

H.870

An act relating to telecommunications

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

* * * PSB Telecommunications Siting; Municipal Role * * *

Sec. 1. 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. 2. 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).

* * * Connectivity Initiative; Public Schools; Cellular Service * * *

Sec. 3. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The ~~purpose~~ goals of the Connectivity Initiative ~~is~~ are to:

(1) ~~provide~~ Provide each service location in Vermont access to Internet service that is capable of speeds of at least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, “unserved” means a location having access to only satellite or dial-up Internet service and “underserved” means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload.

(2) Provide universal availability of mobile telecommunications service throughout the State.

(b) Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

~~(b)~~(c) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from telecommunications service providers, alone or in partnership with one or more municipalities, to deploy broadband to eligible census blocks.

(d) The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; ~~however or~~ that include upgrading Internet service at one or more public schools that do not have access to Internet service capable of the minimum speeds required under subdivision (a)(1) of this section. In addition, the Department shall give priority to proposals that include matching public or private funds and establish an alignment between the proposed broadband or cellular project and community goals.

(e) In addition to the priorities established in subsection (d) of this section, the Department also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; ~~and~~

(6) the objectives of the State's Telecommunications Plan;

(7) whether a public school has a percentage of students receiving free or reduced lunches that is above the State average;

(8) whether the community in which a public school is situated does not have high speed Internet connectivity; and

(9) whether the community in which a public school is situated is rural and has a percentage of households categorized as low-income that is higher than the State average.

(10) a telecommunications service provider's performance with respect to the terms of a publicly-financed grant or loan awarded by a federal or State entity for the expansion of broadband or mobile telecommunications service in Vermont.

Sec. 4 [Deleted.]

Sec. 5. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE OF CHARGE

(a) Beginning on July 1, 2014, the rate of charge shall be two percent of retail telecommunications service.

(b) Beginning on July 1, 2016 and ending on June 30, 2021, the rate of charge established under subsection (a) of this section shall be increased by one-half of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the Connectivity Fund established under section 7516 of this title to provide specifically additional support for the Connectivity Initiative established under section 7515b of this title.

(c) Universal Service Charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by this section and section 7511 of this title.

Sec. 6. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

(b) In addition to the monies transferred to the Fund pursuant to subsection (a) of this section, monies collected from one-half of one percent of the Universal Service Charge shall be allocated to the Fund specifically to provide additional support to the Connectivity Initiative, as prescribed in subsection 7523(b) of this title.

* * * VUSF; News Service; Blind and Visually Impaired * * *

Sec. 7. 30 V.S.A. § 7511 is amended to read:

§ 7511. DISTRIBUTION GENERALLY

(a)(1) As directed by the Commissioner of Public Service, funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

(A) to pay costs payable to the fiscal agent under its contract with the Commissioner;

(B) to support the Vermont telecommunications relay service in the manner provided by section 7512 of this title;

(C) to support the Vermont Lifeline program in the manner provided by section 7513 of this title;

(D) to support Enhanced-911 services in the manner provided by section 7514 of this title; ~~and~~

(E) to support a telecommunications information and news service in the manner provided by section 7512a of this title; and

(F) to support the Connectivity Fund established in section 7516 of this title; and

(2) for fiscal year 2016 only, any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity Fund, as determined by the Commissioner in consultation with the Connectivity Board.

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the Commissioner shall allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 8. 30 V.S.A. § 7512a is added to read:

§ 7512a. TELECOMMUNICATIONS NEWS SERVICE

The fiscal agent shall make distributions to the State Treasurer for a telecommunications information and news service that provides access to existing newspapers and other printed materials for individuals who are blind, visually impaired, or otherwise unable to read such printed materials. The amount of the transfer shall be determined by the Commissioner of Public Service as the amount reasonably necessary to pay the costs of a contract administered by the Department of Public Service.

