

1 S.52

2 Introduced by Senators Lyons, Ashe, Cummings, Degree, MacDonald,
3 Pollina, and Sirotkin

4 Referred to Committee on

5 Date:

6 Subject: Public service; energy; utilities; telecommunications; siting; citizen
7 participation; working group recommendations

8 Statement of purpose of bill as introduced: This bill proposes amendments
9 related to Public Service Board proceedings based on those recommendations
10 of the Access to Public Service Board Working Group requiring statutory
11 change. It also includes changing the Board's name to the Vermont Public
12 Utility Commission.

13 An act relating to the Public Service Board and its proceedings

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

15 * * * Preapplication Submittals; Energy Facilities * * *

16 Sec. 1. 30 V.S.A. § 248(f) is amended to read:

17 (f) However, plans for the construction of such a facility within the State
18 must be submitted by the petitioner to the municipal and regional planning
19 commissions no less than 45 days prior to application for a certificate of public

1 good under this section, unless the municipal and regional planning
2 commissions shall waive such requirement.

3 (1) ~~Such~~ The municipal or regional planning commission may take one
4 or more of the following actions:

5 (A) ~~hold~~ Hold a public hearing on the proposed plans. The planning
6 commission may request that the petitioner or the Department of Public
7 Service, or both, attend the hearing. The petitioner and the Department each
8 shall have an obligation comply with such a request. The Department shall
9 consider the comments made and information obtained at the hearing in
10 making recommendations to the Board on the application and in determining
11 whether to retain additional personnel under subdivision (1)(B) of this
12 subsection.

13 (B) Request that the Department of Public Service exercise its
14 authority under section 20 of this title to retain experts and other personnel to
15 review the proposed facility. The Department may commence retention of
16 these personnel once the petitioner has submitted proposed plans under this
17 subsection. The Department may allocate the expenses incurred in retaining
18 these personnel to the petitioner in accordance with section 21 of this title.
19 Granting a request by a planning commission pursuant to this subdivision shall
20 not oblige the Department or the personnel it retains to agree with the position
21 of the commission.

1 certificate of public good for the temporary installation of one or more
2 meteorological stations under the provisions of section 248 of this title. A
3 meteorological station shall be deemed to promote the public good of the State
4 if it is in compliance with the criteria of this section and the Board rules or
5 orders. An applicant for a certificate of public good for a meteorological
6 station shall be exempt from the requirements of subsection 202(f) of this title.

7 (c) In developing rules or orders, the Board:

8 (1) Shall develop a simple application form and shall require that
9 ~~completed applications be filed~~ the applicant first file the application with the
10 Board; and that, within two business days of notification from the Board that
11 the application is complete, the applicant deliver copies of the complete
12 application to the Department of Public Service, the Agency of Natural
13 Resources, the Agency of Transportation, and the municipality in which the
14 meteorological station is proposed to be located.

15 (2) Shall require that if no objections are filed within 30 days of the
16 ~~Board's receipt of a complete application~~ date by which delivery of the
17 complete application to parties was required under subdivision (1) of this
18 subsection, and the Board determines that the applicant has met all of the
19 requirements of section 248 of this title, the certificate of public good shall be
20 issued for a period that the Board finds reasonable, but in no event for more
21 than five years. Upon request of an applicant, the Board may renew a

1 certificate of public good. Upon expiration of the certificate, the
2 meteorological station and all associated structures and material shall be
3 removed, and the site shall be restored substantially to its preconstruction
4 condition.

5 (3) May waive the requirements of section 248 of this title that are not
6 applicable to meteorological stations, including criteria that are generally
7 applicable to public service companies as defined in this title. The Board shall
8 not waive review regarding whether construction will have an undue adverse
9 effect on aesthetics, historic sites, air and water purity, the natural
10 environment, and the public health and safety.

11 (4) Shall seek to simplify the application and review process, as
12 appropriate, in conformance with this section.

13 * * *

14 Sec. 3. 30 V.S.A. § 248(a)(4) is amended to read:

15 (4)(A) With respect to a facility located in the State, the Public Service
16 Board shall hold a nontechnical public hearing on each petition for such
17 finding and certificate in at least one county in which any portion of the
18 construction of the facility is proposed to be located.

19 (B) The Public Service Board shall hold technical hearings at
20 locations which it selects.

