

1 H.577

2 Introduced by Representative Sullivan of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Public service; municipal electric departments; electric cooperatives;
6 voter approval; out-of-state electricity purchases

7 Statement of purpose of bill as introduced: This bill proposes to modify the
8 statutory provisions that require voter approval before a municipal electric
9 department or electric cooperative purchases electricity from outside Vermont.

10 An act relating to voter approval of electricity purchases by municipalities
11 and electric cooperatives

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

13 ~~Sec. 1. 30 V.S.A. § 2924 is amended to read:~~

14 § 2924. APPROVAL BY VOTERS OF MUNICIPALITY

15 (a) With respect to matters not subject to section 248 of this title, ~~before a~~
16 municipal department established under this chapter or local charter ~~may~~ shall
17 obtain the approval of the voters of the municipality before in any way;

18 (1) ~~purchase~~ purchasing electric capacity or energy from outside the
19 state, for a period exceeding five years, that represents more than one percent
20 of its historic peak demand, or State:

1 ~~(A) for a period exceeding five years, that represents more than three~~
2 percent of its historic peak demand, unless the purchase is from a plant that
3 produces electricity from renewable energy; or
4 ~~(B) for a period exceeding ten years, that represents more than ten~~
5 percent of its historic peak demand, if the purchase is from a plant that
6 produces electricity from renewable energy;
7 (2) invest investing in an electric generation or transmission facility
8 located outside this ~~state~~ State; or
9 (3) begin beginning site preparation for or construction of an electric
10 generation facility within the ~~state~~ State, or an electric transmission facility
11 within the ~~state which~~ State that is designed for immediate or eventual
12 operation at any voltage or ~~exercise~~ exercising the right of eminent domain in
13 connection with site preparation for or construction of any such transmission or
14 generation facility, except for the replacement of existing facilities with
15 equivalent facilities in the usual course of business;
16 (b) that A municipal department shall obtain the approval required by
17 subsection (a) of this section by a vote of a majority of the voters of the
18 municipality voting upon the question at a duly warned annual or special
19 meeting to be held for that purpose. Prior to the meeting, ~~a~~ the municipal
20 department may provide to the voters an assessment of any risks and benefits
21 of the proposed action.

1 ~~(e) In this section, "plant" and "renewable energy" have the same meaning~~
2 ~~as in section 8002 of this title.~~

3 Sec. 2. 30 V.S.A. § 3044 is amended to read:

4 § 3044. APPROVAL BY MEMBERS OF COOPERATIVE

5 (a) With respect to matters not subject to section 248 of this title, ~~before a~~
6 cooperative established under this chapter ~~may~~ shall obtain the approval of the
7 voters of the cooperative before in any way;

8 (1) ~~purchase~~ purchasing electric capacity or energy from outside the
9 state, ~~for a period exceeding five years, that represents more than one percent~~
10 ~~of its historic peak demand, or State:~~

11 (A) for a period exceeding five years, that represents more than three
12 percent of its historic peak demand, unless the purchase is from a plant that
13 produces electricity from renewable energy; or

14 (B) for a period exceeding ten years, that represents more than ten
15 percent of its historic peak demand, if the purchase is from a plant that
16 produces electricity from renewable energy;

17 (2) ~~invest~~ investing in an electric generation or transmission facility
18 located outside this ~~state~~ State; or

19 (3) ~~begin~~ beginning site preparation for or construction of an electric
20 generation facility within the ~~state~~ State, or an electric transmission facility
21 within the ~~state which~~ State that is designed for immediate or eventual

1 ~~operation at any voltage or exercise exercising the right of eminent domain in~~
2 connection with site preparation for or construction of any such transmission or
3 generation facility, except for the replacement of existing facilities with
4 equivalent facilities in the usual course of business,.

5 (b) ~~that~~ A cooperative shall obtain the approval required by subsection (a)
6 of this section by a vote of a majority of the voters of the cooperative voting
7 upon the question at a duly warned annual or special meeting to be held for
8 that purpose. Prior to the meeting, a the cooperative may provide to the voters
9 an assessment of any risks and benefits of the proposed action.

10 (c) In this section, “plant” and “renewable energy” have the same meaning
11 as in section 8002 of this title.

