

House Proposal of Amendment

S. 78

An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont.

The House proposes to the Senate to amend the bill as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by adding a new subdivision (3) to read as follows:

(3) Of the approximately \$8,900,000.00 in state funds appropriated to the VTA for capital investments since its creation in 2007, approximately \$6,400,000.00 has been awarded to fund various telecommunications projects in the state, and about \$280,000.00 worth of those projects has been completed to date.

Second: In Sec. 1 (purpose and findings), in subsection (b), in subdivision (5), after the words “promises near universal coverage in” by adding “large areas of”

Third: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivision (11) in its entirety and inserting in lieu thereof the following:

(11) In light of the infusion of federal dollars to build out telecommunications infrastructure in Vermont, the VTA, in coordination with the secretary of administration, needs to reexamine on a continuing basis its role in providing funds and its support for cellular and broadband deployment.

Fourth: In Sec. 1 (purpose and findings), in subsection (b), in subdivision (13), by striking out the second sentence in its entirety

Fifth: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivision (14) and inserting in lieu thereof:

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state’s iconic beauty and long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked sixth in the world for “destination stewardship” by the National Geographic Society’s Center for Sustainable Destination, as published in the November–December 2009 issue of National Geographic Traveler magazine. Provisions should be enacted that are specifically intended to assure that telecommunications facilities along Vermont’s scenic highways are built consistently with this goal.

and by renumbering all subdivisions in subsection (b) to be numerically correct

Sixth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for communications facilities), in subsection (c) (findings), by striking out subdivision (1) and inserting in lieu thereof:

(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.

Seventh: By adding a new section to be numbered Sec. 3b to read as follows:

Sec. 3b. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

* * *

(g) Concerning an application for a permit to discharge stormwater runoff from a telecommunications facility as defined in 30 V.S.A. § 248a that is filed before July 1, 2014:

(1) Under subdivision (a)(1) of this section, the agency shall not require an applicant to pay more than \$10,000.00 with respect to a facility.

(2) The provisions of subsection (c) (mandatory meeting) of this section shall not apply.

Eighth: By adding a new section to be numbered Sec. 3c to read as follows:

Sec. 3c. Sec. F33 of No. 146 of the Acts of the 2009 Adj. Sess. (2010) is amended to read:

Sec. F33. ANR REPORT ON ANTI-DEGRADATION IMPLEMENTATION RULES

On or after January 15, 2011, and at ~~least 30 days prior to prefiling~~ the same time that the secretary of natural resources prefiles draft anti-degradation policy implementation rules with the interagency committee on administrative rules under 3 V.S.A. § 837, the secretary of natural resources shall submit for review a copy of the draft anti-degradation policy implementation rules to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources. At the time of such prefiling, if the general assembly is not in session, then the secretary shall comply with this section by submitting the draft rules to the chairs of the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources.

Ninth: In Sec. 10, 30 V.S.A. § 8092 (nonexclusive use of fiber on electric utility poles), in subsection (h) (transmission poles), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity but fails to use that capacity within one year from the date the contract is entered into, the communications service provider shall report such non-use to the department of public service. The commissioner of public service shall determine if such non-use constitutes anti-competitive behavior that unreasonably precludes another communications service provider from leasing fiber-optic capacity. If the commissioner determines that such non-use constitutes anti-competitive behavior, he or she shall commence an investigation with the board of public service. The board is authorized to impose a remedy it deems appropriate under the circumstances. Such remedy may include termination of the lease with respect to the unused portion of the leased fiber-optic capacity.

Tenth: In Sec. 10, 30 V.S.A. § 8092 (nonexclusive use of fiber on electric utility poles), by striking out subsection (j) (distribution poles) in its entirety and inserting in lieu thereof the following:

(j) A company having electric transmission or distribution structures carrying voltages of 110 kV or lower may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including

terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity but fails to use that capacity within one year from the date the contract is entered into, the communications service provider shall report such non-use to the department of public service. The commissioner of public service shall determine if such non-use constitutes anti-competitive behavior that unreasonably precludes another communications service provider from leasing fiber-optic capacity. If the commissioner determines that such non-use constitutes anti-competitive behavior, he or she shall commence an investigation with the board of public service. The board is authorized to impose a remedy it deems appropriate under the circumstances. Such remedy may include termination of the lease with respect to the unused portion of the leased fiber-optic capacity.