1 by the Board that the filing is complete, the party shall deliver copies of the
2 complete filing to the parties specified in subdivision (a)(4)(C) of this section
3 and the Board shall give written notice of the proposed certificate and its
4 determination that the filing is complete to the those parties specified in
5 subdivision (a)(4)(C) of this section, to any public interest organization that
6 has in writing requested notice of applications to proceed under this
7 subsection, and to any other person found by the Board to have a substantial
8 interest in the matter. Such notice also shall be published on the Board's
9 website within two days of issuing the determination that the filing is complete
10 and shall request comment within 28 days of the initial publication date by
11 which delivery of the complete filing to parties was required on the question of
12 whether the petition raises a significant issue with respect to the substantive
13 criteria of this section. If the Board finds that the petition raises a significant
14 issue with respect to the substantive criteria of this section, the Board shall
15 hear evidence on any such issue.

16 Sec. 5. 30 V.S.A. § 248a is amended to read:

17 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

18 FACILITIES

19 * * *

20 (j) Telecommunications facilities of limited size and scope.

21 * * *

1 (2)(A) Any ~~party~~ person seeking to proceed under the procedures
2 authorized by this subsection shall file a proposed certificate of public good
3 and proposed findings of fact with its application, ~~and provide~~. Within two
4 business days of notification from the Board that the filing is complete, the
5 applicant shall deliver notice and a copy of the application, proposed certificate
6 of public good, and proposed findings of fact to the Commissioner of Public
7 Service and its Director for Public Advocacy, the Secretary of Natural
8 Resources, the Division for Historic Preservation, the Natural Resources Board
9 if the application concerns a telecommunications facility for which a permit
10 previously has been issued under 10 V.S.A. chapter 151, and each of the
11 legislative bodies and municipal and regional planning commissions in the
12 communities in which the applicant proposes to construct or install facilities.
13 ~~At the same time the applicant files the documents specified in this subdivision~~
14 ~~with the Board~~ Within two business days of notification from the Board that
15 the filing is complete, the applicant also shall ~~give~~ deliver written notice of the
16 proposed certificate to the landowners of record of property adjoining the
17 project site or sites unless the Board has previously determined on request of
18 the applicant that good cause exists to waive or modify the notice requirement
19 with respect to such landowners. Such notice shall request comment to the
20 Board within 21 days of the ~~notice~~ date by which delivery of the complete
21 filing to parties was required on the question of whether the application raises a

1 significant issue with respect to the substantive criteria of this section. If the
2 Board finds that an application raises a significant issue with respect to the
3 substantive criteria of this section, the Board shall hear evidence on any such
4 issue.

5 * * *

6 * * * Notice of Petitions for a CPG to Do Business * * *

7 Sec. 6. 30 V.S.A. § 231 is amended to read:

8 § 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF
9 SERVICE; HEARING

10 (a) A person, partnership, unincorporated association, or previously
11 incorporated association, ~~which~~ that desires to own or operate a business over
12 which the Public Service Board has jurisdiction under the provisions of this
13 chapter shall first petition the Board to determine whether the operation of
14 such business will promote the general good of the State, and shall at that time
15 file a copy of any such petition with the Department. The Department, within
16 12 days, shall review the petition and file a recommendation regarding the
17 petition in the same manner as is set forth in subsection 225(b) of this title.
18 Such recommendation shall set forth reasons why the petition shall be accepted
19 without hearing or shall request that a hearing on the petition be scheduled. If
20 the Department requests a hearing on the petition, or, if the Board deems a
21 hearing necessary, it shall appoint a time and place in the county where the

1 proposed corporation is to have its principal office for hearing the petition, ~~and~~
2 ~~shall make an order for the publication of the substance thereof and the time~~
3 ~~and place of hearing two weeks successively in a newspaper of general~~
4 ~~circulation in the county to be served by the petitioner, the last publication to~~
5 ~~be at least seven days before the day appointed for the hearing. At least~~
6 12 days before this hearing, notice of the hearing shall be published on the
7 Board's website and once in a newspaper of general circulation in the county
8 in which the hearing will occur. The website notice shall be maintained
9 through the date of the hearing. The newspaper notice shall include an Internet
10 address where more information regarding the petition may be viewed. The
11 Director for Public Advocacy shall represent the public at ~~such~~ the hearing. If
12 the Board finds that the operation of such business will promote the general
13 good of the State, it shall give such person, partnership, unincorporated
14 association, or previously incorporated association a certificate of public good
15 specifying the business and territory to be served by such petitioners. For good
16 cause, after opportunity for hearing, the Board may amend or revoke any
17 certificate awarded under the provisions of this section. If any such certificate
18 is revoked, the person, partnership, unincorporated association, or previously
19 incorporated association shall no longer have authority to conduct any business
20 which is subject to the jurisdiction of the Board whether or not regulation

1 thereunder has been reduced or suspended, under section 226a or 227a of this
2 title.

