

1 H.504

2 Introduced by Representatives Klein of East Montpelier, Canfield of Fair  
3 Haven, Cheney of Norwich, Jerman of Essex, Krawczyk of  
4 Bennington and Sharpe of Bristol

5 Referred to Committee on

6 Date:

7 Subject: Land use; environmental permitting; local bylaws; Act 250; public  
8 service board; telecommunications facilities

9 Statement of purpose: This bill proposes to maintain municipal jurisdiction  
10 over telecommunications facilities where the municipality has adopted a  
11 specific telecommunications bylaw or ordinance and require those  
12 municipalities, as well as district environmental commissions, to complete  
13 permit processing in the same time frame as the public service board. It also  
14 proposes, for public service board proceedings on such facilities, to require that  
15 all governmental bodies required to receive notice are parties to the  
16 proceeding, and that the board must ensure monitoring of compliance with  
17 federal standards on radio frequency radiation.

18 An act relating to land use permitting of telecommunications facilities

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

1 Sec. 1. 30 V.S.A. § 248a is amended to read:

2 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
3 FACILITIES

4 (a) Certificate. Notwithstanding any other provision of law, if the applicant  
5 seeks approval for the construction or installation, in a municipality that has  
6 not adopted a specific telecommunications facility ordinance or bylaw under  
7 24 V.S.A. § 2291(19) or 4413(12) or municipal charter, of telecommunications  
8 facilities that are to be interconnected with other telecommunications facilities  
9 proposed or already in existence, the applicant may obtain a certificate of  
10 public good issued by the public service board under this section, which the  
11 board may grant if it finds that the facilities will promote the general good of  
12 the state consistent with subsection 202c(b) of this title. A single application  
13 may seek approval of one or more telecommunication facilities.

14 \* \* \*

15 (c) Findings. Before the public service board issues a certificate of public  
16 good under this section, it shall find that:

17 \* \* \*

18 (2) Unless there is good cause to find otherwise, substantial deference  
19 has been given to the land conservation measures in the plans of the affected  
20 municipalities and the recommendations of the municipal legislative bodies  
21 and the municipal and regional planning commissions regarding the municipal

1 and regional plans, respectively. Nothing in this section or other provision of  
2 law shall prevent a municipal body from basing its recommendations on an  
3 ordinance ~~adopted under 24 V.S.A. § 2291(19)~~ or bylaw adopted ~~under~~  
4 ~~24 V.S.A. chapter 117~~ by the municipality in which the facility is located.

5 \* \* \*

6 (e) Notice. No less than 45 days prior to filing a petition for a certificate of  
7 public good under this section, the applicant shall serve written notice of an  
8 application to be filed with the board pursuant to this section to the legislative  
9 bodies and municipal and regional planning commissions in the communities  
10 in which the applicant proposes to construct or install facilities; the secretary of  
11 the agency of natural resources; the commissioner of the department of public  
12 service and its director for public advocacy; and the landowners of record of  
13 property adjoining the project sites. In addition, at the time of such notice, at  
14 least one copy of each application shall be filed with each of these municipal  
15 and regional planning commissions. Each state, regional, and local body  
16 required to receive notice under this subsection shall be a party by right before  
17 the board. An adjoining landowner shall be a party by right before the board  
18 on a demonstration that the landowner's interest may be affected by the  
19 outcome of the proceeding. Upon motion or otherwise, the public service  
20 board shall direct that further public or personal notice be provided if the board  
21 finds that such further notice will not unduly delay consideration of the merits

1 and that additional notice is necessary for fair consideration of the application.

2 \* \* \*

3 (h) Exemptions from other law. This section applies only to an application  
4 for approval of construction or installation of a telecommunications facility in  
5 a municipality that has not adopted a specific telecommunications facility  
6 ordinance or bylaw under 24 V.S.A. § 2291(19) or 4413(12). An applicant for  
7 approval of such a facility using the procedures provided in this section shall  
8 not be required to obtain a permit or permit amendment or other approval  
9 under the provisions of chapter 117 of Title 24 or chapter 151 of Title 10 for  
10 the facilities subject to the application or to a certificate of public good issued  
11 pursuant to this section. ~~Ordinances adopted pursuant to subdivision 2291(19)~~  
12 ~~of Title 24 or a municipal charter that would otherwise apply to the~~  
13 ~~construction or installation of facilities subject to this section are preempted.~~  
14 Disputes over jurisdiction under this section shall be resolved by the public  
15 service board, subject to appeal as provided by section 12 of this title. An  
16 applicant for approval of a facility to which this section applies that has  
17 obtained or been denied a permit or permit amendment under the provisions of  
18 Title 24 or chapter 151 of Title 10 for the construction of a telecommunications  
19 facility may not apply for approval from the board for the same or substantially  
20 the same facility, except that an applicant may seek approval for a modification  
21 to such a facility.

1 \* \* \*

2 (j)(1) Minor applications.

3 \* \* \*

4 (2)(A) Any party seeking to proceed under the procedures authorized by  
5 this subsection shall file a proposed certificate of public good and proposed  
6 findings of fact with its petition, and provide notice and a copy of the petition,  
7 proposed certificate of public good, and proposed findings of fact to the  
8 commissioner of the department of public service and its director for public  
9 advocacy, the secretary of the agency of natural resources, and each of the  
10 legislative bodies and municipal and regional planning commissions in the  
11 communities in which the applicant proposes to construct or install facilities.  
12 The applicant shall give written notice of the proposed certificate to the  
13 landowners of record of property adjoining the project site or sites unless the  
14 board has previously determined on request of the applicant that good cause  
15 exists to waive or modify the notice requirement with respect to such  
16 landowners. Such notice shall request comment to the board within 21 days of  
17 the notice on the question of whether the petition raises a significant issue with  
18 respect to the substantive criteria of this section. If the board finds that a  
19 petition raises a significant issue with respect to the substantive criteria of this  
20 section, the board shall hear evidence on any such issue.

