

POLICY ANALYSIS: AN ACT RELATING TO AFFORDABLE CLIMATE INITIATIVES, H.289

REFORMING THE 2024 RENEWABLE ENERGY STANDARD (H.289 Secs. 1-7)

- Changing Renewable Energy into “Clean Energy”. H.289 defines clean energy to include nuclear energy. This means utilities wouldn’t have to buy renewable energy credits to use nuclear, which could lead to increased use of nuclear energy. Utilities then wouldn’t have to “retire” as many renewable energy credits. The retirement of these credits encourages renewable energy development.
- Nuclear Energy Is Not Renewable and is Energy Intensive. Nuclear energy may be carbon free, but it is not a renewable resource. Fuels for nuclear energy, such as uranium, are finite materials mined from the ground. That mining, along with the construction of nuclear plants, requires large amounts of energy.
- Savings from Nuclear Energy Are Overstated. If utilities don’t have to buy credits for nuclear power, it may save ratepayers \$15 million to \$20 million over ten years. But Vermont’s Public Service Department projects that Vermonters will spend \$14 billion over that same period on electricity. Ratepayers then only save between 0.11 and 0.14% which will be unnoticeable on ratepayers’ bills.
- Transmission and Distribution Constraints. H.289 would prevent the development of renewable generation in “generation constrained areas.” Because there is no definition of “generation constrained area,” it could mean any area where renewable requires upgrades to the grid—which is virtually everywhere. If developers cannot factor these upgrades into their project costs (which H.289 prohibits) this will greatly deter renewable development in the state.
- Alternative Compliance Payment for Tier II (Distributed Generation). An alternative compliance payment means that a utility may pay a fee instead of supporting renewable energy projects. H.289 makes the alternative compliance payment too low. When these payments are too low, renewable developers may not seek to construct projects in the state which will result in neighboring states hosting our generation sites. We would then also lose the economic benefits of renewable development.
- In-State Renewables Make Money and Jobs. If renewable developers don’t build projects in Vermont because of the distribution constraint requirement and low alternative compliance payments, that takes money and jobs out of the state. In 2024, 30 MW of in-state solar was built in Vermont, generating \$75 million to \$100 million of economic activity. In 2024, the renewable energy sector employed 5,622 people in Vermont.

RESHAPING FUNDING FOR THERMAL EMISSIONS REDUCTIONS WORK (H.289 Sec. 8)

- **Repurposes Existing Energy Efficiency Charge Funds.** H.289 moves around revenue from the existing Energy Efficiency Charge (EEC), which appears on ratepayers' utility bills. This is not an additional investment, but rather a redirection of one third of the state's total energy efficiency budget. H.289 takes \$15M away from existing programs that are driving greenhouse gas emissions reduction—like heat pump programs, commercial lighting programs that drive down costs for businesses, rebates for residents, etc.— and redirects it to weatherization. Though important, weatherization will not have an equivalent effect in reducing greenhouse gas emissions compared to existing programs. There are opportunities to re-envision how the state's energy efficiency funds can be even better spent to address greenhouse gas emissions, such as S.65, An act relating to energy efficiency utility jurisdiction. But H.289 is zero sum—we gain nothing.

TAKING RGGI PROCEEDS AWAY FROM ENERGY EFFICIENCY PROGRAMS (H.289 Secs. 9-11)

- **Redirects RGGI Auction Proceeds to EV Incentives.** In light of President Trump's [intended elimination of funding for electric vehicle incentives](#) and funding for Vermont's EV incentives running out last October, H.289 backfills funding for EV incentives using auction proceeds from the Regional Greenhouse Gas Initiative (RGGI). Under H.289, only up to \$6M of RGGI auction proceeds would continue to be directed to the Electric Efficiency Fund for energy efficiency programs (where RGGI proceeds currently go, historically primarily to support weatherization and other thermal efficiency measures). The remainder of any auction proceeds above \$6M would now go to electric vehicle incentives. In 2024, RGGI proceeds totaled \$9,095,377. If proceeds are similar in subsequent years, the new language in H.289 would have \$3,095,377 going to EV incentives annually. This reduces the amount of RGGI funds going to energy efficiency by about a third.

DETRIMENTAL GWSA AMENDMENTS (H.289 Secs. 12-17)

Vermont Climate Council: This section of H.289 guts the power of the Climate Council in two ways: severing the Council's authority to guide the subject matter of the Agency of Natural Resources' rules implementing the GWSA and reducing the efficacy and legitimacy of the Climate Council by removing essential member positions.

