

1 H.456

2 Introduced by Committee on Natural Resources and Energy

3 Date:

4 Subject: Energy; public service; taxation; clean energy development fund;
5 business solar energy tax credits

6 Statement of purpose: This bill proposes to amend the business solar energy
7 tax credits to allow a taxpayer an option to receive a grant for one-half the
8 value of those credits in lieu of taking their full value over five years; to enable
9 the clean energy development fund to issue such a grant; to return the clean
10 energy development fund to the supervision of the department of public
11 service; and to recodify the clean energy development fund statutes within the
12 renewable energy chapter of Title 30 (public service).

13 An act relating to the clean energy development fund and solar energy tax
14 credits

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

16 Sec. 1. 32 V.S.A. § 5930z is amended to read:

17 § 5930z. SOLAR ENERGY TAX CREDIT

18 * * *

19 (c) The clean energy development board (the board) established pursuant to
20 10 V.S.A. § 6523 shall certify to the department no more than \$9,400,000.00

1 of eligible solar energy tax credits. The board shall set aside a portion of this
2 amount for the systems described in subdivision (2) of this subsection. Credits
3 shall be certified only if one of the two following criteria is met:

4 (1) The investment for which the solar energy tax credit is claimed is
5 made after January 1, 2010, and:

6 (A) The investment pertains to a solar energy plant that has a plant
7 capacity, as defined in 30 V.S.A. § 8002(13), of 2.2 MW or less;

8 (B) On or before July 15, 2010, the solar energy plant owner filed a
9 complete petition with the public service board for a certificate of public good
10 under 30 V.S.A. § 248;

11 (C) On or before September 1, 2011, construction on the solar energy
12 plant is complete and the plant is commissioned within the meaning of
13 30 V.S.A. § 8002(11) or is ready to be commissioned within the meaning of
14 30 V.S.A. § 8002(11) that subdivision, and any delay in actual commissioning
15 is for reasons outside the plant owner's control; and

16 (D) By July 15, 2010, the taxpayer has provided to the clean energy
17 development board on a form prescribed by the board information necessary
18 for the fund to determine the taxpayer's eligibility for the credit; or

19 (2)(A) The investment is made after January 1, 2010, and before
20 December 31, 2010, and pertains to a system that constitutes energy property
21 as defined in 26 U.S.C. § 48(a)(3)(A)(i) and that does not require a certificate

1 of public good under 30 V.S.A. § 248, or pertains to a net metering system as
2 defined in 30 V.S.A. § 219a(a)(3), provided that the system is of no more than
3 150 kilowatts (AC) capacity; and

4 (B) By December 15, 2010, the taxpayer has provided to the clean
5 energy development board on a form prescribed by the board information
6 necessary for the fund to determine the taxpayer's eligibility for the credit.

7 (d) The final amount of any solar energy tax credit certified under this
8 section shall not exceed the amount awarded to the taxpayer under 26 U.S.C.
9 § 48.

10 (e) Any unused solar energy tax credit may be carried forward for no more
11 than five succeeding tax years following the first year in which the solar
12 energy tax credit is claimed.

13 (f) In lieu of a solar energy tax credit certified by the board under this
14 section, a taxpayer may in accordance with this subsection convert such a
15 credit into a grant to the taxpayer from the clean energy development fund
16 established under 10 V.S.A. § 6523.

17 (1) The dollar amount of such a grant-in-lieu-of-credit shall be 50
18 percent of the lesser of the following:

19 (A) The dollar amount of the credit as contained in the certification
20 issued by the board to the taxpayer.

1 (B) The dollar amount of the credit calculated as a percentage of the
2 actual costs of the plant, using the assumption the taxpayer would be able to
3 apply the full amount of the credit against the tax imposed under section 5822
4 or 5832 of this title.

5 (2) No later than 30 days after this act's effective date, the board shall
6 provide notice of this option to obtain a grant-in-lieu-of-credit to all taxpayers
7 for which it has certified tax credits under this section.

8 (3) On or before August 1, 2011, a taxpayer to which the board has
9 issued a certification of a solar energy tax credit under this section shall submit
10 to the board the taxpayer's request, if any, to obtain a grant-in-lieu-of-credit
11 under this subsection.