21 \* \* \*

1           (D) Each state, regional, and local body required to receive notice  
2 under subdivision (2)(A) of this subsection shall be a party by right before the  
3 board. An adjoining landowner shall be a party by right before the board on a  
4 demonstration that the landowner's interest may be affected by the outcome of  
5 the proceeding.

6           (E) If the board denies a request to consider an application under the  
7 procedures of this subsection, a filing made under this subsection that the  
8 board has found to be complete shall be deemed to satisfy notice requirements  
9 of subsection (e) of this section, and the periods stated under subsection (f) of  
10 this section shall run from the date of the board's denial of such request.

11           (k) Rules. The public service board may issue rules or orders  
12 implementing and interpreting this section. In developing such rules and  
13 orders, the board shall seek to simplify the application and review process as  
14 appropriate ~~and may by rule or order waive the requirements of this section~~  
15 ~~that the board determines are not applicable to telecommunications facilities of~~  
16 ~~limited size or scope. Determination by the board that a petition raises a~~  
17 ~~substantial issue with regard to one or more substantive criteria of this section~~  
18 ~~shall not prevent the board from waiving other substantive criteria that it has~~  
19 ~~determined are not applicable to such a telecommunications facility, consistent~~  
20 with the requirements of this section.

1       (l) RFR monitoring. When issuing a certificate of public good under this  
2 section, the board shall provide for the monitoring by a state or local  
3 governmental agency of a facility's compliance with applicable federal  
4 regulations concerning radio frequency radiation (RFR). The reasonable costs  
5 of such monitoring shall be paid by the certificate holder, with any dispute on  
6 the reasonableness of such costs to be determined by the board. In the event  
7 that no other state or local agency agrees to perform such monitoring, the  
8 board or its authorized agent shall do so.

9       Sec. 2. 24 V.S.A. § 4464(b)(1) is amended to read:

10       (b)(1) Decisions. The appropriate municipal panel may recess the  
11 proceedings on any application pending submission of additional information.  
12 The panel should close the evidence promptly after all parties have submitted  
13 the requested information. ~~The panel shall adjourn the hearing and issue a~~  
14 ~~decision within 45 days after the adjournment of the hearing, and failure of the~~  
15 ~~panel to issue a decision within this period shall be deemed approval and shall~~  
16 ~~be effective on the 46th day.~~ Decisions shall be issued in writing and shall  
17 include a statement of the factual bases on which the appropriate municipal  
18 panel has made its conclusions and a statement of the conclusions. The  
19 minutes of the meeting may suffice, provided the factual bases and conclusions  
20 relating to the review standards are provided in conformance with this  
21 subsection.

1           (A) With respect to all applications except an application for approval of  
2 a telecommunications facility, the appropriate municipal panel shall adjourn  
3 the hearing and issue a decision within 45 days after the adjournment of the  
4 hearing, and failure of the panel to issue a decision within this period shall be  
5 deemed approval and shall be effective on the 46th day.

6           (B) With respect to an application for approval of a telecommunications  
7 facility, unless the appropriate municipal panel identifies that the application  
8 raises a significant issue, the panel shall issue a final determination on the  
9 application within 90 days of its filing or, if the original filing did not  
10 substantially comply with the municipality's application requirements, within  
11 90 days of the date on which the panel notifies the applicant that the filing is  
12 complete. If an appropriate municipal panel rules that an application raises a  
13 significant issue, the panel shall issue a final determination on the application  
14 within 180 days of its filing or, if the original filing did not substantially  
15 comply with the municipality's application requirements, within 180 days of  
16 the date on which the panel notifies the applicant that the filing is complete.  
17 Failure of an appropriate municipal panel to issue a decision within the period  
18 required by this subsection shall be deemed approval and shall be effective on  
19 the first day immediately following the end of the applicable period.

1 Sec. 3. 10 V.S.A. § 6084(f) is added to read:

2 (f) Notwithstanding any other provision of law, the following shall apply to  
3 an application under this chapter for a broadcast or communication support  
4 structure and related improvements:

5 (1) If the application is initially determined to be a minor application,  
6 then unless the district commission subsequently determines that an application  
7 raises a significant issue, the commission shall issue a final determination on  
8 the application within 45 days of its filing or, if the original filing was  
9 substantially incomplete, within 45 days of the date on which the application is  
10 determined to be complete. If, subsequent to determining that an application is  
11 a minor application, the district commission rules that the application raises a  
12 significant issue, it shall issue a final determination on the application within  
13 90 days of its filing or, if the original filing was substantially incomplete,  
14 within 90 days of the date on which the application is determined to be  
15 complete.

16 (2) With respect to a major application, the district commission shall  
17 issue a final determination on the application within 90 days of its filing or, if  
18 the original filing was substantially incomplete, within 90 days of the date on  
19 which the application is determined to be complete. However, if a district  
20 commission rules that a major application raises a significant issue, the  
21 commission shall issue a final determination on the application within 180

1 days of its filing or, if the original filing was substantially incomplete, within  
2 180 days of the date on which the application is determined to be complete.

3 Sec. 4. EFFECTIVE DATE

4 This act shall take effect on passage.