12 Sec. 3. EFFECTIVE DATE

13 ~~This act shall take effect on July 1, 2016.~~

** * * Municipal and Cooperative Electric Utilities; Energy Purchases; Voter*

*Approval * * **

Sec. 1. 30 V.S.A. § 2924 is amended to read:

§ 2924. APPROVAL BY VOTERS OF MUNICIPALITY

*(a) With respect to matters not subject to section 248 of this title, before a
municipal department established under this chapter or local charter may
shall obtain the approval of the voters of the municipality before in any way:*

~~(1) purchase purchasing electric capacity or energy from outside the state, for a period exceeding five years, that represents more than one percent of its historic peak demand, or State:~~

~~(A) for a period exceeding five years, that represents more than three percent of its historic peak demand, unless the purchase is from a plant that produces electricity from renewable energy; or~~

~~(B) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant that produces electricity from renewable energy;~~

~~(2) invest investing in an electric generation or transmission facility located outside this state State; or~~

~~(3) begin beginning site preparation for or construction of an electric generation facility within the state State, or an electric transmission facility within the state which State that is designed for immediate or eventual operation at any voltage or exercise exercising the right of eminent domain in connection with site preparation for or construction of any such transmission or generation facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business;~~

~~(b) that A municipal department shall obtain the approval required by subsection (a) of this section by a vote of a majority of the voters of the municipality voting upon the question at a duly warned annual or special~~

meeting to be held for that purpose. Prior to the meeting, ~~the~~ municipal department may provide to the voters an assessment of any risks and benefits of the proposed action.

(c) In this section, "plant" and "renewable energy" have the same meaning as in section 8002 of this title.

Sec. 2. 30 V.S.A. § 3044 is amended to read:

§ 3044. APPROVAL BY MEMBERS OF COOPERATIVE

(a) With respect to matters not subject to section 248 of this title, before a cooperative established under this chapter ~~may~~ shall obtain the approval of the voters of the cooperative before in any way:

(1) ~~purchase purchasing~~ electric capacity or energy from outside the state, for a period exceeding five years, that represents more than one percent of its historic peak demand, or State:

(A) for a period exceeding five years, that represents more than three percent of its historic peak demand, unless the purchase is from a plant that produces electricity from renewable energy; or

(B) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant that produces electricity from renewable energy;

(2) ~~invest~~ investing in an electric generation or transmission facility located outside this ~~state~~ State; or

(3) ~~begin~~ beginning site preparation for or construction of an electric generation facility within the ~~state~~ State, or an electric transmission facility within the ~~state~~which State that is designed for immediate or eventual operation at any voltage or ~~exercise~~ exercising the right of eminent domain in connection with site preparation for or construction of any such transmission or generation facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business.

(b) ~~that~~ A cooperative shall obtain the approval required by subsection (a) of this section by a vote of a majority of the voters of the cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. Prior to the meeting, ~~a~~ the cooperative may provide to the voters an assessment of any risks and benefits of the proposed action.

(c) In this section, “plant” and “renewable energy” have the same meaning as in section 8002 of this title.

** * * Vermont Hydroelectric Power Acquisition; Working Group * * **

Sec. 3. VERMONT HYDROELECTRIC POWER ACQUISITION

WORKING GROUP

(a) Creation. There is created the Vermont Hydroelectric Power Acquisition Working Group to prepare due diligence and feasibility studies regarding the purchase of hydroelectric dams and related assets currently

owned by TransCanada Hydro on the Connecticut and Deerfield Rivers (the “dam facilities”).

(b) Membership. The Working Group shall be composed of the following seven members:

(1) the Secretary of Administration or designee who shall serve as chair;

(2) the State Treasurer or designee;

(3) the Commissioner of Public Service or designee;

(4) two persons chosen by the Governor, at least one of whom shall be an employee of a regional planning commission serving communities that host at least two hydroelectric facilities owned by TransCanada Hydro;

(5) one person chosen by the Speaker of the House; and

(6) one person chosen by the Senate Committee on Committees.

(c) Powers and duties. The Working Group shall:

(1) Review and study the principal policy, economic, environmental, and engineering issues involved in a purchase of the dam facilities, including:

(A) the administrative and structural options for the ownership of the dam facilities and the sale and distribution of their power output, including ownership through the creation of a limited purpose State public power authority, the Vermont Public Power Supply Authority, by one or more Vermont utilities, or by a public-private partnership; and

(B) the alternatives for disposition of the power output of the dam facilities, including wholesale and retail sales within and outside the State and use of the power within a portfolio to support advanced and renewable energy technologies, and the impacts of these alternatives on the credit-worthiness of the State and the ability of Vermont utilities to access investment capital on reasonable commercial terms.