3 * * *

4 * * * Enforcement; Notice of Probable Violation * * *

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

6 § 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

7 (a) Grounds for penalties.

8 (1) A person, company, or corporation subject to the supervision of the
9 Board or the Department of Public Service, who refuses the Board or the
10 Department of Public Service access to the books, accounts, or papers of such
11 person, company, or corporation within this State, so far as may be necessary
12 under the provisions of this title, or who fails, other than through negligence, to
13 furnish any returns, reports, or information lawfully required by it, or who
14 willfully hinders, delays, or obstructs it in the discharge of the duties imposed
15 upon it, or who fails within a reasonable time to obey a final order or decree of
16 the Board, or who violates a provision of chapter 2, 7, 75, or 89 of this title, or
17 a provision of section 231 or 248 of this title, or a rule of the Board, or the
18 conditions of a certificate of public good issued under this title shall be
19 required to pay a civil penalty as provided in subsection (b) of this section after
20 notice and opportunity for hearing.

1 (2) A person who violates a provision of chapter 3 or 5 of this title,
2 except for the provisions of section 231 or 248 of this title, shall be required to
3 pay a civil penalty after notice and opportunity for hearing. If the Board
4 determines that the violation substantially harmed or might have substantially
5 harmed the public health, safety, or welfare, the interests of utility customers,
6 the environment, the reliability of utility service, or the financial stability of the
7 company, the Board may impose a civil penalty as provided in subsection (b)
8 of this section. If the Board determines that the violation did not cause or was
9 not likely to cause such harm, the Board may impose a civil penalty of not
10 more than \$10,000.00.

11 (b) Penalty amounts. The Board may impose a civil penalty under
12 subsection (a) of this section of not more than \$40,000.00. In the case of a
13 continuing violation, an additional fine of not more than \$10,000.00 per day
14 may be imposed. In no event shall the total fine exceed the larger of:

15 (1) \$100,000.00; or

16 (2) one-tenth of one percent of the gross Vermont revenues from
17 regulated activity of the person, company, or corporation in the preceding year.

18 (c) Penalty factors. In determining the amount of a fine under subsection
19 (a) of this section, the Board may consider any of the following factors:

1 (1) the extent that the violation harmed or might have harmed the public
2 health, safety, or welfare, the environment, the reliability of utility service, or
3 the other interests of utility customers;

4 (2) whether the respondent knew or had reason to know the violation
5 existed and whether the violation was intentional;

6 (3) the economic benefit, if any, that could have been anticipated from
7 an intentional or knowing violation;

8 (4) the length of time that the violation existed;

9 (5) the deterrent effect of the penalty;

10 (6) the economic resources of the respondent;

11 (7) the respondent's record of compliance; and

12 (8) any other aggravating or mitigating circumstance.

13 (d) Failure to submit returns and other information. After notice and an
14 opportunity to be heard, the Board may order any person, company, or
15 corporation subject to the supervision of the Board or the Department of Public
16 Service who negligently fails to furnish any returns, reports, or information
17 lawfully required by it to pay a civil penalty of not more than \$10,000.00.

18 (e) Perjury. A person who knowingly, under oath, makes a false return or
19 statement or who knowingly, under oath, when required by law, gives false
20 information to the Board, or the Department of Public Service, or who

1 knowingly testifies falsely in any material matter before either of them, shall
2 be deemed to have committed perjury and shall be punished accordingly.

3 (f) Procedural rules. Violations of the rules of procedure for the
4 determination of cases heard by the Public Service Board shall not be subject
5 to the provisions of subsection (a), (b), or (c) of this section.

6 (g) Affidavit of compliance. At any time, the Board may require a person,
7 company, or corporation to file an affidavit under oath or affirmation that the
8 person, company, or corporation or any facility or plant thereof is in
9 compliance with the terms and conditions of an order, approval, certificate, or
10 authorization issued under this title or rules adopted under this title. A request
11 for an affidavit of compliance under this subdivision may be delivered by hand
12 or by certified mail. Failure to file such an affidavit within the period
13 prescribed by the Board or the material misrepresentation of a fact in an
14 affidavit shall be a violation subject to civil penalty under subdivision (a)(1) of
15 this section and shall also be grounds for revocation or rescission of the order,
16 approval, certificate, or authorization as to which the Board required the
17 affidavit.