* * * High-Cost Program; Eligibility; Deployment Information * * *

Sec. 9. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

* * *

(i) The amount of the monthly support under this section shall be the pro rata share of available funds based on the total number of incumbent local exchange carriers in the State and reflecting each carrier's lines in service or service locations in its high-cost area or areas, as determined under subsection (e) of this section. If an incumbent local exchange carrier does not petition the Board for VETC designation, or is found ineligible by the Board or by the Commissioner of Public Service pursuant to his or her authority under subsection (k) of this section, the share of funds it otherwise would have received under this section shall be used to support the Connectivity Initiative established in section 7515b of this chapter.

* * *

(l) Based on the recommendation of the Commissioner of Public Service, the Board may deem a company ineligible to receive monthly support under

this section or revoke a company's VETC designation if he or she finds that the company or one of its affiliates has not provided adequate deployment information requested by the Director for Telecommunications and Connectivity under subsection 202e(c) of this title.

Sec. 10. PROPOSAL; SCHOOL CONNECTIVITY GRANT PROGRAM

On or before December 1, 2016, the Secretary of Education and the Director of Telecommunications and Connectivity shall propose to the General Assembly in the form of a draft bill a school connectivity grant program designed to provide competitive grants to public schools for capital costs associated with upgrading the Internet connection to a public school or purchasing hardware for infrastructure for internal Internet connections. The goal of the program is to ensure that the maximum Internet service available to the school is accessible by all personnel and students on school grounds, consistent with and supportive of educational policies and objectives. Proposed criteria shall prioritize rural communities having a percentage of households categorized as low-income that is higher than the State average, and shall seek to maximize the availability of federal matching funds.

* * * Communications Union Districts; Budget; Hearing;

Date Changes * * *

Sec. 10a. 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.

* * * E-911; Call-taking Services; Study * * *

Sec. 10b. E-911; CALL-TAKING SERVICES; STUDY

(a) A working group shall be formed to study and make recommendations regarding the most efficient, reliable, and cost effective means for providing statewide call-taking operations for Vermont's 911 system. Among other things, the group shall make findings related to the financing, operations, and geographical location of 911 call-taking services. In addition, the group's findings shall include a description of the number and nature of calls received, and an evaluation of current and potential State and local partnerships with respect to the provision of such services. The group shall take into consideration the "Enhanced 9-1-1 Board Operational and Organizational Report," dated September 4, 2015. The group's recommendations shall strive to achieve the best possible outcome in terms of ensuring the health and safety of Vermonters and Vermont communities.

(b) Members of the working group shall include a representative from each of the following entities: the Enhanced 911 Board; the Department of Public Safety; the Vermont State Employees Association; the Vermont League of Cities and Towns; the Vermont State Firefighters' Association; the Vermont Ambulance Association; the Vermont Association of Chiefs of Police; and the Vermont Sheriffs' Association.

(c) The representative from the E-911 Board shall convene the first meeting of the working group, at which the group shall elect a Chair and Vice Chair from among its members. The group shall meet as needed, and shall receive administrative and staffing support from the Department of Public Safety, and may request relevant financial information from the Joint Fiscal Office.

(d) On or before January 15, 2017, the group shall report its findings and recommendations to the House Committees on Commerce and Economic Development, on Government Operations, on Appropriations, and on Ways and Means and to the Senate Committees on Finance, on Government Operations, on Appropriations, and on Economic Development, Housing, and General Affairs, and to the Governor.

(e) The Department of Public Safety shall continue to provide 911 call-taking services unless otherwise directed by legislative enactment.

* * * Miscellaneous Provisions; Telecommunications

Grant Programs * * *

Sec. 11. RECOVERY AND REPURPOSING OF

TELECOMMUNICATIONS GRANT FUNDS

To the extent State funds are recovered by the Department of Public Service, as the successor in interest to the Vermont Telecommunications Authority (VTA), as the result of a grant recipient's failure to comply with the terms of a grant agreement entered into with the VTA, such public monies shall be deposited in the Connectivity Initiative.

Sec. 12. HIGH-COST PROGRAM; PUBLIC SERVICE BOARD;

DEADLINE

The Public Service Board shall issue a procedures order for implementation of the High-Cost Program established under 30 V.S.A. § 7515 not later than September 1, 2016. If the Board fails to do so, the Board shall provide a report to the General Assembly and the Governor detailing reasons for failing to comply with this mandate.

* * * Effective Date * * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.