Eleventh: In Sec. 11 (study on regulatory exemption), in subsection (a), in the first sentence, after the words “certain telecommunications carriers” by adding the words “not currently eligible”

Twelfth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state land for telecommunications facilities), in subsection (b), in subdivision (1), after the words “on the website maintained by the agency of administration” by adding the words “, with appropriate hyperlinks to that website on all relevant, state-maintained websites”

Thirteenth: In Sec. 14, 24 V.S.A. § 4413 (limitations on municipal bylaws), in subdivision (h)(1), in the first sentence, before “bylaw” by striking “A” and inserting in lieu thereof: “Except as necessary to ensure compliance with the national flood insurance program, a”

Fourteenth: In Sec. 14b, 3 V.S.A. § 2222b (telecommunications coordination and planning), in subsection (c) (deployment tracking), in subdivision (1), after the words “Not later than 30 days” by striking out the word “of” and inserting in lieu thereof “after”

Fifteenth: In Sec. 14b, 3 V.S.A. § 2222b (telecommunications coordination and planning), in subsection (c) (deployment tracking), in subdivision (5), at the end of the subdivision, by adding “Alternatively, entities that voluntarily provide information requested pursuant to this subdivision may select a third party to be the recipient of such information. That third party may aggregate information provided by the entities, but shall not disclose the information it has received to any person, including the secretary. The third party may only disclose the aggregated information to the secretary.”

Sixteenth: By striking out Sec. 14c in its entirety and inserting in lieu thereof a new Sec. 14c to read as follows:

Sec. 14c. Rule 5(d)(2) of the Vermont Rules of Environmental Court Proceedings is amended to read:

(2) *Claims and Challenges of Party Status in an Appeal from a Final Decision.* An appellant who claims party status as a person aggrieved pursuant to 6 V.S.A. § 4855 or 10 V.S.A. § 8504(a) and is not denied that status by

10 V.S.A. § 8504(d)(1), or an appellant who claims party status as an interested person pursuant to 10 V.S.A. § 8504(b)(1), will be automatically accorded that status when the notice of appeal is filed unless the court otherwise determines on motion to dismiss a party. An appellant who claims party status under 10 V.S.A. § 8504(b)(2), (d)(2), or (e)(2) and who has not sought interlocutory relief pursuant to paragraph (1) of this subdivision must assert that claim by motion filed ~~with the notice of appeal~~ not later than the deadline for filing a statement of questions on appeal. Any other person who appears as provided in subdivision (c) of this rule will be accorded party status unless the court otherwise determines on its own motion, on motion to dismiss a party, or on a motion to intervene.

Seventeenth: By adding a new section to be numbered Sec. 14e to read as follows:

Sec. 14e. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

* * *

(8)(A) Communications antennae and facilities. Except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of ~~antennae~~ an antenna used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the ~~aggregate~~ area of the largest ~~faces~~ face of the ~~antennae~~ antenna is not more than ~~eight~~ 15 square feet, and if the ~~antennae~~ antenna and any mast support ~~does~~ do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

* * *

Eighteenth: In Sec. 15, 30 V.S.A. § 8060 (VTA findings and purpose), in subsection (b), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) the ~~ubiquitous~~ universal availability of mobile telecommunication services, including voice and high-speed data ~~throughout the state~~ along

roadways and near universal availability statewide by the end of the year 2010
2013.

Nineteenth: In Sec. 16, 30 V.S.A. § 8061 (establishment and organization of the VTA), in subsection (c), after the words “The governor” by striking out “, the speaker of the house, and the president pro tempore of the senate shall jointly” and inserting in lieu thereof the word “shall”

Twentieth: In Sec. 16, 30 V.S.A. § 8061 (establishment and organization of the VTA), in subsection (d), by striking out the last sentence in its entirety and inserting in lieu thereof the following: “Upon completion of a term of service for any reason, including the term’s expiration or a member’s resignation, and for one year from the date of such completion, a former board member shall not advocate before the authority on behalf of an enterprise that provides broadband or cellular service.”

Twenty-first: By striking out Sec. 16a (VTA board transitional provision) in its entirety and inserting in lieu thereof the following:

Sec. 16a. VTA BOARD; REORGANIZATION

Upon the effective date of this act, the terms of office of the existing members of the board of directors of the Vermont telecommunications authority shall terminate, but members shall continue to serve until new members for the term commencing in 2011 are appointed as provided in this act.

