologies, renewable resources, and end-use efficiency resources and will lead to lower dependence on imported fossil fuels.

(4) Absent federal action, a number of states are taking actions to work regionally to reduce power sector carbon emissions.

(5) Vermont has joined with at least six other states to design the Regional Greenhouse Gas Initiative (RGGI), and, in 2005, Vermont's governor signed a memorandum of understanding (MOU) signaling Vermont's intention to develop rules and programs to participate in RGGI.

(6) It is crucial to manage Vermont's implementation of RGGI and its consumption of fossil fuels for residential and commercial heating, and industrial processes, so as to maximize the state's contribution to lowering carbon emissions while:

(A) minimizing impacts on electric system reliability and unnecessary costs to Vermont ~~power~~ energy consumers;

(B) minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes.

(7) The accelerated deployment of low-cost process, thermal, and electrical energy efficiency ~~and~~, the strategic use of low- and zero-carbon generation, and the selective use of switching fuel sources are the best means to achieve these goals.

(8) It is crucial that funds made available from operation of a regional carbon credits cap and trade system be devoted to the benefit of Vermont ~~power~~ energy consumers through investments in a strategic portfolio of energy efficiency, weatherization, and low-carbon generation resources.

(b) Cap and trade program creation.

(1) The agency of natural resources and the public service board shall, through appropriate rules and orders, establish a carbon cap and trade program that will limit and then reduce the total carbon emissions released by major electric generating stations that provide electric power to Vermont utilities and end-use customers.

(2) Vermont rules and orders establishing a carbon cap and trade program shall be designed so as to permit the holders of carbon credits to trade them in a regional market proposed to be established through the RGGI.

(c) Allocation of tradable carbon credits.

(1) The secretary of natural resources, by rule, shall establish a set of annual carbon budgets for emissions associated with the electric power sector in Vermont consistent with the 2005 RGGI MOU, including any amendments to that MOU, and on a reciprocal basis with the other states participating in the RGGI process.

(2) In order to provide the maximum long-term benefit to Vermont ~~electric~~ consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon

power system, building envelope, and other investments, the public service board, by rule or order, shall establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits ~~and the proceeds from the sale of those credits through allocation~~ to one or more trustees acting on behalf of consumers in accordance with the following principles. To the extent feasible, the allocation plan shall accomplish the following goals:

(A) minimize windfall financial gains to power generators as a result of the operation of the cap and trade program, considering both the costs that generators may incur to participate in the program and any power revenue increases they are likely to receive as a result of changes in regional power markets;

(B) employ an administrative structure that will enable program managers to perform any combination of holding, banking, and selling carbon credits in regional, national, and international carbon credit markets in a financially responsible and market-sensitive fashion, and provide funds to defray the reasonable costs of the program trustee or trustees and Vermont's pro-rata share of the costs of the RGGI regional organization;

(C) optimize the revenues received from the management and sale of carbon credits for the benefit of Vermont ~~electric customers~~ energy consumers and the Vermont economy;

(D) minimize any incentives from operation of the cap and trade program for Vermont utilities to increase the overall carbon emissions associated with serving their customers;

(E) build upon existing regulatory and administrative structures and programs that lower power and heating costs, improve efficiency, and lower the state's carbon profile ~~of the state's power supply~~ while minimizing adverse impacts on electric system reliability and unnecessary costs to Vermont ~~power~~ energy consumers, and minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes;

(F) ensure that carbon credits allocated under this program and revenues associated with their sale remain ~~power system~~ public assets managed for the benefit of ~~electric~~ the state's consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power, or heating system or building envelope investments;

(G) where practicable, support efforts recommended by the agency of natural resources or the department of public service to stimulate or support investment in the development of innovative ~~power sector~~ carbon emissions abatement technologies that have significant carbon reduction potential.

(d) Appointment of consumer trustees. The public service board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees

to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. Proceeds from the sale of carbon credits shall be deposited into the fuel efficiency fund established under section 203a of this title.

(e) Reports. By January 15 of each year, commencing in 2007, the department of public service in consultation with the agency of natural resources and the public service board shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the implementation and operation of RGGI and the revenues collected and the expenditures made under this section, together with recommended principles to be followed in the allocation of funds.

