

1 S.199

2 Introduced by Senator Clarkson

3 Referred to Committee on Finance

4 Date: January 3, 2024

5 Subject: Communications; communications union districts; mergers;
6 governance; business practices

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 Vermont law as it pertains to communications union districts, particularly with
9 regard to mergers, governance, and business practices.

10 An act relating to mergers and governance of communications union
11 districts

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

13 Sec. 1. FINDINGS; PURPOSE

14 (a) The General Assembly finds:

15 (1) For nearly a decade, the General Assembly has consistently found
16 that commercial carriers have failed to provide broadband service to many
17 rural areas of Vermont, leaving over 80,000 locations currently without access
18 to modern internet service. See, e.g., 2015 Acts and Resolves No. 41,
19 2019 Acts and Resolves No. 79, and 2021 Acts and Resolves No. 71.

1 (2) An attempt to provide universal access to reliable, high-quality
2 broadband service through the construction of 200 cellular towers providing
3 4G LTE data, or “fixed wireless access,” was unsuccessful due to challenges
4 presented by dense woodlands, hilly terrain, and the failure of equipment to
5 meet manufacturer performance claims.

6 (3) Recognizing that neither the market nor modern wireless technology
7 would come to Vermont’s rescue, the General Assembly in 2015 enabled the
8 creation of special-purpose municipalities called communications union
9 districts (CUDs). A CUD is a regional entity empowered to construct and
10 operate a broadband network. As a municipality, a CUD can issue revenue
11 bonds to help construct its network. However, a CUD is prohibited by law
12 from taxing or otherwise imposing costs on residents of the district.

13 (4) The CUD concept was initially enacted in Vermont at the request of
14 ECFiber, a municipal internet service provider operating pursuant to a 23-town
15 interlocal contract. ECFiber began issuing revenue bonds in 2016, as
16 Vermont’s first CUD.

17 (5) The success ECFiber has enjoyed with bringing world-class, fiber-
18 optic broadband service to all locations within its member towns led to
19 legislative efforts to promote and accelerate the creation of additional CUDs
20 throughout Vermont. See, e.g., 2019 Acts and Resolves No. 79.

1 (6) Since 2019, nine additional CUDs have been formed. Over 200
2 towns send more than 400 volunteer delegates to the governing boards of these
3 districts, a level of citizen involvement across large geographic areas greatly
4 facilitated by virtual meetings.

5 (7) All 10 CUDs are in the process of partnering with private companies
6 to build and operate resilient fiber-optic networks. All are committed to
7 universal service and digital equity.

8 (8) Recent federal funding available to CUDs through grant programs
9 administered by the Vermont Community Broadband Board has enabled
10 several CUDs to complete planning and start network construction.

11 (9) For example, ECFiber has constructed high-speed fiber-optic service
12 to over 25,000 locations and will complete service to another 8,000 locations
13 in its expanded 31-town district by 2025. Approximately 20,000 of those
14 locations would otherwise be classified as unserved or underserved.

15 (10) Although CUDs are municipalities, they are unusual in that they
16 operate in a larger competitive environment and therefore sometimes compete
17 for customers with well-funded commercial providers. This distinguishes
18 them from typical municipal enterprises, such as water districts and electric
19 departments, which often operate as regulated monopolies in their respective
20 service territories. As a result, a CUD needs to protect its business data in a
21 manner that other municipal enterprises do not. Such protection will ensure a

1 CUD is not competitively disadvantaged and unfairly prevented from
2 accomplishing its public mission.

3 (11) Despite the influx of recent and anticipated federal funding for
4 broadband deployment, the General Assembly has recognized that public
5 funds are not sufficient to support CUDs on an ongoing basis. Accordingly,
6 existing Vermont law requires that any broadband project financed through a
7 grant from the Vermont Community Broadband Board must demonstrate an
8 economically sustainable business model that ultimately will be eligible for
9 financing in the private or municipal bond market. In other words, a CUD
10 must show it is a going business concern able to stand on its own, without
11 having to rely on public funding.