18 (h) Investigation; notice of probable violation. The Department may
19 investigate any alleged violation of section 248 or 248a of this title, a rule or
20 order of the Board that implements or was adopted pursuant to one or both of
21 those sections, or a condition of a certificate of public good issued pursuant to

1 one of those sections. The Department may initiate the investigation on receipt
2 of a complaint, at the request of the Board or other agency of the State, or on
3 the Department's own initiative. If after investigation the Department finds a
4 probable violation or one or more of the identified provisions of law, the
5 Department may issue a notice of violation to the person alleged to have
6 committed the violation, with a copy to the complainant or requesting agency,
7 if any.

8 (1) The Department shall file a copy of the notice with the Board, which
9 shall treat the notice as a petition to impose penalties under this section.

10 (2) The notice of probable violation shall include each of the following:

11 (A) An identification of each statute, rule, order, or decree alleged to
12 have been violated, including each condition of a certificate of public good.

13 (B) A concise statement of the facts giving rise to the violation and
14 the evidence supporting the existence of those facts.

15 (C) Identification of the response options available pursuant to
16 subdivision (4) of this subsection and of the consequences of failure to respond
17 to respond set forth in subdivision (6) of this subsection.

18 (D) A statement of the remedial action sought, if any, including a
19 concise statement of the reasons for seeking such action.

1 (E) If a civil penalty is proposed, the amount of the proposed civil
2 penalty and a concise statement of how the amount of the proposed penalty
3 considers the factors set forth in subsection (c) of this section.

4 (3) Within 30 days of receiving a notice issued under this subsection,
5 any person who is the subject of an enforcement proceeding pursuant to the
6 notice shall make a written response to the Department and to the Board, with
7 a copy to each person to whom the Department sent the notice.

8 (A) The Board may extend this period for an additional 30 days on a
9 showing of good cause.

10 (B) During the period described in this subdivision (3), as it may be
11 extended by the Board, a person subject to an enforcement proceeding
12 pursuant to the notice may make a public records request to the Department
13 and the provisions of 1 V.S.A. § 317(c)(14) (exception for records relevant to
14 litigation to which public agency is party) shall not apply to this request.

15 (4) A person who is the subject of an enforcement proceeding pursuant
16 to the notice shall have the following response options:

17 (A) object to one or more of the following contained in the notice and
18 request a hearing before the Board: a finding of probable violation, a proposed
19 remedial action, or a proposed civil penalty;

1 (B) agree to take a remedial action sought in the notice and submit a
2 plan for compliance, which shall include a schedule of steps to be taken and a
3 date by which complete compliance shall be obtained; and

4 (C) pay a civil penalty proposed in the notice by certified check.

5 (5) A request for hearing in response to a notice issued under this
6 subsection shall include a statement of the issues intended to be raised at
7 hearing, including any defenses the person intends to raise and an
8 identification of any mitigating factors the person intends to assert. The Board
9 shall hold a hearing when requested.

10 (6) When a timely response under this subsection is not filed, the Board
11 may enter the notice as a final order of the Board, either at the request of the
12 Department or on its own initiative. The notice and opportunity to respond
13 shall be considered to satisfy the requirements of subsection (a) of this section
14 for notice and opportunity for hearing.

15 (7) If a person responding to a notice agrees to undertake a remedial
16 action or to pay a civil penalty proposed in the notice, the person shall be
17 action or penalty if the Board's final order is consistent with each remedial
18 action and penalty to which the person agreed.

19 (8) When a response to a notice is filed under this subsection, the Board
20 shall issue a final order after conducting any requested hearing. A final order
21 may contain a statement of actions, if any, required to be taken and the date by

1 which such actions must be taken and the amount of any civil penalty imposed,
2 after consideration of the factors set forth in subsection (c) of this section.

3 (9) With the permission of the Board, the Department may dismiss or
4 amend a notice prior to entry of a final order. When the Department amends a
5 notice, the person who is the subject of enforcement proceedings pursuant to
6 the notice shall be given a further opportunity to respond in accordance with
7 subdivisions (3) through (5) of this subsection.

8 (10) The Board may approve disposition of a notice by stipulation or
9 agreed settlement submitted prior to entry of a final order.

