

1 Introduced by Committee on Commerce and Economic Development

2 Date:

3 Subject: Telecommunications; siting; Vermont Universal Service Fund;

4 Connectivity Initiative; telecommunications news service; public

5 school grants

6 Statement of purpose of bill as introduced: This bill proposes to make various

7 amendments to Vermont law concerning telecommunications.

8 An act relating to telecommunications

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

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

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

12 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

13 FACILITIES

14 (a) Certificate. Notwithstanding any other provision of law, if the applicant

15 seeks approval for the construction or installation of telecommunications

16 facilities that are to be interconnected with other telecommunications facilities

17 proposed or already in existence, the applicant may obtain a certificate of

18 public good issued by the Public Service Board under this section, which the

19 Board may grant if it finds that the facilities will promote the general good of

20 the State consistent with subsection 202c(b) of this title. A single application

1 may seek approval of one or more telecommunications facilities. An
2 application under this section shall include a copy of each other State and local
3 permit, certificate, or approval that has been issued for the facility under a
4 statute, ordinance, or bylaw pertaining to the environment or land use.

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

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

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

13 (3) “De minimis modification” means the addition, modification, or
14 replacement of telecommunications equipment, antennas, or ancillary
15 improvements on a telecommunications facility or existing support structure,
16 whether or not the structure was constructed as a telecommunications facility,
17 or the reconstruction of such a facility or support structure, provided:

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

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

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

8 (D) the additional equipment, antennas, or ancillary improvements on
9 the support structure, excluding cabling, does not increase the aggregate
10 surface area of the faces of the equipment, antennas, or ancillary improvements
11 on the support structure by more than 75 square feet.

12 ~~(3)~~(4)(A) “Limited size and scope” means:

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

15 (ii) An addition, modification, replacement, or removal of
16 telecommunications equipment at a lawfully constructed telecommunications
17 facility or on an existing support structure, and ancillary improvements, that
18 would result in a facility of a total height of less than 200 feet and does not
19 increase the width of the existing support structure by more than 20 feet.

20 (B) For construction described in subdivision (3)(A) of this
21 subsection to be of limited size and scope, it shall not disturb more than 10,000

1 square feet of earth. ~~For purposes of~~ As used in this subdivision, “disturbed
2 earth” means the exposure of soil to the erosive effects of wind, rain, or runoff.

3 ~~(4)(5)~~ “Telecommunications facility” means a communications facility
4 that transmits and receives signals to and from a local, State, national, or
5 international network used primarily for two-way communications for
6 commercial, industrial, municipal, county, or State purposes and any
7 associated support structure that is proposed for construction or installation
8 which is primarily for communications purposes, and any ancillary
9 improvements that are proposed for construction or installation and are
10 primarily intended to serve the communications facilities or support structure.
11 An applicant may seek approval of construction or installation of a
12 telecommunications facility whether or not the telecommunications facility is
13 attached to an existing structure.

14 ~~(5)(6)~~ “Wireless service” means any commercial mobile radio service,
15 wireless service, common carrier wireless exchange service, cellular service,
16 personal communications service (PCS), specialized mobile radio service,
17 paging service, wireless data service, or public or private radio dispatch
18 service.

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

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

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

16 (B) a telecommunications facility of limited size and scope shall
17 comply, at a minimum, with the requirements of the Low Risk Site Handbook
18 for Erosion Prevention and Sediment Control issued by the Department of
19 Environmental Conservation, regardless of any provisions in that handbook
20 that limit its applicability.

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

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

18 (B) The Board may decline to give deference to a measure, policy, or
19 recommendation described in this subdivision (2) if the evidence demonstrates
20 that the applicant cannot, through building facilities that comply with the
21 measure, policy, or recommendation, achieve service objectives that promote

1 the general good of the State. The applicant or other party asking the Board to
2 decline to give such deference shall have the burden of proof.