12 (b) The purpose of this act is to further support the efforts of CUDs to
13 provide high-quality, reliable broadband service in unserved and underserved
14 communities by enabling CUDs to become more responsive to economies of
15 scale as those opportunities arise and take full advantage of emerging
16 organizational structures. To that end, the provisions of this act simplify the
17 process by which two or more CUDs can merge and provide additional
18 flexibility related to CUD governance and business practices.

1 Sec. 2. 30 V.S.A. § 3082a is added to read:

2 § 3082a. MERGER

3 (a) Authority. Notwithstanding 24 V.S.A. chapter 49, a district may merge
4 with one or more other districts as provided in this section. Such merger shall
5 include all member municipalities of each of the merging districts.

6 Section 3053 of this chapter applies to a new combined district formed
7 pursuant to this section.

8 (b) Preliminary merger plan.

9 (1) The merging districts shall prepare a preliminary merger plan. The
10 plan shall include provisions relating to structure, organization, functions,
11 operation, finance, assets, rights, liabilities, contracts, consents required by
12 law, or regulation, including adequate provisions for the satisfaction or
13 assumption of all obligations of the district members concerned. More
14 specifically, the plan shall include provisions clearly stating that, upon the
15 effective date of the merger:

16 (A) all assets of whatever kind, owned, claimed, or held by each
17 district shall become vested in and become assets owned by the combined
18 district without any further act, deed, or instrument being necessary; and

19 (B) the combined district shall assume and be obligated to pay or
20 otherwise perform each and every lawful obligation, debt, claim, bonded

1 indebtedness, and other liability of each district without any further act, deed,
2 or instrument being necessary.

3 (2) Upon approval of the preliminary merger plan by three-quarters vote
4 of a quorum of the board of each of the merging districts, the notice and
5 hearing requirements of subsection (c) of this section shall be implemented.

6 (c) Notice and hearing.

7 (1) Not less than 45 days prior to the public hearing required by
8 subdivision (2) of this subsection, copies of the preliminary merger plan shall
9 be distributed to the legislative bodies of the member municipalities of the
10 merging districts.

11 (2) A public hearing on the plan shall be held in each merging district
12 not less than 30 days prior to the vote referenced in subsection (d) of this
13 section. Notice of each hearing shall be distributed by member municipalities
14 by local posting and electronic communications. In addition, each district
15 shall publish notice in newspapers and other paid media relevant to its service
16 territory. The last notice shall appear not later than three days before the final
17 public hearing required by this subdivision.

18 (3) Not less than 30 days prior to the vote referenced in subsection (d)
19 of this section, notice of the proposed merger shall be distributed to each
20 known creditor of the merging districts and such other entities as may be
21 required by law, regulation, or contract.

1 (d) Vote of approval. Subsequent to the public hearings required by
2 subsection (c) of this section, a joint committee shall prepare a final merger
3 plan for presentation to the boards of the merging districts. The plan shall take
4 effect upon approval by two-thirds vote of a quorum of the board of each of
5 the merging districts.

6 (e) Organizational meeting. The combined district's initial organizational
7 meeting shall be held within 90 days following the final vote to merge required
8 under subsection (d) of this section.

9 (f) Notice to Secretary of State. The district's governing board shall notify
10 the Secretary of State of the merger as provided in subsection 3053(a) of this
11 chapter and shall provide notice to such other entities as may be required by
12 law.

13 ~~Sec. 3. 30 V.S.A. § 3060 is amended to read:~~

14 ~~§ 3060. ORGANIZATIONAL MEETING; REMOTE MEETINGS~~

15 ~~(a) Annually, on the second Tuesday in May following the appointments~~
16 ~~contemplated in section 3059 of this chapter or on a date specified in the~~
17 ~~district's bylaws, the board shall hold its organizational meeting. At such~~
18 ~~meeting, the board shall elect from among its appointed representatives a chair~~
19 ~~and a vice chair, each of whom shall hold office for one year and until his or~~
20 ~~her a successor is duly elected. The board's initial organizational meeting~~

1 ~~shall be held within 90 days following the vote to form a district under~~
2 subsection 3051(b) of this title.

