



DEPARTMENT OF PUBLIC SERVICE

**Assessment of Telecommunications Facility
Review Process under 30 V.S.A. § 248a**

Report to the Vermont House Committee on Commerce and Economic
Development and the Senate Committee on Finance

October 1, 2015

Submitted by:
Vermont Public Service Department

Purpose

Section 19 of Act 190 of 2014 and Section 29 of Act 199 of 2014 require that the Department of Public Service (the "Department") submit to the House Committee on Commerce and Economic Development and the Senate Committee on Finance a report assessing the telecommunications facility review process under 30 V.S.A. § 248a. The report is required to include the following information for the year ending August 31, 2015:

- The number of applications for the construction or installation of telecommunications facilities filed with the Public Service Board (the "Board");
- The number of applications for which a certificate of public good was granted;
- The number of applications for which notice was filed but were then withdrawn; and
- The number of times the Department used its authority under 30 V.S.A. § 248a(o) to allocate expenses incurred in retaining expert personnel to the application.

Background

Title 30, section 248a authorizes the Public Service Board (the "Board") to issue certificates of public good ("CPGs") for the construction or installation of telecommunications facilities if the Board finds that the facilities will promote the general good of the State of Vermont. Pursuant to § 248a(h), if an applicant receives a CPG for a telecommunications facility under § 248a, it is exempt from permitting requirements under 24 V.S.A. chapter 117 (local zoning) and 10 V.S.A. chapter 151 (Act 250).

Section 248a(c) establishes a series of criteria under which the Board must make findings before it can issue a CPG authorizing the installation or modification of a telecommunications facility. Specifically, the Board is required to find that a 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" *See* § 248a(c)(1). The Board is also required to give due consideration to criteria outlined in 10 V.S.A. §§ 1424(d) and 6086(a)(1) through (8) (Act 250 criteria). *Id.*

Depending on the size and scope of the project, however, some of these criteria are conditionally waived. For example, pursuant to § 248a(3)(A), new facilities that do not exceed 140 feet in height and disturb less than 10,000 square feet of earth are defined as "limited size and scope" facilities. Under § 248a(c)(1), the Board's review of limited size and scope projects is generally limited to the proposed project's impact on floodways, aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas, endangered species, and necessary wildlife habitat.

Section 248a also establishes a separate process for "de minimis" applications. Under § 248a(b)(2), a "de minimis modification" is defined as a modification to an existing building or telecommunications facility that does not result in an increase in the height or width of the facility or increase impervious surfaces surrounding the facility by more than 300 square feet. To qualify as a de minimis modification, any installation of new equipment must be completed within ten feet of an existing facility or building and result in less than 75 square feet of new

surface area of equipment installed on the facility. Pursuant to § 248a(k), the Board is required to issue a CPG for any proposed project that qualifies as a de minimis modification.

The Department has a right to appear and participate on any application before the Board under § 248a. The Department, as required by § 248a(p), has also prepared a § 248a review process guide, which is available on the Department's website at publicservice.vermont.gov/publications. Municipal governing bodies and planning commissions also have a right to comment and appear before the Board in any § 248a proceeding, and the Board is required to give substantial deference to comments received from municipalities in response to an application unless there is good cause to find otherwise. *See* § 248a(c)(2). Section 248a(o) further allows municipal governing bodies to request that the Department retain outside experts to review § 248a applications, and the Department has authority to bill the expenses associated with retaining experts back to the applicants.

Below, the Department provides the relevant information required for this report under Act 190 and Act 199.

Reported § 248a Information

1. The number of applications for the construction or installation of telecommunications facilities filed with the Board.

During the year ending August 31, 2015, there were 127 applications filed with the Board pursuant to § 248a for the construction or installation of telecommunications facilities. Of the 127 total applications, 83 were filed as "de minimis modifications" to existing facilities or buildings; 41 were filed as "limited size and scope" projects; and 3 were filed as full § 248a applications.

2. The number of applications for which a certificate of public good was granted.

During the year ending August 31, 2015, the Board granted 131 CPGs for applications filed under § 248a. Of these 131 CPGs, 23 were issued for applications that were filed prior to the year ending August 31, 2015 (i.e. the application was filed before September 1, 2014, but the Board issued the CPG after September 1, 2014).

3. The number of applications for which notice was filed but were then withdrawn.

During the year ending August 31, 2015, there were 5 applications for which notice was filed but were then withdrawn by the applicant. There were an additional 7 applications that were not processed by the Board because of lack of necessary information in the application materials or the Board found that the proposed project did not qualify as a de minimis modification. There were an additional 7 applications pending before the Board as of August 31, 2015, 3 of which were scheduled for technical hearings by the Board.

4. The number of times the Department used its authority under 30 V.S.A. § 248a(o) to allocate expenses incurred in retaining expert personnel to the application.

The Department used its authority under 30 V.S.A. § 248a(o) to allocate expenses incurred in retaining experts four times during the year ending August 31, 2015. The Department retained experts to review aesthetic impacts and radiofrequency propagation of proposed facilities. The Department has retained experts under § 248a(o) each time that it was requested to do so by a municipal governing body or planning commission.