12 (4) To a taxpayer making a timely request under subdivision (3) of this
13 subsection, a grant-in-lieu-of-credit shall be paid from the clean energy
14 development fund within 30 days of:

15 (A) The date on which the taxpayer provides proof that the plant for
16 which the taxpayer seeks a grant-in-lieu-of-credit under this subsection has
17 received from the U.S. Department of the Treasury, pursuant to 26 U.S.C.
18 §§ 46 and 48, a grant in lieu of the federal investment tax credit and proof of
19 the dollar amount of such federal grant; or

20 (B) If the taxpayer has not received a grant from the U.S Department
21 of the Treasury described in subdivision (4)(A) of this subsection, the date on

1 which the taxpayer provides to the board proof that the solar energy plant for
2 which the taxpayer seeks a grant-in-lieu-of-credit under this subsection has
3 been commissioned and proof of the plant's actual costs.

4 (g) On a regular basis, the department shall notify the treasurer and the
5 clean energy development board of solar energy tax credits claimed pursuant to
6 this section, and the board shall cause to be transferred from the clean energy
7 development fund to the general fund an amount equal to the amount of solar
8 energy tax credits as and when the credits are claimed.

9 ~~(g)~~(h) The clean energy development board and the department shall
10 collaborate in implementing the certification of credits under this section.

11 Sec. 2. 10 V.S.A § 6523 is amended to read:

12 § 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

13 * * *

14 (c) Purposes of fund. The purposes of the fund shall be to promote the
15 development and deployment of cost-effective and environmentally sustainable
16 electric power and thermal energy or geothermal resources, ~~and emerging~~
17 ~~energy-efficient technologies~~, for the long-term benefit of Vermont consumers,
18 primarily with respect to renewable energy resources, and the use of combined
19 heat and power technologies. The fund also may be used to support natural gas
20 vehicles in accordance with subdivision (d)(1)(K) of this section. The general
21 assembly expects and intends that the public service board, public service

1 department, and the state's power and efficiency utilities will actively
2 implement the authority granted in Title 30 to acquire all reasonably available
3 cost-effective energy efficiency resources for the benefit of Vermont
4 ratepayers and the power system.

5 (d) Expenditures authorized.

6 * * *

7 (2) If during a particular year, the ~~clean energy development board~~
8 commissioner of public service determines that there is a lack of high value
9 projects eligible for funding, as identified in the five-year plan, or as otherwise
10 identified, the ~~clean energy development board may~~ commissioner shall
11 consult with the ~~public service~~ clean energy development board, and shall
12 consider transferring funds to the energy efficiency fund established under the
13 provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in
14 response to an opportunity for a particularly cost-effective investment in
15 energy efficiency, and only as a temporary supplement to funds collected
16 under that subsection, not as replacement funding.

17 (3) A grant in lieu of a solar energy tax credit in accordance with
18 32 V.S.A. § 5930z(f). Of any fund moneys unencumbered by such grants, the
19 first \$2.3 million shall fund the small-scale renewable energy incentive
20 program described in subdivision (1)(E)(ii) of this subsection.

1 (4) A sum equal to the cost for the 2010 and preceding tax years of the
2 business solar energy income tax credits authorized in 32 V.S.A. § §§ 5822(d)
3 and 5930z(a), net of any such costs for which a transfer has already been made
4 under this subdivision and of the cost of any credits in lieu of which the
5 taxpayer elects to receive a grant, shall be transferred annually from the clean
6 energy development fund to the general fund.

7 (e) Management of fund.

8 (1) ~~There is created the clean energy development board, which shall~~
9 ~~consist of the following nine directors:~~

10 ~~(A) Three at large directors appointed by the speaker of the house;~~

11 ~~(B) Three at large directors appointed by the president pro tempore~~
12 ~~of the senate.~~

13 ~~(C) Two at large directors appointed by the governor.~~

14 ~~(D) The state treasurer, ex officio.~~ This fund shall be administered
15 by the department of public service to facilitate the development and
16 implementation of clean energy resources. The department is authorized to
17 expend moneys from the clean energy development fund in accordance with
18 this section. The commissioner of the department shall make all decisions
19 necessary to implement this section and administer the fund except those
20 decisions committed to the clean energy development board under this

1 subsection. The department shall assure an open public process in the
2 administration of the fund for the purposes established in this subchapter.

3 (2) During fiscal years after FY 2006, up to five percent of amounts
4 appropriated to the public service department from the fund may be used for
5 administrative costs related to the clean energy development fund ~~and after~~
6 ~~FY 2007, another five percent of amounts appropriated to the public service~~
7 ~~department from the fund not to exceed \$300,000.00 in any fiscal year shall be~~
8 ~~transferred to the secretary of the agency of agriculture, food and markets for~~
9 ~~agricultural and farm-based energy project development activities.~~

10 (3) ~~A quorum of the clean energy development board shall consist of~~
11 ~~five directors. The directors of the board shall select a chair and vice chair.~~
12 There is created the clean energy development board, which shall consist of
13 seven persons appointed in accordance with subdivision (4) of this subsection.