3 (b)(1) Notwithstanding any provision of law to the contrary, and upon
4 approval of the board or as specified in the district's bylaws:

5 (A) A quorum or more of the board may attend a meeting by
6 electronic or other means without designating a physical meeting location
7 where the public may attend.

8 (B) Board members and staff shall not be required to be physically
9 present at a designated meeting location.

10 (2) When the board meets electronically under subdivision (1) of this
11 subsection, the board shall:

12 (A) use technology that permits the attendance and participation of
13 the public through electronic or other means;

14 (B) allow the public to access the meeting by telephone; and

15 (C) post information that enables the public to directly access and
16 participate in meetings electronically and shall include this information in the
17 published agenda for each meeting.

18 (3) Unless unusual circumstances make it impossible for it to do so, the
19 board shall record any meetings held pursuant to this subsection.

Sec. 3. 30 V.S.A. § 3060 is amended to read:

§ 3060. ORGANIZATIONAL MEETING

Annually, on the second Tuesday in May following the appointments contemplated in section 3059 of this chapter or on a date specified in the district's bylaws, the board shall hold its organizational meeting. At such meeting, the board shall elect from among its appointed representatives a chair and a vice chair, each of whom shall hold office for one year and until ~~his or her~~ a successor is duly elected. The board's initial organizational meeting shall be held within 90 days of following the vote to form a district under subsection 3051(b) of this title.

~~1 Sec. 4. 30 V.S.A. § 3069 is amended to read:~~

~~2 § 3069. TREASURER~~

~~3 The treasurer of the district shall be appointed by the board, and shall serve
4 at its pleasure. The treasurer shall not be a member of the governing board.~~

~~5 The treasurer shall have the exclusive charge and custody of the funds of the
6 district and shall be the disbursing officer of the district. When authorized by
7 the board, the treasurer may sign, make, or endorse in the name of the district
8 all checks and orders for the payment of money and pay out and disburse the
9 same and receipt therefor. The treasurer shall keep a record of every~~

~~10 obligation issued and contract entered into by the district and of every payment
11 thereon. The treasurer shall keep correct books of account of all the business
12 and transactions of the district and such other books and accounts as the board
13 may require. The treasurer shall render a statement of the condition of the
14 finances of the district at each regular meeting of the board and at such other
15 times as shall be required of the treasurer. The treasurer shall prepare the~~

~~16 annual financial statement and the budget of the district for distribution, upon~~

1 ~~approval of the board, to the legislative bodies of district members. The~~
2 ~~treasurer shall do and perform all of the duties appertaining to the office of~~
3 ~~treasurer of a body politic and corporate. The treasurer may delegate any or~~
4 ~~all of the responsibilities described in this section, provided such delegation is~~
5 ~~approved by the board or authorized in the district's bylaws. Upon removal or~~
6 ~~the treasurer's termination from office by virtue of removal or resignation, the~~
7 ~~treasurer shall immediately pay over to the successor all of the funds belonging~~
8 ~~to the district and at the same time deliver to the successor all official books~~
9 ~~and papers.~~

10 *Sec. 4. 30 V.S.A. § 3069 is amended to read:*

§ 3069. TREASURER

The treasurer of the district shall be appointed by the board, and shall serve at its pleasure. The treasurer shall not be a member of the governing board. The treasurer shall have the exclusive charge and custody of the funds of the district and shall be the disbursing officer of the district. When authorized by the board, the treasurer may sign, make, or endorse in the name of the district all checks and orders for the payment of money and pay out and disburse the same and receipt therefor. The treasurer shall keep a record of every obligation issued and contract entered into by the district and of every payment thereon. The treasurer shall keep correct books of account of all the business and transactions of the district and such other books and accounts as the board may require. The treasurer shall render a statement of the condition of the finances of the district at each regular meeting of the board and at such other times as shall be required of the treasurer. The treasurer shall prepare the annual financial statement and the budget of the district for distribution, upon approval of the board, to the legislative bodies of district members. The treasurer shall do and perform all of the duties appertaining to the office of treasurer of a body politic and corporate. The treasurer may delegate authority to perform any or all of the duties described in this section, provided such delegation is approved by the board or authorized in the district's bylaws, and further provided the treasurer retains accountability and oversight authority for any such delegations. Upon removal or the treasurer's

termination from office by virtue of removal or resignation, the treasurer shall immediately pay over to the successor all of the funds belonging to the district and at the same time deliver to the successor all official books and papers.

