

H.117 - Finance Proposal of Amendment

Section by Section Summary *Legislative Council – May 7, 2015*

Secs. 1 – 13 of the proposed amendment reflect **Proposals of the House**. They have remained substantially the same, with only a few changes proposed by the Finance Committee. The **House-passed bill contained** the following substantive provisions:

Secs 1 – 6 (Division for Telecommunications and Connectivity and State telecom policy)

Secs 7 – 12 (Universal Service Fund and the programs it funds, such as the High Cost Program and the Connectivity Initiative)

Sec. 13 (Conversion of a meteorological station to a wireless telecom facility)

A more detailed section by section summary follows. Senate proposals of amendment to House-passed provisions are in ***bold italics***.

Secs. 1 – 6 (Division for Telecommunications and Connectivity and State Telecom Policy)

Background

Last year in Act 190, a new Division for Connectivity was created in the Agency of Administration to become operational July 1, 2015, the same date on which the Vermont Telecommunications Authority (VTA) is set to enter dormant status.

Act 190, however, requested the Secretary of Administration to determine whether in fact the Agency of Administration was the appropriate State entity to “house” the new Division and, if not, recommend where it should go.

H.117 puts into bill form the Secretary’s recommendation; namely, that the new Division should be merged with the existing Division for Telecommunications within the Department of Public Service. The new Division would be called the Division for Telecommunications and Connectivity.

In addition to effectuating the transfer of the new Division from one State entity to another, this bill makes additional amendments to Vermont law, as explained below, section by section.

Sec. 1, essentially, repeals provisions of Act 190 relevant to establishment of the Division for Connectivity within the Administration.

Sec. 2 amends the composition of the Department of Public of Service (DPS) to replace the Director for Telecommunications with a Director for Telecommunications and Connectivity.

Sec. 3 concerns the Telecommunications Plan, which is prepared by the DPS:

- It deletes now irrelevant references to the Division for Connectivity
- It requires the Agency of Transportation to assist DPS with preparation of the Plan
- It requires DPS to specifically consult with utilities that have a certificate of public good (CPG), VELCO, and the AOT in Plan preparation
- It specifies that the Plan shall undergo a major review not later than September 2017

Sec. 4 establishes the purposes and powers of the Division for Telecommunications and Connectivity (DTC). It largely resembles the language in Act 190 regarding the Division for Connectivity, which incorporated many of the VTA goals and responsibilities (administering a grant program) but without the bonding authority, as well as the Agency of Administration telecommunications duties (action planning; deployment tracking; mapping). The speed requirements for mapping are upgraded to 4-1, 25-3, and 100 symmetrical.

Sec. 5 establishes a Telecommunications and Connectivity Board. Its duties are as follows:

- review and advise the Commissioner on grant awards under the Connectivity Initiative
- advise the Commissioner on the development of State policy and planning, including the State action plan and the Telecommunications Plan
- advise the Commissioner on the development of RFPs under the Connectivity Initiative
- provide the Commissioner with recommendations for the apportionment of Connectivity Funds between the High-Cost Program and the Connectivity Initiative; and
- advise the Commissioner on recommendations for appropriate Internet access speeds for publicly-funded telecommunication and connectivity projects

Board membership is similar to the existing VTA Board, except it also includes the Secretary of Transportation as a nonvoting member. There are still 5 at large members appointed by the Governor and 2 legislative members that meet knowledge and expertise requirements and do not possess a conflict of interest.

Senate proposals of amendment include: Renaming the “Telecommunications and Connectivity Board” as the “Telecommunications and Connectivity Advisory Board” and reducing membership on the Board from 10 to 8 by eliminate the two legislative members.

Sec. 6 is very similar to the corresponding provision in Act 190; however, instead of authorizing up to six new exempt full-time positions, it only authorizes up to 3 new positions. It also transfers all assets and liabilities of the VTA to the DPS; and requires the Commissioner's approval of any new VTA contracts (effective on passage; VTA dormant July 1, 2015).

Secs. 7 – 12 (Vermont Universal Service Fund and the programs it funds)

Sec. 7 replaces the Public Service Board (PSB) with DPS, as overseer of the fund.

Sec. 8 repeals a provision added last year which allowed USF monies to support additional Executive Branch telecom-related activities. In FY 15, this provision was used to fund the operations of the VTA.

Sec. 9 concerns distribution of USF monies. Essentially, it adds a new provision that allows, for Fiscal year 2016 only, the personnel and administrative costs associated with the Connectivity Initiative to come from the Fund, as determined by the Commissioner in consultation with the Connectivity Board.

Sec. 9a concerns funding for Connectivity personnel beyond FY 2016. It requires the Commissioner, by January 15 2016, to determine whether revenue from the existing gross receipts tax on public service companies would cover Connectivity personnel and administrative costs beginning in FY 17. If not, the Commissioner shall recommend to General Assembly a new rate of tax.