14 (A) The clean energy development board shall have decision-making
15 and approval authority with respect to the plans, budget, and program designs
16 described in subdivisions (7)(B)–(D) of this subsection. The clean energy
17 development board shall function in an advisory capacity to the commissioner
18 on all other aspects of this section's implementation.

19 (B) During a board member's term and for a period of one year after
20 the member leaves the board, the clean energy development fund shall not
21 make any award of funds to and shall confer no financial benefit on a company

1 or corporation of which the member is an employee, officer, partner,
2 proprietor, or board member or of which the member owns more than
3 10 percent of the outstanding voting securities. This prohibition shall not
4 apply to a financial benefit that is available to any person and is not awarded
5 on a competitive basis or offered only to a limited number of persons.

6 (4) ~~In making appointments of at large directors to the clean energy~~
7 ~~development board, the appointing authorities shall give consideration to~~
8 ~~citizens of the state with knowledge of relevant technology, regulatory law,~~
9 ~~infrastructure, finance, and environmental permitting. A director shall recuse~~
10 ~~himself or herself from all matters and decisions pertaining to a company or~~
11 ~~corporation of which the director is an employee, officer, partner, proprietor, or~~
12 ~~board member. The at large directors of the board shall serve terms of four~~
13 ~~years beginning July 1 of the year of appointment. However, one at large~~
14 ~~director appointed by the speaker and one at large director appointed by the~~
15 ~~president pro tempore shall serve an initial term of two years. Any vacancy~~
16 ~~occurring among the at large directors shall be filled by the respective~~
17 ~~appointing authority and shall be filled for the balance of the unexpired term.~~
18 ~~A director may be reappointed. The commissioner of public service shall~~
19 appoint three members of the clean energy development board, and the chairs
20 of the house and senate committees on natural resources and energy each shall
21 appoint two members of the clean energy development board. The terms of

1 the members of the clean energy development board shall be four years, except
2 that when appointments to this board are made for the first time after the
3 effective date of this act, each appointing authority shall appoint one member
4 for a two-year term and the remaining members for four-year terms. When a
5 vacancy occurs in the board during the term of a member, the authority who
6 appointed that member shall appoint a new member for the balance of the
7 departing member's term.

8 (5) Except for those ~~directors~~ members of the clean energy development
9 board otherwise regularly employed by the state, the compensation of the
10 ~~directors~~ members shall be the same as that provided by ~~subsection 32 V.S.A.~~
11 ~~§ 1010(a) of Title 32. All directors of the clean energy development board,~~
12 ~~including those directors otherwise regularly employed by the state, shall~~
13 ~~receive their actual and necessary expenses when away from home or office~~
14 ~~upon their official duties.~~

15 (6) ~~At least every three years, the clean energy development board shall~~
16 ~~commission a detailed financial audit by an independent third party of the fund~~
17 ~~and the activities of the fund manager, which shall make available to the~~
18 ~~auditor its books, records, and any other information reasonably requested by~~
19 ~~the board or the auditor for the purpose of the audit.~~

20 (7) In performing its duties, the clean energy development board may
21 utilize the legal and technical resources of the department of public service ~~or,~~

1 ~~alternatively, may utilize reasonable amounts from the clean energy~~
2 ~~development fund to retain qualified private legal and technical service~~
3 ~~providers.~~ The department of public service shall provide the clean energy
4 development board ~~and its fund manager~~ with administrative services.

5 ~~(8)(7)~~ The ~~clean energy development board~~ department shall perform
6 each of the following:

7 (A) By January 15 of each year, ~~commencing in 2010,~~ provide to the
8 house and senate committees on natural resources and energy, the senate
9 committee on finance, and the house committee on commerce and economic
10 development a report for the fiscal year ending the preceding June 30 detailing
11 the activities undertaken, the revenues collected, and the expenditures made
12 under this subchapter.

13 (B) Develop, and submit to the clean energy development board for
14 review and approval, a five-year strategic plan and an annual program plan,
15 both of which shall be developed with input from a public stakeholder process
16 and shall be consistent with state energy planning principles.

17 (C) Develop, and submit to the clean energy development board for
18 review and approval, an annual operating budget.