10 * * * Name Change to Public Utility Commission * * *

11 Sec. 8. 30 V.S.A. § 3 is amended to read:

12 § 3. ~~PUBLIC SERVICE BOARD~~ UTILITY COMMISSION

13 (a) The Vermont Public Service Board Utility Commission shall consist of
14 a Chair and two members. The Chair and each member shall not be required to
15 be admitted to the practice of law in this State.

16 (b) The Chair shall be nominated, appointed, and confirmed in the manner
17 of a Superior judge.

18 (c) Members of the ~~Board~~ Commission other than the Chair shall be
19 appointed in accordance with this subsection. Whenever a vacancy occurs,
20 public announcement of the vacancy shall be made. The Governor shall
21 submit at least five names of potential nominees to the Judicial Nominating

1 Board for review. The Judicial Nominating Board shall review the candidates
2 in respect to judicial criteria and standards only and shall recommend to the
3 Governor those candidates the Board considers qualified. The Governor shall
4 make the appointment from the list of qualified candidates. The appointment
5 shall be subject to the consent of the Senate.

6 (d) The term of each member shall be six years. Any appointment to fill a
7 vacancy shall be for the unexpired portion of the term vacated. A member
8 wishing to succeed himself or herself in office may seek reappointment under
9 the terms of this section.

10 (e) Notwithstanding 3 V.S.A. § 2004, or any other provision of law,
11 members of the ~~Board~~ Commission may be removed only for cause. When a
12 ~~Board~~ Commission member who hears all or a substantial part of a case retires
13 from office before such case is completed, he or she shall remain a member of
14 the ~~Board~~ Commission for the purpose of concluding and deciding such case,
15 and signing the findings, orders, decrees, and judgments therein. A retiring
16 Chair shall also remain a member for the purpose of certifying questions of law
17 if appeal is taken. For such service, he or she shall receive a reasonable
18 compensation to be fixed by the remaining members of the ~~Board~~ Commission
19 and necessary expenses while on official business.

20 (f) A case shall be deemed completed when the ~~Board~~ Commission enters a
21 final order therein even though such order is appealed to the Supreme Court

1 and the case remanded by that court to the ~~Board~~ Commission. Upon remand
2 the ~~Board~~ Commission then in office may in its discretion consider relevant
3 evidence including any part of the transcript of testimony in the proceedings
4 prior to appeal.

5 (g) The Chair shall have general charge of the offices and employees of the
6 ~~Board~~ Commission.

7 Sec. 9. 30 V.S.A. § 7001(1) is amended to read:

8 (1) ~~“Board”~~ “Commission” means the Public ~~Service Board~~ Utility
9 Commission under section 3 of this title.

10 Sec. 10. 30 V.S.A. § 8002(1) is amended to read:

11 (1) ~~“Board”~~ “Commission” means the Public ~~Service Board~~ Utility
12 Commission under section 3 of this title, except when used to refer to the
13 Clean Energy Development Board.

14 Sec. 11. REVISION AUTHORITY

15 When preparing the Vermont Statutes Annotated for publication, the Office
16 of Legislative Council shall make the following revisions throughout the
17 statutes as needed for consistency with Secs. 8–10 of this act, as long as the
18 revisions have no other effect on the meaning of the affected statutes:

19 (1) replace “Public Service Board” with “Public Utility
20 Commission”; and

1 (2) identification of at least five locations across Vermont that are
2 willing and able to host the access described in subsection (a) of this section;

3 (3) the estimated capital costs of providing such access; and

4 (4) the estimated operating costs for hosting and connecting.

5 (c) For the purpose of this section, the Department is authorized to spend
6 \$10,000.00 from its approved budget for fiscal year 2018.

7 * * * Citizen Access to Public Service Board; Implementation Report * * *

8 Sec. 13. REPORT; IMPLEMENTATION OF WORKING GROUP

9 RECOMMENDATIONS

10 On or before December 15, 2017, the Public Service Board shall submit to
11 the House Committee on Energy and Technology and the Senate Committees
12 on Finance and on Natural Resources and Energy a report on the progress
13 made in implementing the recommendations of the Access to Public Service
14 Board Working Group created by 2016 Acts and Resolves No. 174, Sec. 15,
15 including those recommendations that the Group identified as not requiring
16 statutory change.

17 * * * Effective Dates * * *

18 Sec.14. EFFECTIVE DATES

19 This section and Secs. 12 and 13 shall take effect on passage. The
20 remainder of this act shall take effect on July 1, 2017.