Senate proposal of amendment: Allow the Commissioner the additional option of recommending a proposal to fund personnel and administrative costs of the Connectivity Initiative with monies in the Connectivity Fund. Either way, it is ultimately still left to the General Assembly to decide the funding source.

Sec. 10. Act 190 apportioned USF monies equally between the Connectivity Initiative and the High-Cost Program. The proposal here changes that. Instead 45 percent goes to the High-Cost Program and 55 percent goes to the Connectivity Initiative.

Sec. 11 amends the High-Cost Program so that an incumbent local exchange carrier can only receive High-Cost support that is proportionate to the number of lines and locations it has in service, and any funds remaining at the end of the year are transferred to the Connectivity Initiative.

Sec. 12 amends the Connectivity Initiative, which is a DPS grant program designed to promote broadband deployment, by updating the speed requirements for funding from 4-1, to 10-1 or the FCC speed requirements, whichever is higher.

Sec. 13 (CPG for met station conversions)

Allows a holder of a CPG for a meteorological station to convert the station to a wireless telecom facility under 30 V.S.A. § 248a, without having to tear down the met station first.

Sec. 14 (Leasing of State-owned rights-of-way owned by the Agency of Transportation)

Concerns existing law regarding the leasing to telecom providers State-owned rights-of-way that are under the jurisdiction of the Agency of Transportation. It was amended to remove references to the Vermont Telecommunications Authority. So, instead of the VTA, the Secretary of Transportation and the Commissioner of Public Service shall now determine whether a fee should be waived in whole or in part if telecom service is provided to the State instead.

Sec. 15 (Confidentiality of retransmission fees reported to the Attorney General)

Amends the law enacted last year concerning the reporting of retransmission fees charged to cable companies by broadcasters. The fee reports go to the Attorney General so he or she can investigate whether unfair methods of competition are occurring. The amendment ensures that all fees reported to the Attorney General's Office remain confidential, unless otherwise ordered by a court.

Sec. 16 (E-911 operations and financial savings)

Essentially, when read in concert with subsection (b) of **Sec. 27** of the amendment (the effective dates section), it gives the Secretary of Administration authority to determine, by July 1, 2015, whether the E-911 system should be transferred to the Department of Public Safety. If the Secretary does not so choose, then, as provided in subsection (b) of Sec. 16 of the amendment, in FY 2016 not less than \$300K shall be transferred from the E-911 Fund to the General Fund to offset E-911-eligible costs incurred by the Department of Public Safety, and not less than one, full-time employee position in the E-911 system shall be eliminated. (The findings in subsection (a) of Sec. 16 provide the context for this proposal.)

- **Secs. 17 – 19** contain the statutory changes necessary if E-911 is transferred to the Department of Public Safety.

Secs. 20 – 25 (Authorizes “communications union districts;” designates ECFiber as such a district; allows districts to apply for VEDA funding)

Establishes a new chapter of law, chapter 82 in Title 30, allowing two or more towns and cities to form a “communications union district” for the purpose of delivering communications services to its member municipalities, and allows such districts to seek funding from the Vermont Economic Development Authority (VEDA).

It also details the authority of the district and its governing board; the responsibilities of member municipalities; the process by which a town or city can apply to join the district or withdraw from the district; and the process by which a district may dissolve. Some significant provisions include:

- To the extent a district experiences financial losses, such costs shall not be borne by the taxpayers of the district members (See § 3053(d))
- Among the districts powers are the power to operate, own, manage, and finance a communications plant (See 3054(a)(1))
- There are certain specified limits on the authority of a district. For example, a district may not accept funds generated by a member's taxing or assessment power and may not levy, assess, apportion, or collect any tax upon property within the district, nor upon any of its member municipalities, without authorization by the General Assembly (See § 3056(a) and (b))
- In addition, it is specified that a district's notes and bonds are payable only out of any revenues or monies of the district (See § 3056(c))
- The municipal members of a district each have representation on the district's governing board and each member is entitled to one vote (See § 3058 and § 3062)
- The treasurer of the district shall not be a member of the district's governing board. (See § 3069)
- An annual audit of the district's financial condition shall be performed by an independent professional accounting firm (See § 3070)

Sec. 21 qualifies "The East Central Vermont Telecommunications District" approved by Norwich, Randolph, Sharon, Stratford, and Woodstock on March 3, 2015 as a communications union district, if so approved by the legislative body of each of those towns after enactment of H.117.

Sec. 22-25 makes communications union districts eligible for financing through VEDA.

Sec. 26 authorizes Legislative Council to make statutory revisions consistent with the proposals in this bill.

Sec. 27 establishes the effective dates of the various sections in the proposal of amendment.