(2) Prepare recommendations on the purchase of the dam facilities.

(d) Assistance. The Working Group may consult with other State, municipal, or private entities, including representatives of the State Treasurer; the Vermont Agency of Natural Resources; the Vermont Municipal Bond Bank; representatives of existing municipal, cooperative, and investor-owned utilities; the Vermont Department of Public Service; and, where appropriate, the Public Service Board. Reasonable administrative support for the Working Group shall be provided upon request by the Department of Public Service and the Office of Legislative Council. The Working Group may retain professional assistance to undertake the duties required herein.

(e) Reimbursement. Legislative members of the Working Group shall receive per diem and expenses pursuant to 2 V.S.A. § 406, and members of the Working Group who are not State employees may be compensated by their appointing authorities.

(f) Public records. Commercial and financial information of a proprietary nature produced or acquired by the Working Group shall be exempt from public inspection and copying under the Public Records Act if public release of the information could jeopardize the position of the State of Vermont and its agents in negotiations or in the purchase of the facilities on advantageous terms.

(g) Meetings. The members of the Working Group shall be appointed not later than 13 days following passage of this act and the Secretary of Administration shall convene the Working Group not later than 15 days after the effective date of this act.

(h) Appropriation. The Secretary of Administration is authorized to expend \$75,000.00 from general funds appropriated to the Executive Branch in the FY 2017 Appropriations Act for the study required in this section. If the Secretary determines that additional expenditures are necessary to preserve options on behalf of the State, the Working Group is authorized to approve the Secretary's use of an additional \$175,000.00 from general funds appropriated to the Executive Branch in the FY 2017 Appropriations Act. The Secretary shall make an offsetting reduction or funds transfer for any amount expended from the funds appropriated to the Executive Branch in the FY 2017 Appropriations Act. Any additional funding shall require approval from the Emergency Board. If any funds are expended pursuant to this section, the

Secretary shall submit a report to the Joint Fiscal Committee. The report shall include the amount expended and the underlying source of funds.

(i) Report. On or before August 1, 2016, the Working Group shall submit a report on the study and recommendation described in subsection (c) of this section to the Senate Committees on Finance and on Natural Resources and Energy, and the House Committees on Commerce and Economic Development and on Natural Resources and Energy.

(j) Bid. If the Working Group's report described in subsection (i) of this section includes a recommendation to purchase the dam facilities, then the Working Group is authorized to submit a bid to purchase the dam facilities; provided, however, that the Working Group shall obtain approval of the General Assembly to proceed with the bid within 14 days of receipt of notification that the bid has been accepted. If the bid is accepted when the General Assembly is not in session, then the Working Group shall request that the Governor convene a special session for the purpose of approving the bid.

Sec. 4. 30 V.S.A. chapter 90 is added to read:

CHAPTER 90. VERMONT HYDROELECTRIC POWER AUTHORITY

Subchapter 1. General Provisions

§ 8040. FINDINGS, PURPOSE, AND GOALS

(a) The General Assembly of the State of Vermont finds that potential exists to purchase an interest in hydroelectric power stations along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts.

(b) Therefore, it is the purpose of this chapter to create an entity with the authority to finance, purchase, own, operate, or manage any interest in the hydroelectric power facilities along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts, and to sell the electric energy under the control of the Authority from those facilities at wholesale to authorized wholesale purchasers. The purchase and operation of an interest shall be pursued with the following goals:

(1) to promote the general good of the State;

(2) to stimulate the development of the Vermont economy;

(3) to increase the degree to which Vermont's energy needs are met through environmentally-sound sustainable and renewable in-state energy sources;

(4) to lessen electricity price risk and volatility for Vermont ratepayers and to increase system reliability;

(5) to not compete with Vermont utilities;

(6) to ensure that the credit rating of the State will not be adversely affected and Vermont taxpayers will not be liable should the purchase of the

facilities fail because of the failure to produce sufficient revenue to service the debt, the failure of a partner, or for any other reason; and

(7) to cause the facilities to be operated in an environmentally-sound manner consistent with federal licenses and purposes.

§ 8041. DEFINITIONS

As used in this chapter:

(1) “Authority” means the Vermont Hydroelectric Power Authority established by this chapter.

(2) “Facilities” means the hydroelectric power stations and related assets along the Connecticut and Deerfield Rivers located in Vermont, New Hampshire, and Massachusetts in which the Authority has acquired an equity interest.

