

1 S.220

2 Representative Lenes of Shelburne moves that the House propose to the
3 Senate that the bill be amended by adding the following section to read:

4 Sec. 20. 30 V.S.A. § 248a is amended to read:

5 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS
6 FACILITIES

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

18 * * *

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

3 (1) The proposed facility will not have an undue adverse effect on
4 aesthetics, historic sites, air and water purity, the natural environment, and the
5 public health and safety, and the public's use and enjoyment of the I-89 and
6 I-91 scenic corridors or of any highway that has been designated as a scenic
7 road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C.
8 § 162, with due consideration having been given to the relevant criteria
9 specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).
10 However, with respect to telecommunications facilities of limited size and
11 scope, the Board shall waive all criteria of this subdivision other than
12 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty,
13 historic sites, rare and irreplaceable natural areas; endangered species;
14 necessary wildlife habitat). Such waiver shall be on condition that:

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

18 (B) ~~A~~ a telecommunications facility of limited size and scope shall
19 comply, at a minimum, with the requirements of the Low Risk Site Handbook
20 for Erosion Prevention and Sediment Control issued by the Department of

1 Environmental Conservation, regardless of any provisions in that handbook
2 that limit its applicability.

3 (2) ~~Unless there is good cause to find otherwise, substantial~~ Substantial
4 deference has been given to the land conservation measures in the plans of the
5 affected municipalities and the recommendations of the municipal legislative
6 bodies and the municipal and regional planning commissions regarding the
7 municipal and regional plans, respectively. Nothing in this section or other
8 provision of law shall prevent a municipal body from basing its
9 recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or
10 bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the
11 facility is located. A rebuttable presumption respecting compliance with the
12 applicable plan shall be created by a letter from an affected municipal
13 legislative body or municipal planning commission concerning compliance
14 with the municipal plan and by a letter from a regional planning commission
15 concerning compliance with the regional plan.

16 * * *

17 (e) Notice. No less than 45 days prior to filing an application for a
18 certificate of public good under this section, the applicant shall serve written
19 notice of an application to be filed with the Board pursuant to this section to
20 the legislative bodies and municipal and regional planning commissions in the
21 communities in which the applicant proposes to construct or install facilities;

1 the Secretary of Natural Resources; the Division for Historic Preservation; the
2 Commissioner of Public Service and its Director for Public Advocacy; the
3 Natural Resources Board if the application concerns a telecommunications
4 facility for which a permit previously has been issued under 10 V.S.A.
5 chapter 151; and the landowners of record of property adjoining the project
6 sites. In addition, at least one copy of each application shall be filed with each
7 of these municipal and regional planning commissions.

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

12 (2) Upon the request of the municipal legislative body or the planning
13 commission, the applicant shall attend a meeting with the municipal legislative
14 body or planning commission, or both, within the 45-day notice period before
15 filing an application for a certificate of public good.

16 (f) Review ~~period~~.

17 (1) If the Public Service Board determines that an application does not
18 raise a significant issue, the Board shall issue a final determination on an
19 application filed pursuant to this section within 60 days of its filing or, if the
20 original filing did not substantially comply with the Public Service Board's
21 rules, within 60 days of the date on which the Clerk of the Board notifies the

1 applicant that the filing is complete. If the Board rules that an application
2 raises a significant issue, it shall issue a final determination on an application
3 filed pursuant to this section within 180 days of its filing or, if the original
4 filing did not substantially comply with the Public Service Board's rules,
5 within 180 days of the date on which the Clerk of the Board notifies the
6 applicant that the filing is complete.

7 (2) The Board shall hold a public hearing and receive public comments
8 and municipal recommendations on the application if an affected municipal
9 legislative body or planning commission requests a public hearing, and the
10 municipal legislative body or planning commission has met with the applicant
11 according to subdivision (e)(2) of this section.

12 (A) The Board shall hold a public hearing within 21 days of receiving
13 the request from the municipal legislative body or planning commission.
14 Notice of the public hearing shall be given in accordance with
15 subdivision 248(a)(4)(D) of this title.

16 (B) The Board may consider on the merits the comments and
17 recommendations received at the public hearing and in writing.

18 * * *

19 (j)(1) Telecommunications facilities of limited size and scope. The Board
20 may, subject to such conditions as it may otherwise lawfully impose, issue a
21 certificate of public good in accordance with the provisions of this subsection

1 and without the notice and hearings required by any provision other than
2 subdivision (2) of this subsection if the Board finds that such facilities will be
3 of limited size and scope, and the application does not raise a significant issue
4 with respect to the substantive criteria of this section. The Board may make
5 findings based on the application and the supporting evidence submitted by the
6 applicant. If an applicant requests approval of multiple telecommunications
7 facilities in a single application under this section, the Board may issue a
8 certificate of public good in accordance with the provisions of this subsection
9 for all or some of the telecommunications facilities described in the
10 application.

11 (2)(A) Any party seeking to proceed under the procedures authorized by
12 this subsection shall file a proposed certificate of public good and proposed
13 findings of fact with its application, and provide notice and a copy of the
14 application, proposed certificate of public good, and proposed findings of fact
15 to the Commissioner of Public Service and its Director for Public Advocacy,
16 the Secretary of Natural Resources, the Division for Historic Preservation, the
17 Natural Resources Board if the application concerns a telecommunications
18 facility for which a permit previously has been issued under 10 V.S.A.
19 chapter 151, and each of the legislative bodies and municipal and regional
20 planning commissions in the communities in which the applicant proposes to
21 construct or install facilities. At the same time the applicant files the

1 documents specified in this subdivision with the Board, the applicant shall give
2 written notice of the proposed certificate to the landowners of record of
3 property adjoining the project site or sites unless the Board has previously
4 determined on request of the applicant that good cause exists to waive or
5 modify the notice requirement with respect to such landowners. Such notice
6 shall request comment to the Board within 21 days of the notice on the
7 question of whether the application raises a significant issue with respect to the
8 substantive criteria of this section. If the Board finds that an application raises
9 a significant issue with respect to the substantive criteria of this section, the
10 Board shall hold a technical hearing to hear evidence on any such issue.

11 * * *

12 (m) Municipal bodies; participation. The legislative body and the planning
13 commission for the municipality in which a telecommunications facility is
14 located shall have the right to appear and participate on any application under
15 this section seeking a certificate of public good for the facility.

16 (n) Ruling on recommendations. The Board's decision to issue or deny a
17 certificate of public good shall include a written ruling on each
18 recommendation of the municipal legislative body or planning commission.

1 Sec. 20a. PUBLIC SERVICE BOARD; RULEMAKING

2 On or before January 15, 2015, the Public Service Board shall adopt rules

3 that define “good cause” and “substantial deference” for the purpose of

4 30 V.S.A. § 248a(c)(2).

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