19 (D) Develop, and submit to the clean energy development board for
20 review and approval, proposed program designs to facilitate clean energy
21 market and project development (including use of financial assistance,

1 investments, competitive solicitations, technical assistance, and other incentive
2 programs and strategies). Prior to any approval of a new program or of a
3 substantial modification to a previously approved program of the clean energy
4 development fund, the department of public service shall publish online the
5 proposed program or modification, shall provide an opportunity for public
6 comment of no less than 30 days, and shall provide to the clean energy
7 development board copies of all comments received on the proposed program
8 or modification. For the purpose of this subdivision (D), “substantial
9 modification” shall include a change to a program’s application criteria or
10 application deadlines and shall include any change to a program if advance
11 knowledge of the change could unfairly benefit one applicant over another
12 applicant. For the purpose of 3 V.S.A. § 831(b) (initiating rulemaking on
13 request), a new program or substantial modification of a previously approved
14 program shall be treated as if it were an existing practice or procedure.

15 ~~(9)~~(8) At least ~~quarterly~~ annually, the clean energy development board
16 and the commissioner or designee jointly shall hold a public meeting to review
17 and discuss the status of the fund, fund projects, the performance of the fund
18 manager, any reports, information, or inquiries submitted by the fund manager
19 or the public, and any additional matters ~~the clean energy development board~~
20 deems ~~they deem~~ necessary to fulfill ~~its~~ their obligations under this section.

1 ~~(10) The clean energy development board shall administer and is~~
2 ~~authorized to expend monies from the clean energy development fund in~~
3 ~~accordance with this section.~~

4 (f) Clean energy development fund manager. The clean energy
5 development fund shall have a fund manager who shall be ~~a state~~ an employee
6 ~~retained and supervised by the board and housed within and assigned for~~
7 ~~administrative purposes to~~ of the department of public service.

8 (g) Bonds. The commissioner of public service, in consultation with the
9 clean energy development board, may explore use of the fund to establish one
10 or more loan-loss reserve funds to back issuance of bonds by the state treasurer
11 otherwise authorized by law, including clean renewable energy bonds, that
12 support the purposes of the fund.

13 (h) ARRA funds. All American Recovery and Reinvestment Act (ARRA)
14 funds described in section 6524 of this title shall be disbursed, administered,
15 and accounted for in a manner that ensures rapid deployment of the funds and
16 is consistent with all applicable requirements of ARRA, including
17 requirements for administration of funds received and for timeliness, energy
18 savings, matching, transparency, and accountability. These funds shall be
19 expended for the following categories listed in this subsection, provided that
20 no single project directly or indirectly receives a grant in more than one of
21 these categories. ~~The~~ After consultation with the clean energy development

1 board, the commissioner of public service shall have discretion to use
2 non-ARRA moneys within the fund to support all or a portion of these
3 categories and shall direct any ARRA moneys for which non-ARRA moneys
4 have been substituted to the support of other eligible projects, programs, or
5 activities under ARRA and this section.

6 * * *

7 (4) \$2 million for a public-serving institution efficiency and renewable
8 energy program that may include grants and loans and create a revolving loan
9 fund. For the purpose of this subsection, “public-serving institution” means
10 government buildings and nonprofit public and private universities, colleges,
11 and hospitals. In this program, awards shall be made through a competitive bid
12 process. ~~On or before January 15, 2011, the clean energy development board~~
13 ~~shall report to the general assembly on the status of this program, including~~
14 ~~each award made and, for each such award, the expected energy savings or~~
15 ~~generation and the actual energy savings or generation achieved.~~

16 * * *

17 (8) Concerning the funds authorized for use in subdivisions (4)–(7) of
18 this subsection:

19 (A) To the extent permissible under ARRA, up to five percent may
20 be spent for administration of the funds received.

1 (B) In the event that the ~~clean energy development board~~
2 commissioner of public service determines that a recipient of such funds has
3 insufficient eligible projects, programs, or activities to fully utilize the
4 authorized funds, then after consultation with the clean energy development
5 board, the commissioner shall have discretion to reallocate the balance to other
6 eligible projects, programs, or activities under this section.

7 (9) The ~~clean energy development board~~ commissioner of public service
8 is authorized, to the extent allowable under ARRA, to utilize up to 10 percent
9 of ARRA funds received for the purpose of administration. The ~~board~~
10 commissioner shall allocate a portion of the amount utilized for administration
11 to retain permanent, temporary, or limited service positions or contractors and
12 the remaining portion to the oversight of specific projects receiving ARRA
13 funding ~~through the board~~ pursuant to section 6524 of this title.