§ 8042. ESTABLISHMENT

There is created a body corporate and politic to be known as the Vermont Hydroelectric Power Authority. The Authority is an instrumentality of the State exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred upon it by this chapter constitutes the performance of essential governmental functions.

§ 8043. BOARD OF DIRECTORS

(a) Directors. The powers of the Authority shall be exercised by seven directors appointed as follows:

(1) Five directors shall be appointed by the Governor, at least one of whom shall represent retail customers. No director appointed by the Governor, while serving as a director, shall be an employee, board member, or director, or have a substantial ownership interest in an electric company regulated by the Public Service Board or the Department of Public Service under this title;

(2) The State Treasurer, who shall serve ex officio; and

(3) One director shall be a representative of the Department of Public Service, appointed by the Commissioner, who shall serve at the pleasure of the Commissioner.

(b) Terms and vacancies. The directors appointed by the Governor shall be appointed for terms of five years and until their successors are appointed and confirmed, except that the first directors shall be appointed in the following manner: one for a term of two years, two for a term of three years, and two for a term of five years. The Governor for cause may remove a director appointed by a Governor. The Governor may fill any vacancy occurring among the directors appointed by a Governor for the balance of the unexpired term. A director may be reappointed.

(c) Officers. The Authority shall elect a chair, a vice chair, and a treasurer from among its directors.

(d) Quorum. A quorum shall consist of four directors. No action of the Authority shall be considered valid unless the action is supported by a majority vote of the directors present and voting and then only if at least four directors vote in favor of the action.

(e) Compensation. Directors shall be compensated for necessary expenses incurred in the performance of their duties in the manner provided by 32 V.S.A. § 1010(b).

(f) Bylaws. The Authority's board of directors shall adopt bylaws or other rules and regulations for the management of the affairs of the Authority and carrying out the purposes of this chapter.

(g) Conflicts. Despite any law or charter provision to the contrary, a director or officer of the Authority who is also an officer, employee, or member of a legislative body of a municipality or other public body or of the State shall not thereby be precluded from voting or acting on behalf of the Authority on a matter involving the municipality or public body or the State.

§ 8044. MANAGER

(a) Manager. The Authority shall employ and compensate a manager who shall serve under a contract for a specific term or at the pleasure of the Authority. The Authority, with the Governor's approval, shall fix the manager's compensation. The manager shall be the chief executive officer of

the Authority and shall administer, manage, and direct the affairs and business of the Authority, subject to the policies, control, and direction of the directors.

(b) Interim manager. The Governor or the Governor's designee shall have the power to appoint an interim manager upon enactment of this chapter, who shall serve at the Governor's pleasure, under the Governor's direction, and for compensation established by the Governor. The interim manager, with the approval of the Governor or the Governor's designee, shall have full authority to take all actions authorized under this chapter to protect and advance the interests of the State of Vermont until such time as a manager employed pursuant to subsection (a) of this section has assumed office.

§ 8045. TERMINATION

(a) The Authority shall continue so long as it shall have any obligations or indebtedness outstanding and until its existence is terminated by law. Upon termination of the Authority, title to all of the property owned by the Authority shall vest in the State. The State reserves the right to change or terminate the Authority and any structure, organization, program, or activity of the Authority, subject to constitutional limitations.

(b) The net earnings of the Authority, beyond those necessary for retirement of its notes, bonds, or other obligations or indebtedness or to implement the public purposes and programs authorized in this chapter, shall not inure to the benefit of any person other than the State.

Subchapter 2. Powers and Prohibitions

§ 8046. GENERAL POWERS

The Authority has the following powers as are necessary to carry out the purposes of this chapter:

(1) To borrow money and to issue negotiable bonds, notes, and commercial paper, and give other evidences of indebtedness or obligations, and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, to purchase, hold, and dispose of any of its bonds, notes, or commercial paper, and to resell or retire any such evidences of indebtedness or obligations prior to the stated maturity thereof.

(2) To enter into all contracts, leases, agreements, and arrangements, including such agreements with other persons as the Authority deems necessary or appropriate in connection with the issuance, sale, and resale of evidences of indebtedness or obligations, including trust indentures, bond purchase agreements, disclosure agreements, remarketing agreements, agreements providing liquidity or credit facilities, bond insurance, or other credit enhancements in connection with such evidences of indebtedness or obligations.

(3) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of property necessary to carry out the purposes of

this chapter, real or personal, improved or unimproved, tangible or intangible, including an interest in land of less than fee.