1 Sec. 5. 30 V.S.A. § 3074 is amended to read:

2 § 3074. FISCAL YEAR

3 The fiscal year of the district shall commence on January 1 and end on
4 December 31 of each year, unless otherwise specified in the district's bylaws.

5 Sec. 6. 30 V.S.A. § 3075 is amended to read:

6 § 3075. BUDGET

7 (a) Annually, on or before October 21 or on another date specified in the
8 district's bylaws, the board shall approve and cause to be distributed to the
9 legislative body of each district member for review and comment an annual
10 report of its activities, together with a financial statement, a proposed district
11 budget for the next fiscal year, and a forecast presenting anticipated year-end
12 results. The proposed budget shall include reasonably detailed estimates of:

13 (1) deficits and surpluses from prior fiscal years;

14 (2) anticipated expenditures for the administration of the district;

15 (3) anticipated expenditures for the operation and maintenance of any
16 district communications plant;

17 (4) payments due on obligations, long-term contracts, leases, and
18 financing agreements;

19 (5) payments due to any sinking funds for the retirement of district
20 obligations;

1 (6) payments due to any capital or financing reserve funds;

2 (7) anticipated revenues from all sources; and

3 (8) such other estimates as the board deems necessary to accomplish its
4 purpose.

5 (b) Coincident with a regular meeting thereof, the board shall hold a public
6 hearing on or before November 15 of each year or on another date specified in
7 the district's bylaws to receive comments from the legislative bodies of district
8 members and hear all other interested persons regarding the proposed budget.
9 Notice of such hearing shall be given to the legislative bodies of district
10 members at least 15 days prior to such hearing. The board shall give
11 consideration to all comments received and make such changes to the proposed
12 budget as it deems advisable.

13 (c) Annually, on or before December 15 or on another date specified in the
14 district's bylaws, the board shall adopt the budget and appropriate the sums it
15 deems necessary to meet its obligations and operate and carry out the district's
16 functions for the next ensuing fiscal year.

17 (d) Actions or resolutions of the board for the annual appropriations of any
18 year shall not cease to be operative at the end of the fiscal year for which they
19 were adopted. Appropriations made by the board for the various estimates of
20 the budget shall be expended only for such estimates, but by majority vote of
21 the board the budget may be amended from time to time to transfer funds

1 between or among such estimates. Any balance left or unencumbered in any
2 such budget estimate, or the amount of any deficit at the end of the fiscal year,
3 shall be included in and paid out of the operating budget and appropriations in
4 the next fiscal year. All such budget amendments shall be reported by the
5 district treasurer to the legislative bodies of each district member within
6 14 days following the end of the fiscal year.

7 (e) Financial statements and audit results shall be delivered to the
8 legislative bodies of each district member within 10 days following delivery to
9 the board.

10 Sec. 7. 30 V.S.A. § 3084 is amended to read:

11 § 3084. CONFIDENTIALITY; LEGISLATIVE INTENT

12 (a) The purpose of this section is to clarify that any records or information
13 produced or acquired by a district that are trade secrets or confidential business
14 information shall be exempt from public inspection and copying pursuant to
15 1 V.S.A. § 317(c)(9).

16 (b) For purposes of this section, “confidential business information”
17 includes the operational records of any internet service provider under contract
18 with a district for the construction of a broadband network or to provide
19 broadband service, or both, as well as detailed information about the district’s
20 deployment plans if public disclosure could put the district at a competitive
21 disadvantage. Business records of a district carry a presumption of

1 confidentiality. The exemption and presumption specified in this section shall
2 not, however, apply to district governance records and information.

3 Sec. 8. EFFECTIVE DATE

4 This act shall take effect on passage.