

1 H.605

2 Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

3 Referred to Committee on

4 Date:

5 Subject: Telecommunications; public service; siting; municipalities

6 Statement of purpose of bill as introduced: This bill proposes to clarify that, in
7 a telecommunications siting proceeding before the Public Service Board, the
8 default is that the Board yields to the plans and recommendations of the
9 municipality unless the Board determines that the evidence demonstrates the
10 applicant cannot achieve service objectives that promote the general good of
11 the State by constructing facilities that comply with those plans and
12 recommendations.

13 An act relating to the municipal role in Public Service Board
14 telecommunications siting

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

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

17 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

18 FACILITIES

19 (a) Certificate. Notwithstanding any other provision of law, if the applicant
20 seeks approval for the construction or installation of telecommunications

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

10 (b) Definitions. As used in this section:

11 (1) “Ancillary improvements” means telecommunications equipment
12 and site improvements that are primarily intended to serve a
13 telecommunications facility, including wires or cables and associated poles to
14 connect the facility to an electric or communications grid; fencing; equipment
15 cabinets or shelters; emergency backup generators; and access roads.

16 (2) “Deference” means yielding to the opinion, wishes, or judgment of
17 another.

18 (3) “De minimis modification” means the addition, modification, or
19 replacement of telecommunications equipment, antennas, or ancillary
20 improvements on a telecommunications facility or existing support structure,

1 whether or not the structure was constructed as a telecommunications facility,
2 or the reconstruction of such a facility or support structure, provided:

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

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

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

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

16 ~~(3)~~(4)(A) “Limited size and scope” means:

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

19 (ii) An addition, modification, replacement, or removal of
20 telecommunications equipment at a lawfully constructed telecommunications
21 facility or on an existing support structure, and ancillary improvements, that

1 would result in a facility of a total height of less than 200 feet and does not
2 increase the width of the existing support structure by more than 20 feet.

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

7 ~~(4)~~(5) “Telecommunications facility” means a communications facility
8 that transmits and receives signals to and from a local, State, national, or
9 international network used primarily for two-way communications for
10 commercial, industrial, municipal, county, or State purposes and any
11 associated support structure that is proposed for construction or installation
12 which is primarily for communications purposes, and any ancillary
13 improvements that are proposed for construction or installation and are
14 primarily intended to serve the communications facilities or support structure.

15 An applicant may seek approval of construction or installation of a
16 telecommunications facility whether or not the telecommunications facility is
17 attached to an existing structure.

18 ~~(5)~~(6) “Wireless service” means any commercial mobile radio service,
19 wireless service, common carrier wireless exchange service, cellular service,
20 personal communications service (PCS), specialized mobile radio service,

1 paging service, wireless data service, or public or private radio dispatch
2 service.

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

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

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

20 (B) a telecommunications facility of limited size and scope shall
21 comply, at a minimum, with the requirements of the Low Risk Site Handbook

1 for Erosion Prevention and Sediment Control issued by the Department of
2 Environmental Conservation, regardless of any provisions in that handbook
3 that limit its applicability.

4 (2) ~~Unless there is good cause to find otherwise, substantial deference~~
5 Deference has been given to the land conservation measures and policies on
6 telecommunications facilities in the plans of the affected municipalities ~~and;~~ to
7 the recommendations of the municipal legislative bodies and the municipal ~~and~~
8 ~~regional~~ planning commissions regarding the municipal ~~and regional~~ plans,
9 ~~respectively;~~ and to the recommendations of the regional planning commission
10 concerning the regional plan. Nothing in this section or other provision of law
11 shall prevent a municipal body from basing ~~its~~ policies and recommendations
12 to which deference is required under this subdivision (2) on an ordinance
13 adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A.
14 chapter 117 by the municipality in which the facility is located. Each of
15 following shall apply when making a finding under this subdivision (2):

16 (A) A rebuttable presumption respecting compliance with the
17 applicable plan shall be created by a letter from an affected municipal
18 legislative body or municipal planning commission concerning compliance
19 with the municipal plan and by a letter from a regional planning commission
20 concerning compliance with the regional plan.

1 (B) The Board may decline to give deference to a measure, policy, or
2 recommendation described in this subdivision (2) if the evidence demonstrates
3 that the applicant cannot, through building facilities that comply with the
4 measure, policy, or recommendation, achieve service objectives that promote
5 the general good of the State. The applicant or other party asking the Board to
6 decline to give such deference shall have the burden of proof.

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

* * *

12 (h) Exemptions from other law.

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

1 (2) ~~Ordinances~~ An applicant using the procedures provided in this
2 section shall not be required to obtain an approval from the municipality under
3 an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter
4 that would otherwise apply to the construction or installation of facilities
5 subject to this section ~~are preempted~~. This exemption from obtaining an
6 approval under such an ordinance shall not affect the deference to be given to a
7 policy or recommendation based on such an ordinance under subsection (c) of
8 this section.

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

16 * * *

17 Sec. 2. 24 V.S.A. § 4412(8)(C) is amended to read:

18 (C) The regulation of a telecommunications facility, as defined in
19 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter
20 when and to the extent jurisdiction is assumed by the Public Service Board
21 according to the provisions of that section. This exemption from obtaining

1 approval under this chapter shall not affect the deference to be given to a
2 policy or recommendation based on a local land use bylaw under 30 V.S.A.
3 § 248a(c).

4 Sec. 3. EFFECTIVE DATE

5 This act shall take effect on passage.