(4) To pledge or assign any money, fees, charges, or other revenues of the Authority and any proceeds derived by the Authority from the sale of property or from insurance or condemnation awards.

(5) To employ personnel who, in the discretion of the Authority, may be in the classified system under 3 V.S.A. chapter 13, and to employ or contract with agents, consultants, legal advisors, and other persons and entities as may be necessary or desirable for its purposes, upon such terms as the Authority may determine.

(6) To apply and contract for and to expend assistance from the United States or other sources, whatever the form.

(7) To administer its own funds and to deposit funds which are not needed currently to meet the obligations of the Authority.

(8) To invest funds which are not needed currently to meet the obligations of the Authority, pursuant to an investment policy approved by the State Treasurer.

(9) To apply to the appropriate agencies of the State, other states, the United States, and to any other proper agency for permits, licenses, certificates, or approvals which may be necessary, and to construct, maintain,

and operate the facilities in accordance with these licenses, permits, certificates, or approvals.

(10) To contract with respect to the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission, or use of project electric power and energy and to otherwise participate in intrastate, interstate, and international wholesale arrangements with respect to those matters.

(11) To contract for the use of transmission and distribution facilities owned by others solely for the purpose of engaging in wholesale transactions.

(12) Alone or jointly, to plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of, or otherwise participate in the facilities or portions of the facilities, the product or service from them, securities or obligations issued or incurred in connection with the financing of them, or research and development relating to them, within or outside the State.

(13) To sell electric power at wholesale within or outside the State.

(14) To undertake a joint financing of the facilities.

(15) To accept and expend with respect to a facility, project, or program any gifts or grants received from any source in accordance with the terms of the gifts or grants.

(16) To exercise all powers necessary or incidental to affect any or all of the purposes for which the Authority is created.

§ 8047. PROHIBITIONS

The Authority shall take no action to cause, nor shall any provision of this chapter be construed to impose, any obligation upon the State as a result of the insolvency of a partner.

§ 8048. OBLIGATIONS NOT OBLIGATIONS OF THE STATE

(a) The Authority shall have the benefit of sovereign immunity to the same extent as the State of Vermont.

(b) Notwithstanding subsection (a) of this section:

(1) obligations of the Authority under a contract authorized by this chapter shall not be deemed to constitute an obligation, indebtedness, or a lending of credit of the State; and

(2) no financing or security document, bond, or other instrument issued or entered into in the name and on behalf of the Authority under this chapter shall in any way obligate the State to raise any money by taxation or use other funds for any purpose to pay any debt or meet any financial obligation to any person at any time in relation to a facility, project, or program financed in whole or in part by the issue of the Authority's bonds under this chapter.

§ 8049. RECORDS; ANNUAL REPORT; AUDIT

(a) The Authority shall keep an accurate account of all its activities and of all its receipts and expenditures.

(b) Each year, prior to February 1, the Authority shall submit a report of its activities for the preceding fiscal year to the Governor and to the General Assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the Authority, and a copy of the audit shall be filed with the State Treasurer.

Subchapter 3. Form and Nature of Indebtedness; Approval

§ 8050. BONDS; INDEBTEDNESS

(a) Issue. The Authority may issue bonds, or any other forms of indebtedness, to pay the costs of purchasing the facilities, or property related to such facilities, to pay the costs of repairs, replacements, or expansions of the facilities, to pay capitalized interest and costs of issuance, which have been approved by the Authority, or to refund bonds previously issued.

(b) Form of bonds. Bonds issued under this section shall bear the manual or facsimile signature of the manager of the Authority and the manual or facsimile signature of the Chair or Vice Chair of the Authority. Bonds shall be sold by the signing officers at public or private sale, and the proceeds thereof shall be paid to the trustee under the security document that secures the bonds. Such bonds shall be in such form and denominations, and with such terms and

provisions, including the maturity date or dates, redemption provisions, and other provisions necessary or desirable. Such bonds shall be either taxable or tax-exempt and shall be noninterest bearing, or bear interest at such rate or rates, which may be fixed or variable, as may be sufficient or necessary to effect the issuance and sale or resale thereof. If any swaps or similar derivative instrument is used in the issuance of such bonds, the Authority shall employ a swap adviser to develop an interest rate management plan.