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

7 **(A) If a proposed new telecommunications facility that provides**
8 **wireless service will exceed 50 feet in height, the application shall identify**
9 **all existing telecommunications facilities within a three-mile radius of the**
10 **site of the proposed facility and, for each such existing facility, shall**
11 **include a projection of the coverage that would be provided if the**
12 **applicant's proposed telecommunications equipment were located on or at**
13 **the existing facility. The applicant also shall compare each such**
14 **projection to the coverage that would be provided at the site of the**
15 **proposed facility.**

16 **(B) To obtain a finding that a proposed facility cannot reasonably**
17 **be collocated on or at an existing telecommunications facility, the**
18 **applicant must demonstrate:**

19 **(i) collocating on or at an existing facility will result in a**
20 **significant reduction of the area to be served by the proposed facility or**
21 **substantially impede coverage objectives for the proposed facility that**

1 **promote the general good of the State under subsection 202c(b) of this**
2 **title;**

3 **(ii) the existing facility cannot accommodate the applicant's**
4 **proposed telecommunications equipment due to structural constraints; or**

5 **(iii) the owner of the existing facility will not provide space for**
6 **the applicant's proposed telecommunications equipment on or at that**
7 **facility on commercially reasonable terms.**

8 * * *

9 (h) Exemptions from other law.

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

18 (2) ~~Ordinances~~ An applicant using the procedures provided in this
19 section shall not be required to obtain an approval from the municipality under
20 an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter
21 that would otherwise apply to the construction or installation of facilities

1 subject to this section ~~are preempted~~. This exemption from obtaining an
2 approval under such an ordinance shall not affect the deference to be given to a
3 policy or recommendation based on such an ordinance under subsection (c) of
4 this section.

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

12 * * *

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

14 (C) The regulation of a telecommunications facility, as defined in
15 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter
16 when and to the extent jurisdiction is assumed by the Public Service Board
17 according to the provisions of that section. This exemption from obtaining
18 approval under this chapter shall not affect the deference to be given to a
19 policy or recommendation based on a local land use bylaw under 30 V.S.A.
20 § 248a(c).

1 * * * Connectivity Initiative; Grant Program; Public Schools * * *

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

3 § 7515b. CONNECTIVITY INITIATIVE

4 (a) The purpose of the Connectivity Initiative is to provide each service
5 location in Vermont access to Internet service that is capable of speeds of at
6 least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements
7 established under Connect America Fund Phase II, whichever is higher,
8 beginning with locations not served as of December 31, 2013 according to the
9 minimum technical service characteristic objectives applicable at that time.
10 Within this category of service locations, priority shall be given first to
11 unserved and then to underserved locations. As used in this section,
12 “unserved” means a location having access to only satellite or dial-up Internet
13 service and “underserved” means a location having access to Internet service
14 with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps
15 download and 1 Mbps upload. Any new services funded in whole or in part by
16 monies from this Initiative shall be capable of being continuously upgraded to
17 reflect the best available, most economically feasible service capabilities.

18 (b) The Department of Public Service shall publish annually a list of census
19 blocks eligible for funding based on the Department’s most recent broadband
20 mapping data. The Department annually shall solicit proposals from service
21 providers to deploy broadband to eligible census blocks. The Department shall

1 give priority to proposals that reflect the lowest cost of providing services to
2 unserved and underserved locations, or that include upgrading Internet service
3 at one or more public schools that do not have access to “broadband” as
4 defined by the FCC, or both; however, the Department also shall consider:

5 (1) the proposed data transfer rates and other data transmission
6 characteristics of services that would be available to consumers;

7 (2) the price to consumers of services;

8 (3) the proposed cost to consumers of any new construction, equipment
9 installation service, or facility required to obtain service;

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

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

13 (6) the objectives of the State’s Telecommunications Plan;

14 (7) the ability of a public school to have Internet connectivity to any
15 other district or supervisory union that meets the most recent standards for high
16 speed Internet upload and download capacities;

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

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

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

4 Sec. 4. 24 V.S.A. § 5609 is added to read:

5 § 5609. SCHOOL CONNECTIVITY GRANT PROGRAM

6 (a) Creation. There is created a School Connectivity Grant Program to
7 provide competitive grants to schools for capital costs associated with
8 state-of-the-art educational applications and equipment. The Program is
9 authorized to award grants of up to \$50,000.00 per project. The Department of
10 Public Service shall administer and coordinate the Program.