Twenty-second: In Sec. 17, 30 V.S.A. § 8062 (VTA powers and duties), in subsection (a), after the new subdivision (2) (inventory of federal radio frequency licenses), by adding a new subdivision (3) to read as follows:

(3) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities;

and by renumbering the remaining subdivisions to be numerically correct

Twenty-third: In Sec. 17, 30 V.S.A. § 8062 (VTA powers and duties), in subsection (b), in subdivision (1), after the word “unserved” in both instances by inserting the words “or underserved”

Twenty-fourth: In Sec. 18, 30 V.S.A. § 8063 (interagency cooperation), in the new subsection (b), after the words “general assembly” by inserting the words “or, if the general assembly is not in session, without prior notice to the chairs of the house committee on commerce and economic development and the senate committees on finance and on economic development, housing and general affairs and approval of the joint fiscal committee, in consultation with the legislative chairs already referenced in this subsection”

Twenty-fifth: In Sec. 19, 30 V.S.A. § 8071 (VTA quarterly and annual reports), in subsection (c), in subdivision (6), after the words “existing business providers” by striking out the rest of the sentence until the period

Twenty-sixth: By striking out Sec. 23 (Hughesnet recovery act program) in its entirety and inserting in lieu thereof the following:

Sec. 23. SATELLITE RECOVERY ACT PROGRAM

(a) Pursuant to the broadband initiatives program of the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, companies such as Hughes Network Systems, LLC (Hughes) were selected by the Rural Utilities Service (RUS) of the United States Department of Agriculture as nationwide providers under RUS’s satellite grant program. Under the program, Hughes was awarded a \$58,700,000.00 grant in 2010. The grant allows Hughes to provide high speed Internet service by satellite to over 105,000 rural residences by eliminating the cost of hardware and installation and by reducing the price of monthly service plans.

(b) The satellite Internet service provided by satellite grant recipients may provide a good opportunity to bring broadband service to areas that otherwise might not be served and for such time until broadband service meeting or exceeding the minimum technical service characteristics under 30 V.S.A. § 8077 is available.

(c) Notwithstanding the minimum technical service characteristics under 30 V.S.A. § 8077, the commissioner of public service and the director of the Vermont telecommunications authority shall make known the availability of satellite recovery act programs and reference them in relevant publications listing broadband providers in Vermont.

(d) Notwithstanding the provisions of this section, an area shall not be considered “served” for purposes of state broadband policy and planning if it is only served by a satellite provider.

Twenty-seventh: In Sec. 24a, 3 V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (a), by striking out the word “chapter” and inserting in lieu thereof “section”

Twenty-eighth: In Sec. 24a, 3 V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (b), in subdivision (1)(B), by striking out “mpbs” and inserting in lieu thereof “Mbps”

Twenty-ninth: In Sec. 24a, 3V.S.A. § 2222c (report on broadband and wireless deployment), in subsection (b), in subdivision (1)(A) and in subdivisions (2)(A) and (B), by striking out each instance of “mbps” and inserting in lieu thereof “Mbps”

Thirtieth: In Sec. 24b, 30 V.S.A. § 202c (state telecommunications policy and planning), in subsection (b), in subdivision (9), after the words

“deployment of broadband infrastructure” by striking out the words “pursuant to the objectives set forth in S.78 of the Acts of 2011”

Thirty-first: In Sec. 24c (report on the VTA’s sustainability), in subsection (a), by striking out the word “ubiquitous” and inserting in lieu thereof “universal”

Thirty-second: By adding a new section to be numbered Sec. 24d to read as follows:

Sec. 24d. VTA FUNDING; FIBER-OPTIC FACILITIES; NORTH LINK

(a) Notwithstanding Sec. 14 of No. 2 of the Acts of 2009 (Special Session), which appropriated the sum of \$500,000.00 from the general fund to the Vermont telecommunications authority (VTA) for the purpose of financing a transaction with Northern Enterprises, Inc. (“North Link”), such funds shall be used to complete the construction and installation of an open access fiber-optic network from Hardwick, Vermont to Newport, Vermont.

(b) The funds appropriated under this section may be used for direct investment in fiber-optic facilities, to be owned by the VTA, or for grants to telecommunications service providers.

(c) Fiber-optic facilities owned by the VTA pursuant to this section shall include fiber strands for use by a telecommunications service provider to deliver broadband Internet access directly to homes, businesses, and institutional users (last-mile connectivity), in addition to strands which may be used to interconnect with other broadband and cellular facilities (middle mile) or to support system control and data acquisition for an electric distribution utility for smart metering technology solutions.

(d) Fiber-optic facilities funded in whole or in part with funds appropriated under this section shall be available for use by as many telecommunications service providers as the technology will permit on a nondiscriminatory basis and according to published terms and conditions.