(c) Trustee. A state or national chartered bank, Vermont bank, or Vermont trust company may serve as trustee for the benefit of debtholders under a security document, and the trustee may at any time own all or any part of the indebtedness issued under that security document, unless otherwise provided therein. All monies received or held by the Authority or by a trustee pursuant to a financing or security document shall be deemed to be trust funds and shall be held and applied solely in accordance with the applicable document.

(d) Enforcement. Except as provided in any financing or security document entered into or any indebtedness issued under this chapter, each of the parties to the financing or security document or any debtholder may enforce the obligation of any other person to the party or debtholder under the bond or instrument by appropriate legal proceedings.

(e) Legal investments. Any indebtedness issued under this chapter shall be legal investments for all persons without limit as to the amount held,

regardless of whether they are acting for their own account or in a fiduciary capacity. Such bonds shall likewise be legal investments for all public officials authorized to invest public funds.

§ 8051. BONDS; INDEBTEDNESS; APPROVAL

The Authority shall issue indebtedness under this chapter pursuant to guidelines developed by the State Treasurer. The Governor and the State Treasurer shall provide written approval prior to any issuance.

Subchapter 4. Funds and Accounts

§ 8052. FUNDS; ACCOUNTS.

The Authority shall establish funds and accounts, including reserve funds, necessary to meet the Authority's operating and capital needs, and the provisions of any security documents. Any debt service reserves shall be structured to be consistent with applicable guidelines established by the Internal Revenue Service.

Sec. 5. VERMONT HYDROELECTRIC POWER AUTHORITY;

TRANSITIONAL PROVISION; APPOINTMENT; TERMINATION

(a) The Governor shall appoint the directors of the Authority within 14 days following the request of the Vermont Hydroelectric Power Acquisition Working Group.

(b) Sec. 4 of this act, creating 30 V.S.A. chapter 90, shall terminate on January 15, 2017 if at that time the State has not purchased or commenced

negotiations to purchase, the dam facilities, as determined by the Secretary of Administration.

** * * Telecommunications Siting; Local Input; Collocation * * **

Sec. 5a. 30 V.S.A. § 248a is amended to read:

*§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS
FACILITIES*

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other State and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. As used in this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a

telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) “De minimis modification” means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) the addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) the additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3) “Good cause” means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or State’s interests in section 202c of this title.

(4)(A) “Limited size and scope” means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision, “disturbed earth” means the exposure of soil to the erosive effects of wind, rain, or runoff.

(5) “Substantial deference” means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

~~(4)~~(6) “Telecommunications facility” means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

~~(5)~~(7) “Wireless service” means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the Public Service Board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public’s use and enjoyment of the I-89 and

I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) the Board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) a telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.

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

~~and regional plans, respectively; and to the recommendations of the regional planning commission concerning the regional plan.~~ Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(A) If a proposed new support structure for a new telecommunications facility that provides wireless service will exceed 50 feet in height in a cleared area or will exceed 20 feet in height above the average treeline measured within a 100-foot radius from the structure in a wooded area, the application shall identify all existing telecommunications facilities within the area to be served by the proposed structure and, for each such

existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunications equipment were located on or at the existing facility. The applicant also shall compare each such projection and estimate to the coverage and capacity that would be provided at the site of the proposed structure.

(B) To obtain a finding that a proposed facility cannot reasonably be collocated on or at an existing telecommunications facility, the applicant must demonstrate that:

(i) collocating on or at an existing facility will result in a significant reduction of the area to be served or the capacity to be provided by the proposed facility or substantially impede coverage or capacity objectives for the proposed facility that promote the general good of the State under subsection 202c(b) of this title;

(ii) the proposed antennas and equipment will exceed the structural or spatial capacity of the existing or approved tower or facility, and the existing or approved tower or facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility;

(iii) the owner of the existing facility will not provide space for the applicant's proposed telecommunications equipment on or at that facility on commercially reasonable terms; or

(iv) the proposed antennas and equipment will cause radio frequency interference that will materially impact the usefulness of other existing or permitted equipment at the existing or approved tower or facility and such interference cannot be mitigated at a reasonable cost.

* * *

(e) Notice. No less than ~~45~~ 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the ~~45-day~~ 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the collocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's collocation assessment and to conduct further independent analysis, as necessary. Within 45 days of receiving the applicant's notice and

collocation assessment, the Department shall report its own preliminary findings and recommendations regarding collocation to the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

* * *

(h) Exemptions from other law.

(1) An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. This exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.