- **Climate Council Authority.** The GWSA is designed to ensure robust implementation by requiring that the Agency of Natural Resources "shall adopt rules... consistent with the Vermont Climate Action Plan." 10 VSA 593(a). H.289 would change the GWSA by making the Climate Council "advisory." Making the Council's role advisory means making the Climate Action Plan advisory, such that any Agency of Natural Resources rules would no longer need to be "consistent" with the Climate Action Plan. This would significantly reduce prospects for actual implementation of the GWSA.
- **Climate Council Member Positions.** The GWSA promotes stakeholder input through the appointed membership of the Climate Council. However, the original GWSA could do better

on this point—the membership provisions in the GWSA allot more than a third of the member seats to the Governor’s cabinet. But even that outsized executive branch representation is not enough for Governor Scott, as H.289 now proposes to remove three key member positions from the legislation: (1) one with “expertise and professional experience in the design and implementation of programs to reduce greenhouse gas emissions”; (2) one with “expertise in the design and implementation of programs to increase resilience to and respond to natural disasters resulting from climate change”; and (3) one from “a Vermont-based organization with expertise in energy and data analysis.” Of all the members on the Climate Council, these likely have the most knowledge about how to make the Climate Action Plan effectively reduce greenhouse gas emissions and drive clean energy progress. Removing these positions consolidates even more power with the executive branch by tipping the membership scales and all but guarantees that the Council, going forward, will be challenged in navigating the technical field of clean energy and greenhouse gas emissions reductions.

Yet Another Plan: Instead of relying on the Climate Action Plan produced by the Vermont Climate Council, H.289 creates a new parallel body and process for developing a “companion” plan from the Administration—the Climate Action Mitigation Plan (“CAMP”). In other words, H.289 replaces the Vermont Climate Council without actually dissolving it, resulting in wasted resources and effort from the members of the Climate Council as they continue producing and updating a plan that the Governor apparently has no intention of following. This proposed change delays progress and consolidates power with Governor Scott by removing stakeholder involvement in the creation of yet another climate plan.

Repeal of the Citizen Suit Provision: An analysis of this repeal considers many of the public statements made by Governor Scott and Secretary of the Agency of Natural Resources Julie Moore. Citizen suit provisions allow Vermonters to hold their government accountable for implementing the laws their representatives enact and to help protect public health and natural resources. Lawsuits against the state are generally defended by the Vermont Attorney General’s Office. While suits limited to the kinds of issues contemplated by the GWSA (evaluating the Agency’s review of its rules and requiring the Agency to adopt rules if necessary) require *some* resources from the Attorney General’s Office (attorney time) and from the Agency of Natural Resources (coordinating with attorneys), they do not “cost taxpayers millions of dollars. *See* Governor’s Affordable Climate Action Plan Memorandum preceding the release of H.289.

- The Scope of the Citizen Suit Provision. The citizen suit provision is very limited. It allows any Vermonter to sue the Secretary of the Agency of Natural Resources to: (1) ensure the Secretary conducted a legally sufficient review of its current rules to meet the GHG emission reductions requirements under the GWSA; and (2) adopt rules if the review indicated rules were necessary to meet those emissions reduction requirements.
- The Remedy. A court cannot order the Agency of Natural Resources to adopt specific rules as a result of a lawsuit brought against the agency. All the court can do is determine whether the Secretary of the Agency of Natural Resources conducted an adequate review of the rules and order the Secretary to adopt rules if necessary. Because courts do not make

rules or policies, they do not have the authority to tell the Agency of Natural Resources what kinds of rules it should adopt or in what sectors.

- Fees. If a plaintiff is successful, a judge *may* award reasonable attorneys' fees. The defendant (the Agency of Natural Resources) may be awarded attorneys' fees if the action was frivolous or lacked a reasonable basis to file a lawsuit (meaning the plaintiffs had no legal or factual grounds to bring the suit). It's important to keep in mind that the Agency of Natural Resources is represented in legal disputes by the Vermont Attorney General's Office, which already budgets for defending agencies.
- Citizen Suit Provisions Are Common Tools to Hold Governments Accountable. Similar lawsuits have occurred in Massachusetts and here in Vermont. In 2014, a coalition of Massachusetts-based organizations sued the state after the state's Department of Environmental Protection failed to adopt rules to reduce emissions as required by their Global Warming Solutions Act. That coalition succeeded, compelling the state to adopt the required rules. There is also analogous precedent for citizen enforcement achieving results in Vermont. [Conservation Law Foundation's 2008 citizen suit](#) compelled the state to fix its insufficient Lake Champlain water quality cleanup plan ("TMDL"), which now includes a much more robust set of programs to ensure compliance with pollution controls.

A policy briefing on the existing GWSA is available [here](#).

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