* * * Renewable Energy Pricing and Portfolio Standards * * *

Sec. 19. 30 V.S.A. § 8002(4) is amended to read:

(4) “New renewable energy” means renewable energy produced by a generating resource coming into service after December 31, 2004. This may include the additional energy from an existing renewable facility retrofitted with advanced technologies or otherwise operated, modified, or expanded to increase the kwh output of the facility in excess of an historical baseline established by calculating the average output of that facility for the 10-year period that ended December 31, 2004. If the production of new renewable energy through retrofitting changes in operations, modification, or expansion involves combustion of the resource, the system also must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions. For the purposes of this chapter, renewable energy refers to either “existing renewable energy” or “new renewable energy.”

Sec. 20. 30 V.S.A. § 8003 is amended to read:

§ 8003. RENEWABLE ENERGY PRICING

(a) ~~Upon petition of an electric company subject to this title, upon request of the department of public service, or on its own initiative, the public service board may approve one or more renewable pricing programs for one or more electric utilities; provided, however, in the case of a municipal plant or department formed under local charter or chapter 79 of this title, or an electric cooperative formed under chapter 81 of this title, any renewable pricing~~

~~program approved by the board shall also be approved by a majority of the voters of a municipality or cooperative voting upon the question at a duly warned annual or special meeting held for that purpose.~~ Unless the board finds good cause to exempt a utility, by no later than July 1, 2009, each electric utility, municipal department formed under local charter or chapter 79 of this title, and each electric cooperative formed under chapter 81 of this title shall 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.

* * *

(f) ~~Renewable pricing programs offered by a company shall be available to such customer classes as the board may determine.~~

(g) The board shall consider the following factors in deciding whether and upon what conditions to approve a proposed renewable energy pricing program:

- (1) minimization of marketing and administrative expenses;

(2) auditing or certification of sources of energy or tradeable renewable energy credits;

(3) marketing and promotion plans;

(4) effectiveness of the program in meeting the goals of promoting renewable energy generation and public understanding of renewable energy sources in Vermont;

(5) retention by the program of renewable energy production incentives, tax incentives and other incentives earned or otherwise obtained by energy resources acquired pursuant to or as part of a renewable energy pricing program approved under this section to reduce the cost of any premiums paid under this section; and

(6) costs imposed on nonparticipating customers arising on account of the implementation of the voluntary renewable energy pricing program.

Sec. 21. 30 V.S.A. § 8004(e) is amended to read:

(e) In lieu of, or in addition to purchasing tradeable renewable energy credits to satisfy the portfolio requirements of this section, a retail electricity provider in this state may pay to ~~a renewable energy fund established by the public service board~~ the Vermont clean energy development fund established under 10 V.S.A. § 6523 an amount per kilowatt hour as established by the board. As an alternative, the board may require any proportion of this amount to be paid to the energy conservation fund established under subsection 209(d) of this title.

* * * SPEED Program * * *

Sec. 22. 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 (2) and (3) of this subsection shall:

* * *

(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 ~~margin~~ below the hourly spot market 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 renewable energy that are anticipated to be below the long-term market price, over the lives of the projects 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;

* * *

(d)(1) The public service board shall meet on or before January 1, 2012, and open a proceeding, and issue findings determining to determine the total amount of qualifying SPEED resources that have come into service or are projected to come into service during the period of time between January 1, 2005 and January 1, 2013 been supplied to Vermont retail electricity providers or have been issued a certificate of public good. If the board finds that the amount of qualifying SPEED resources coming into service during that time or having been issued a certificate of public good after January 1, 2005 and before July 1, 2012 equals or exceeds total statewide growth in electric energy usage retail sales during the period of time between January 1, 2005 and January 1, 2012 that time, and in addition, at least five percent of the 2005 total statewide electric retail sales is provided by qualified SPEED resources or would be provided by qualified SPEED resources that have been issued a certificate of public good, or if it finds that the amount of qualifying SPEED resources equals or exceeds 10 percent of total statewide electric energy usage

retail sales for calendar year 2005, the portfolio standards established under this chapter shall not be in force. The board shall make its determination by ~~July 1, 2012~~ January 1, 2013. If the board finds that the goal established has not been met, one year after the board's determination the portfolio standards established under subsection 8004(b) of this title shall take effect.

(2) A state goal is to assure that 20 percent of total statewide electric retail sales before July 1, 2017 shall be generated by SPEED resources. The public service board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2011 with regard to the state's progress in meeting this goal. In addition, the board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2013 with regard to the state's progress in meeting this goal and, if necessary, shall include any appropriate recommendations for measures that will make attaining the goal more likely.