(2) Ordinances An applicant using the procedures provided in this section shall not be required to obtain an approval from the municipality under an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section ~~are preempted~~. This exemption from obtaining an approval under such an ordinance shall not affect the substantial deference

to be given to a plan or recommendation based on such an ordinance under subdivision (c)(2) of this section.

(3) Disputes over jurisdiction under this section shall be resolved by the Public Service Board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction of a telecommunications facility may not apply for approval from the Board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

* * *

Sec. 5b. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter when and to the extent jurisdiction is assumed by the Public Service Board according to the provisions of that section. This exemption from obtaining approval under this chapter shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under 30 V.S.A. § 248a(c)(2).

** * * Department of Public Service; CPG; Complaint Protocol * * **

*Sec. 5c. DEPARTMENT OF PUBLIC SERVICE; CERTIFICATE OF
PUBLIC GOOD; COMPLAINT PROTOCOL*

(a) Not later than September 1, 2016, the Commissioner of Public Service shall establish and implement a protocol for handling complaints concerning the alleged failure of a company to comply with the terms and conditions of a certificate of public good issued by the Public Service Board under 30 V.S.A. § 248 or 248a. The Commissioner may revise the protocol at any time to achieve a more effective and satisfactory response to complaints.

(b) The purpose of this section is to create a single location within State government for receipt and tracking of all complaints described in subsection (a) of this section. The protocol shall include a process for filing, investigating, and responding to complaints in a timely manner, as well as a procedure for tracking the number and nature of complaints received and a summary of actions taken by the Department of Public Service in response to each complaint, which information shall be aggregated and reported annually to the General Assembly beginning on January 1, 2017, notwithstanding 2 V.S.A. § 20(d). In addition, the Department shall keep a record of complaints filed under the protocol. A summary of the record shall be published on a website maintained by the Department to increase public awareness and transparency, which may reduce the occurrence of redundant complaint filings. The Commissioner's protocol shall include standards and procedures for consolidating complaints of a similar nature involving the same company and procedures under which a company receiving a complaint informs the

Department of the complaint and its nature and such information as the Commissioner determines is necessary to track its progress and response.

(c) A complainant shall not be required to direct a complaint to a company prior to submitting a complaint with the Department of Public Service pursuant to the complaint protocol established under this section.

(d) The Commissioner may retain experts and other personnel as identified in 30 V.S.A. § 20 to investigate complaints, and may allocate the reasonable expenses incurred in retaining such personnel to the company as provided under 30 V.S.A. § 21.

(e) The complaint protocol established under this section shall be in addition to any procedure established under 30 V.S.A. § 208. Unresolved complaints may be considered by the Public Service Board pursuant to its authority under Title 30, including 30 V.S.A. § 8(f), and Public Service Board Rules.

(f) With its report filed under this section on or before January 1, 2018, the Commissioner shall make recommendations regarding the establishment of and payment for an ongoing process for monitoring a company's compliance with a certificate of public good for the purpose of reducing the filing of individual complaints under this section.

* * * VTA Grants; Compliance; Refund * * *

Sec. 5d. VTA GRANT; COMPLIANCE; REFUND

(a) With funds appropriated by the General Assembly in 2011 Acts and Resolves No. 40, Secs. 3 and 49, the Vermont Telecommunications Authority (VTA) awarded VTel Wireless, a subsidiary of the Vermont Telephone Company, a \$2,644,093.00 grant to purchase equipment to deploy mobile voice service over its wireless broadband 4G LTE (WOW) network by December 31, 2014. The equipment purchased by VTel does not currently comply with the FCC's E-911 location accuracy requirements and, therefore, has not been deployed.

(b) Consistent with all applicable State and federal requirements, VTel shall provide mobile voice service over its WOW network to not less than 2,000 Vermont customers on or before November 1, 2017.

(c) On or before November 15, 2017, VTel Wireless shall submit to the Department of Public Service, the successor in interest to the VTA, written evidence substantiating compliance with subsection (b) of this section. If the Department of Public Service finds that VTel Wireless has not complied with subsection (b) of this section, VTel shall refund the State of Vermont \$2,644,093.00.

(d) Any money refunded to the State under this section shall be deposited into the Connectivity Fund and used solely to support the Connectivity Initiative established under 30 V.S.A. § 7515b.