11 (b) Priorities. The criteria for awarding grants under the Program shall be
12 consistent with the following priorities:

13 (1) the school has a percentage of students receiving free or reduced
14 lunches that is above the State average;

15 (2) the community in which the school is situated is rural and has a
16 percentage of households categorized as low-income that is higher than the
17 State average; or

18 (3) the school has received upgraded Internet service within the prior
19 three calendar years, or is expected to receive upgraded Internet service in the
20 coming calendar year.

1 (c) Notwithstanding section 5601 of this chapter, there are no match
2 requirements for the grants awarded in subsection (a) of this section.

3 Sec. 5. FY 2017 CAPITAL APPROPRIATION; CONNECTIVITY

4 INITIATIVE; SCHOOL CONNECTIVITY GRANT PROGRAM

5 (a) The sum of \$1,000,000.00 is appropriated to the Connectivity Initiative,
6 established in 30 V.S.A. § 7515b, from the bond premium in the FY 17 Capital
7 Budget Adjustment Act.

8 (b) The sum of \$200,000.00 is appropriated to the School Connectivity
9 Grant Program, established in 24 V.S.A. § 5609, from the FY 17 Capital
10 Budget Adjustment Act.

11 * * * Vermont Universal Service Fund; Connectivity; Mobile

12 Telecommunications Service * * *

13 Sec. 6. 30 V.S.A. § 7523 is amended to read:

14 § 7523. RATE OF CHARGE

15 (a) Beginning on July 1, 2014, the rate of charge shall be two percent of
16 retail telecommunications service. Beginning on July 1, 2016, the rate of
17 charge shall be increased by one-half of one percent of retail
18 telecommunications service, and the monies collected from this increase shall
19 be transferred to the Connectivity Fund established under section 7516 of this
20 title to specifically provide additional support for the Connectivity Initiative
21 established under 7515b of this title.

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

5 Sec. 7. 30 V.S.A. § 7516 is amended to read:

6 § 7516. CONNECTIVITY FUND

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

14 (b) In addition to the monies transferred to the Fund pursuant to subsection
15 (a) of this section, monies collected from one-half of one percent of the
16 Universal Service Charge shall be allocated to the Fund specifically to provide
17 additional support to the Connectivity Initiative, as prescribed in subsection
18 7523(a) of this title.

19 Sec. 8. 30 V.S.A. § 7515b is amended to read:

20 § 7515b. CONNECTIVITY INITIATIVE

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

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

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

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

17 ~~(b)~~(c) The Department of Public Service shall publish annually a list of
18 census blocks eligible for funding based on the Department’s most recent
19 broadband and cellular mapping data. The Department annually shall solicit
20 proposals from telecommunications service providers, alone or in partnership

1 with one or more municipalities, to deploy broadband and mobile
2 telecommunications service to eligible census blocks.

3 (d) The Department shall give priority to proposals that reflect the lowest
4 cost of providing services to unserved and underserved locations; ~~however,~~ In
5 addition, the Department shall give priority to proposals that include matching
6 public or private funds and establish an alignment between the proposed
7 broadband or cellular project and community goals.

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

10 (1) the proposed data transfer rates and other data transmission
11 characteristics of services that would be available to consumers;

12 (2) the price to consumers of services;

13 (3) the proposed cost to consumers of any new construction, equipment
14 installation service, or facility required to obtain service;

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

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

18 (6) the objectives of the State's Telecommunications Plan.

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

2 Sec. 9. 30 V.S.A. § 7511 is amended to read:

3 § 7511. DISTRIBUTION GENERALLY

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

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

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

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

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

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

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

19 (2) for fiscal year 2016 only, any personnel or administrative costs
20 associated with the Connectivity Initiative shall come from the Connectivity

1 Fund, as determined by the Commissioner in consultation with the
2 Connectivity Board.

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

6 Sec. 10. 30 V.S.A. § 7512a is added to read:

7 § 7512a. TELECOMMUNICATIONS NEWS SERVICE

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

15 Sec. 11. EFFECTIVE DATE

16 This act shall take effect on passage.