14 (i) Rules. The department and the clean energy development board each
15 may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions
16 under this section. ~~The board and~~ shall consult with the commissioner of
17 ~~public service~~ each other either before or during the rulemaking process.

18 ~~(j) Governor disapproval. The governor shall have the authority within~~
19 ~~30 days of approval or adoption to disapprove a project, program, or other~~
20 ~~activity approved by the clean energy development board if the source of the~~
21 ~~funds is ARRA; and any rules adopted under subsection (i) of this section. The~~

1 ~~governor may at any time waive his or her authority to disapprove any project,~~
2 ~~program, or other activity or rule under this subsection.~~

3 Sec. 3. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION;

4 TERM EXPIRATION; NEW APPOINTMENTS

5 (a) The terms of all members of the clean energy development board under
6 10 V.S.A. § 6523 appointed prior to the effective date of this section shall
7 expire on September 30, 2011.

8 (b) No later than August 31, 2011, the appointing authorities under Sec. 2
9 of this act, 10 V.S.A. § 6523(e)(4), shall appoint the members of the clean
10 energy development board created by Sec. 2, 10 V.S.A. § 6523(e)(3). The
11 terms of the members so appointed shall commence on October 1, 2011. The
12 appointing authorities may appoint members of the clean energy development
13 board as it existed prior to the effective date of this section. The provisions of
14 10 V.S.A. § 6523(e)(3)(B) (board members; prohibition; financial benefits)
15 shall apply only to members of the clean energy development board appointed
16 to terms commencing on and after October 1, 2011.

17 (c) With respect to the clean energy development fund established under
18 10 V.S.A. § 6523, as of October 1, 2011:

19 (1) The department of public service shall be the successor to the clean
20 energy development board as it existed on September 30, 2011, and any legal
21 obligations incurred by the clean energy development board as of

1 September 30, 2011 shall become legal obligations of the department of public
2 service.

3 (2) The clean energy development board shall exercise prospectively
4 such functions and authority as this act confers on that board.

5 Sec. 4. 10 V.S.A. § 6524 is amended to read:

6 § 6524. ARRA ENERGY MONEYS

7 The expenditure of each of the following shall be subject to the direction
8 and approval of the commissioner of public service, after consultation with the
9 clean energy development board established under subdivision ~~6523(e)(1)~~
10 6523(e)(4) of this title, and shall be made in accordance with subdivisions
11 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments;~~
12 ~~recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support),~~ and
13 (e)(8)(A)(reporting) and subsections 6523(f)(fund manager), (h)(ARRA
14 funds), and (i)(rules), ~~and (j)(governor disapproval)~~ of this title and applicable
15 federal law and regulations:

16 (1) The amount of \$21,999,000.00 in funds received by the state under
17 the appropriation contained in the American Recovery and Reinvestment Act
18 (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized
19 under 42 U.S.C. § 6321 et seq.

1 (2) The amount of \$9,593,500.00 received by the state under ARRA
2 from the United States Department of Energy through the energy efficiency
3 and conservation block grant program.

4 Sec. 5. RECODIFICATION; REDESIGNATION

5 (a) 10 V.S.A. §§ 6523 and 6524 are recodified respectively as 30 V.S.A.
6 §§ 8015 and 8016. The office of legislative council shall revise accordingly
7 any references to these statutes contained in the Vermont Statutes Annotated.
8 Any references in session law to these statutes as previously codified shall be
9 deemed to refer to the statutes as recodified by this act.

10 (b) Within 30 V.S.A. chapter 89 (renewable energy programs):

11 (1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

12 Subchapter 1. General Provisions

13 (2) §§ 8015–8016 shall be within subchapter 2 and designated to read:

14 Subchapter 2. Clean Energy Development Fund

15 Sec. 6. EFFECTIVE DATES

16 (a) The following shall take effect on passage:

17 (1) This section.

18 (2) Secs. 1 (business solar energy tax credits) and 3 (clean energy
19 development; transition; term expiration; new appointments) of this act.

20 (3) In Sec. 2 (clean energy development fund) of this act: 10 V.S.A.
21 § 6523(d)(3) and (4) (solar tax credit; grant in lieu of and general fund

1 reimbursement) and, for the purpose of Sec. 3 of this act, 10 V.S.A.
2 § 6523(e)(3) (clean energy development board) and (4) (appointments to clean
3 energy development board).

4 (b) Except as provided under subdivision (a)(3) of this section, Secs. 2
5 (clean energy development fund) and 4 (ARRA energy moneys) shall take
6 effect on October 1, 2011.