(3) For the purposes of the determination to be made under this subsection, electricity produced at all facilities owned by or under long-term contract to Vermont retail electricity providers, whether it is generated inside or outside Vermont, that is new renewable energy shall be counted in the calculations under ~~subdivision~~ subdivisions (d)(1) and (2) of this section.

* * *

* * * Municipal Tax Exemptions * * *

Sec. 23. 32 V.S.A. § 3845 is amended to read:

§ 3845. ALTERNATE ENERGY SOURCES

* * *

(b) For the purposes of this section alternate energy sources includes any plant, structure or facility used for the generation of electricity or production of energy used on the premises for private, domestic, or agricultural purposes, no part of which may be for sale or exchange to the public. The term shall include, but not be limited to grist mills, windmills, facilities for the collection of solar energy or the conversion of organic matter to methane, net metering systems regulated by the public service board under 30 V.S.A. § 219a, and all component parts thereof including land upon which the facility is located, not to exceed one-half acre.

* * * Wind-Powered Electric Generating Facilities * * *

Sec. 24. 32 V.S.A. § 5401(10)(J) is added to read:

(10) “Nonresidential property” means all property except:

* * *

(J) Buildings and fixtures of wind-powered electric generating facilities taxed under section 5402c of this title.

Sec. 25. 32 V.S.A. § 5402c is added to read:

§ 5402c. WIND-POWERED ELECTRIC GENERATING FACILITIES TAX

(a) A facility certified by the commissioner of public service as a facility which produces electrical energy for resale, generated solely from wind power, which has an installed capacity of at least five megawatts, which was placed in service after January 1, 2007, and which holds a valid certificate of public good issued under 30 V.S.A. § 248, shall be assessed an alternative education property tax on its buildings and fixtures used directly and exclusively in the generation of electrical energy from wind power.

(b) The tax shall be imposed at a rate per kWh of electrical energy produced by the certified facility, as determined by the public service department for the six months ending April 30 and the six months ending October 31 each year. The rate of the tax shall be \$0.003.

(c) In no case shall the tax imposed for any six-month period be less than an amount equal to the rate per kWh imposed by this subsection multiplied by

the number of kWh that would be generated if the facility operated at 15 percent of the facility's average capacity factor.

(d) The tax imposed by this section shall be paid to the commissioner of taxes by the person or entity then owning or operating the certified facility by December 1 for the period ending October 31 and by June 1 for the period ending April 30 for deposit into the education fund. A person or entity failing to make returns or pay the tax imposed by this section within the time required shall be subject to and governed by the provisions of sections 3202 and 3203 and subchapters 8 and 9 of chapter 151 of this title.

(e) Unless buildings and fixtures are taxed under this section, they shall remain subject to taxation under section 5402 of this title. Buildings and fixtures subject to the education property tax under this section shall not be taken into account in determining the common level of appraisal for the municipality.

Sec. 26. MUNICIPAL PROPERTY TAXES UNAFFECTED

Application of alternative education property tax to a wind-powered electric generating facility under 32 V.S.A. § 5402c shall have no effect upon the assessment of municipal taxes upon that facility by any municipality in this state.

* * * Business Energy Credit * * *

Sec. 27. 32 V.S.A. § 5822(c)(1)(B) and (d) are amended to read:

(c) The amount of tax determined under subsection (a) of this section shall be:

(1) increased by 24 percent of the taxpayer's federal tax liability for the taxable year for the following:

* * *

(B) recapture of federal investment tax credit and increased by 76 percent of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit recapture for the taxable year;

(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, 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.

Sec. 28. 32 V.S.A. § 5930z is added 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.

(b) Any taxpayer who has received a credit under subsection (a) of this section in any prior year shall increase its corporate income tax under this chapter by the amount of the Vermont-property portion of the business solar energy investment tax credit component of the federal investment tax credit recapture for the taxable year.

Sec. 29. EFFECTIVE DATE OF BUSINESS ENERGY TAX CREDITS

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

* * * Weatherization * * *

Sec. 30. 33 V.S.A. § 2501(c) is amended to read:

(c) 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 into the fund. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the commissioner of finance and management. Disbursements may be made from the fund only to support the programs established by this chapter or otherwise as authorized by this chapter.

Sec. 31. 33 V.S.A. § 2502 is amended to read:

§ 2502. HOME WEATHERIZATION ASSISTANCE PROGRAM

(a) The director of the state office of economic opportunity shall administer a home weatherization assistance program under such rules, regulations, funding and funding requirements as may be imposed by federal law.