** * * Communications Union Districts; Budget; Hearing;*

*Date Changes * * **

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

§ 3075. BUDGET

(a) Annually, ~~not later than September 15~~ on or before October 21, the board shall approve and cause to be distributed to the legislative body of each district member for review and comment an annual report of its activities, together with a financial statement, a proposed district budget for the next fiscal year, and a forecast presenting anticipated year-end results. The proposed budget shall include reasonably detailed estimates of:

- (1) deficits and surpluses from prior fiscal years;*
- (2) anticipated expenditures for the administration of the district;*
- (3) anticipated expenditures for the operation and maintenance of any district communications plant;*
- (4) payments due on obligations, long-term contracts, leases, and financing agreements;*
- (5) payments due to any sinking funds for the retirement of district obligations;*
- (6) payments due to any capital or financing reserve funds;*
- (7) anticipated revenues from all sources; and*

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

(b) *Coincident with a regular meeting thereof, the board shall hold a public hearing ~~not later than November 1~~ on or before November 15 of each year to receive comments from the legislative bodies of district members and hear all other interested persons regarding the proposed budget. Notice of such hearing shall be given to the legislative bodies of district members at least ~~30 days~~ 15 days prior to such hearing. The board shall give consideration to all comments received and make such changes to the proposed budget as it deems advisable.*

(c) *Annually, ~~not later than December 1~~ on or before December 15, the board shall adopt the budget and appropriate the sums it deems necessary to meet its obligations and operate and carry out the district's functions for the next ensuing fiscal year.*

(d) *Actions or resolutions of the board for the annual appropriations of any year shall not cease to be operative at the end of the fiscal year for which they were adopted. Appropriations made by the board for the various estimates of the budget shall be expended only for such estimates, but by majority vote of the board the budget may be amended from time to time to transfer funds between or among such estimates. Any balance left or unencumbered in any such budget estimate, or the amount of any deficit at the end of the fiscal year,*

shall be included in and paid out of the operating budget and appropriations in the next fiscal year. All such budget amendments shall be reported by the district treasurer to the legislative bodies of each district member within 14 days of the end of the fiscal year.

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

** * * Public Advocacy; Department of Public Service; Attorney General;*

*Annual Report * * **

*Sec. 5f. PUBLIC ADVOCACY; DEPARTMENT OF PUBLIC SERVICE;
ATTORNEY GENERAL; ANNUAL REPORT*

(a) The Commissioner of Public Service shall submit to the General Assembly a report summarizing significant cases concluded within the past year and describing the positions taken by the Department of Public Service in those cases. The report also shall summarize the Department's role and positions with respect to other significant topics addressed by the Department's Public Advocacy Division pursuant to alternative regulation or to litigation before the Public Service Board or other tribunal. The report specifically shall refer to the Department's duties and responsibilities under Title 30 and explain how the Department's positions and activities align with those statutory provisions. In addition, the report shall include the terms of

any settlement or memorandum of understanding (MOU) negotiated by the Department in such cases, the parties that participated in any settlement or MOU negotiations, and documentation of what the Department was able to negotiate on behalf of residential ratepayers and what the Department conceded that was beneficial to the applicable public service company.

(b) The primary purpose of the reporting requirement of this section is to help address concerns regarding any potential compromise of the effectiveness or independence of the Department's representation of ratepayers in rate proceedings, including base rate filings under an alternative regulation plan.

(c) To assist with meeting the purpose stated in subsection (b) of this section, the Attorney General shall monitor and detail at least one rate proceeding annually and make findings and recommendations related to the effectiveness and independence of the Department's ratepayer advocacy. In performing his or her duties under this section, the Attorney General shall have full access to the work and work product of the Department as it relates to each proceeding he or she monitors. The Attorney General's findings and recommendations shall be included in the Department's annual report.

(d) The report required by this section shall be submitted annually on or before November 1, except that the first report shall be submitted on or before December 1, 2016. This reporting requirement shall sunset three years from the effective date of this section.

(e) The Department shall not be required to disclose privileged information in connection with a report submitted under this section, nor shall it be required to disclose information relating to litigation strategy in any matters then pending before the Public Service Board or other tribunal.

(f) Prior to submitting a report under this section, the Department shall solicit public comments and shall summarize and respond to such comments by topic in the report. Comments shall be solicited by announcement on the Department's website and by such other means as the Commissioner deems appropriate.

(g) The Public Service Board shall allocate the reasonable expenses incurred by the Attorney General under this section to the public service company involved in a proceeding he or she monitors, as provided in 30 V.S.A. §§ 20 and 21.

** * * Effective Dates * * **

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 1 and 2 shall take effect on July 1, 2016.