(b) In addition, the director shall supplement, or supplant, any federal program with a state home weatherization assistance program ~~providing:~~

(1) The state program shall provide an enhanced weatherization assistance amount exceeding the federal per unit limit allowing amounts up to an average of ~~\$3,000.00~~ \$6,000.00 per unit ~~pursuant to rules adopted by the director allocating additional per unit amounts~~ allocated on a cost-effective basis. In units where costs exceed the allowable average by more than 25 percent, prior approval of the director of the state economic opportunity office

shall be required before work commences. This amount shall be adjusted annually by increasing the last year's amount by ~~the lesser of~~

~~(A) the percentage increase in the Consumer Price Index for the previous year; or~~

~~(B) three percent;.~~

(2) The state program shall provide amounts for low income customers utilizing any high operating cost fuel, to convert to another fuel source under rules adopted by the director based on the cost effectiveness of the converted facility over the life cycle of the equipment.

(3) The director, in collaboration with the weatherization service providers and other stakeholders, shall develop the state program so that it will include:

(A) Facilitating the development and implementation of a statewide common energy-audit tool or tools that work well on all Vermont housing, including multi-family buildings.

(B) With regard to multi-family buildings, requiring either of the following requirements to be met:

(i) at least 25 percent or more of the tenants in the building are eligible for the weatherization program; or

(ii) at least 50 percent of the units are weatherization affordable, and at least one tenant of the building has applied for the weatherization program and has been determined to be eligible. For purposes of this

subdivision, “weatherization affordable” means a unit having a rent that is established at less than 30 percent of the income level established by computing 60 percent of the area median income level or 60 percent of the state median income level, whichever is higher, for the relevant household size. Relevant household size means the number of bedrooms in the unit, plus one.

(C) Establishing program eligibility levels at 60 percent of the area median income, or 60 percent of the state median income, whichever is higher.

(D) Eliminating the lien requirements on weatherized rental properties, so long as the landlord executes a rent stabilization agreement which has a term of at least one year.

(E) Generally, allowing flexibility to accommodate special circumstances in which greater energy savings can be realized or health and safety problems may be alleviated.

(F) Increasing the number of low income homes weatherized each year, or the scope of services provided, or both, to reflect increased revenues in the home weatherization assistance trust fund.

* * *

Sec. 32. 33 V.S.A. § 2503(h) is amended to read:

(h) No tax under this section shall be imposed for any quarter ending after June 30, ~~2008~~ 2011. Monies from the escrow account shall be issued for rebates pursuant to subsection (g) of this section until March 1, ~~2009~~ 2012.

Sec. 33. REPORT ON HEATING FUEL GROSS RECEIPTS TAX

By January 15, 2011, the joint energy committee shall:

(1) With the assistance of the department of taxes, the department of motor vehicles, and the joint fiscal office, review the efficiency of the gross receipts tax and other taxes on fuels, including payment and reporting requirements.

(2) Study the advisability of continuing or increasing the amount of the tax established under 33 V.S.A. § 2503, as appropriate, given the degree of success of the state by that time in meeting the building efficiency goals of the state established in 10 V.S.A. § 581.

(3) Report its findings and recommendations with regard to subdivisions (1) and (2) of this section to the house and senate committees on appropriations and on natural resources and energy, the house committee on ways and means, and the senate committee on finance.

* * * Biodiesel * * *

Sec. 34. USE OF BIODIESEL IN STATE OFFICE BUILDINGS, STATE
GARAGES, AND THE STATE VEHICLE FLEET

(a) Definitions. As used in this section:

(1) "Biodiesel blend" means a blend of biodiesel fuel and petroleum diesel fuel or petroleum heating fuel that contains at least two percent biodiesel fuel by volume.

(2) "Biodiesel fuel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from vegetable oil or animal fat which meets the American Society for Testing and Materials (ASTM) specification D6751-02 for Biodiesel Fuel (B100) Blend Stock for Distillate Fuel.

(b) On or before January 15, 2009, the department of buildings and general services, department of public service, and agency of transportation jointly shall submit a report to the house and senate committees on institutions, the house and senate committees on natural resources and energy, the house and senate committees on transportation, the house and senate committees on agriculture, the house committee on commerce, the house committee on ways and means, and the senate committee on finance with recommendations on increasing the use of biodiesel blends in state office buildings, state garages, and in the state transportation fleet.

(1) The portion of the report prepared by the department of buildings and general services shall contain:

(A) A summary of the current use of biodiesel blends in state office buildings.

(B) Recommendations on how to increase the use of biodiesel blends in all state office buildings, wherever feasible, to at least five percent biodiesel (B5) by December 31, 2009, and to at least 10 percent biodiesel (B10) by 2012.

(C) A summary of any obstacles to increasing biodiesel use in state buildings.

(D) A proposed work plan to increase biodiesel use.

(2) The portion of the report prepared by the department of public service shall contain:

(A) A summary of the biodiesel fuel production capacity, storage facilities, and distribution facilities currently available in Vermont.

(B) Recommendations for increasing biodiesel fuel production, storage facilities, and distribution facilities.

(C) A summary of current information on the performance of biodiesel blends for use as heating fuel and as a motor vehicle fuel.

(D) A summary of the national and regional quality assurance and quality control measures in use for blending biodiesel fuel.

(E) A proposed work plan to increase biodiesel use.

(3) The portion of the report prepared by the agency of transportation shall contain:

(A) A summary of the current use of biodiesel blends in state garages and the state transportation fleet.

(B) Recommendations on how to increase the use of biodiesel blends in state garages and in the state transportation fleet, wherever feasible, to at least five percent biodiesel (B5) by December 31, 2009, and to at least 10 percent biodiesel (B10) by 2012.

(C) A summary of any obstacles to increasing biodiesel use in state garages and the state transportation fleet.

(D) A proposed work plan to increase biodiesel use.

(c) The department of public service, with representatives of the department of buildings and general services and the agency of transportation present, shall conduct at least one public hearing to review the draft report and to solicit comments prior to finalizing the report.

Sec. 35. STUDY ON PUBLIC POWER AUTHORITY

By no later than January 15, 2009, the department of public service shall report to the committees on commerce, finance, and natural resources and energy, with the results of a study detailing the benefits and disadvantages of creating a public power authority with tools necessary to enable it to establish a substantial public power presence in the state, when to do so would be in the public interest.

Sec. 36. REPORT ON VALUATION OF NET METERED SYSTEMS

By December 1, 2008, the department of taxes shall present to the house and senate committees on natural resources and energy a report on how net metered systems are now being valued and taxed at the town and municipal level in Vermont and recommendations on how such customer-sited renewable energy generation should be valued for property tax purposes by towns and municipalities.

Sec. 37. NATURAL RESOURCES BOARD RULEMAKING ON

CONSERVATION FLOW STANDARDS

(a) The natural resources board shall, in a process separate from the planned revision to the Vermont water quality standards, evaluate the need to amend by rule the conservation flow standards for the water quality review of proposed hydroelectric facilities. In conducting its evaluation, the natural resources board, by no later than June 1, 2008, shall convene a public stakeholder process of interested parties to review existing and proposed conservation flow standards and to issue recommendations regarding the need to amend the conservation flow standards. As part of its evaluation of the conservation flow standards, the natural resources board shall consider whether the following flow standards may be used for reviewing the water quality impact of new hydroelectric generation projects in the state, including water withdrawals, diversions, existing impoundments, and the construction of appurtenant facilities related to a project:

- (1) A 7Q10 conservation flow;

(2) The statewide median flow for August as the aquatic base flow;

(3) The statewide February median flow;

(4) Site specific flow standards; and

(5) Any other flows deemed appropriate by the board.

(b) After the stakeholder group issues its recommendations as required under subsection (a) of this section, the natural resources board may adopt rules amending the conservation flow standards used by the agency of natural resources to conduct water quality review of proposed hydroelectric facilities. Any amendment to the conservation flow standards shall assure the protection of water quality, including water quantity, necessary to sustain aquatic communities, aquatic habitat, and stream functions. This section shall not be construed to prohibit the natural resources board from addressing or amending conservation flow standards for hydroelectric facilities during the triennial review of the Vermont water quality standards.

Sec. 38. AGENCY OF NATURAL RESOURCES REPORT ON FISH

STUDY METHODOLOGY

On or before January 15, 2009, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with an estimate of the cost of producing a fish study methodology for the state of Vermont, other than the U.S. Geological Survey's instream flow incremental methodology protocols, provided that such a methodology is feasible and adequately addresses flow needs and the protection of aquatic habitat while also providing applicants for agency permits and certification with a reliable and agency accepted method for conducting fish studies.

Approved: March 19, 2008