

1 S.52

2 Introduced by Senators Lyons, Ashe, Cummings, Degree, MacDonald,

3 Pollina, and Sirotkin

4 Referred to Committee on Finance

5 Date: January 21, 2017

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 ~~(C) Such commissions shall make Make recommendations, if any, to~~
2 ~~the Public Service Board and to the petitioner at least seven days prior to filing~~
3 ~~of the petition with the Public Service Board.~~

4 ~~(D) Once the petition is filed with the Public Service Board, make~~
5 ~~recommendations to the Board by the deadline for submitting comments or~~
6 ~~testimony set forth in the applicable provision of this section, Board rule, or~~
7 ~~scheduling order issued by the Board.~~

8 (2) The petitioner's application shall address the substantive written
9 comments related to the criteria of subsection (b) of this section received by
10 the petitioner within 45 days of the submittal made under this subsection and
11 the substantive oral comments related to those criteria made at a public hearing
12 under subdivision (1) of this subsection.

13 * * * Energy and Telecommunications Facilities; Service of Application When
14 Determined Complete * * *

15 Sec. 2. 30 V.S.A. § 246 is amended to read:

16 § 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

17 (a) As used in this section, a "meteorological station" consists of one
18 temporary tower, which may include guy wires, and attached instrumentation
19 to collect and record wind speed, wind direction, and atmospheric conditions.

20 (b) The Public Service Board shall establish by rule or order standards and
21 procedures governing application for, and issuance or revocation of, a

22 ~~certificate of public good for the temporary installation of one or more~~

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

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

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

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

1 ~~meteorological station and all associated structures and material shall be~~
2 removed, and the site shall be restored substantially to its preconstruction
3 condition.

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

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

12 * * *

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

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

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

20 (C) ~~At the time of filing its application with the Board, copies shall~~
21 ~~be given by the petitioner. Within two business days of notification from the~~

1 ~~Board that the petition is complete, the petitioner shall deliver copies of the~~
2 complete petition to the Attorney General and the Department of Public
3 Service, and, with respect to facilities within the State, the Department of
4 Health, Agency of Natural Resources, Historic Preservation Division, Agency
5 of Transportation, Agency of Agriculture, Food and Markets, and to the chair
6 or director of the municipal and regional planning commissions and the
7 municipal legislative body for each town and city in which the proposed
8 facility will be located.

9 (D) Notice of the public hearing shall be published and maintained
10 on the Board's website for at least 12 days before the day appointed for the
11 hearing. Notice of the public hearing shall be published once in a newspaper
12 of general circulation in the county or counties in which the proposed facility
13 will be located, and the notice shall include an internet address where more
14 information regarding the proposed facility may be viewed.

15 * * *

16 Sec. 4. 30 V.S.A. § 248(j)(2) is amended to read:

17 (2) Any party seeking to proceed under the procedures authorized by
18 this subsection shall file a proposed certificate of public good and proposed
19 findings of fact with its petition. The Within two business days of notification
20 by the Board that the filing is complete, the party shall deliver copies of the
21 complete filing to the parties specified in subdivision (a)(4)(C) of this section

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

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

15 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

16 FACILITIES

17 * * *

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

19 * * *

20 (2)(A) Any ~~party~~ person seeking to proceed under the procedures

21 ~~authorized by this subsection shall file a proposed certificate of public good~~

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

1 ~~issue with respect to the substantive criteria of this section, the Board shall~~

2 hear evidence on any such issue.

3 * * *

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

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

6 § 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF
7 SERVICE; HEARING

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

1 ~~and place of hearing two weeks successively in a newspaper of general~~
2 ~~circulation in the county to be served by the petitioner, the last publication to~~
3 ~~be at least seven days before the day appointed for the hearing. At least~~
4 ~~12 days before this hearing, notice of the hearing shall be published on the~~
5 ~~Board's website and once in a newspaper of general circulation in the county~~
6 ~~in which the hearing will occur. The website notice shall be maintained~~
7 ~~through the date of the hearing. The newspaper notice shall include an~~
8 ~~Internet address where more information regarding the petition may be~~
9 ~~viewed.~~ The Director for Public Advocacy shall represent the public at such
10 ~~the hearing.~~ If the Board finds that the operation of such business will
11 promote the general good of the State, it shall give such person, partnership,
12 unincorporated association, or previously incorporated association a certificate
13 of public good specifying the business and territory to be served by such
14 petitioners. For good cause, after opportunity for hearing, the Board may
15 amend or revoke any certificate awarded under the provisions of this section.
16 If any such certificate is revoked, the person, partnership, unincorporated
17 association, or previously incorporated association shall no longer have
18 authority to conduct any business which is subject to the jurisdiction of the
19 Board whether or not regulation thereunder has been reduced or suspended,
20 under section 226a or 227a of this title.

1 ~~*** Enforcement; Notice of Probable Violation ***~~

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

3 § 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

4 (a) Grounds for penalties.

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

18 (2) A person who violates a provision of chapter 3 or 5 of this title,
19 except for the provisions of section 231 or 248 of this title, shall be required to
20 pay a civil penalty after notice and opportunity for hearing. If the Board
21 determines that the violation substantially harmed or might have substantially
22 ~~harmed the public health, safety, or welfare, the interests of utility customers,~~

1 ~~the environment, the reliability of utility service, or the financial stability of~~
2 the company, the Board may impose a civil penalty as provided in subsection
3 (b) of this section. If the Board determines that the violation did not cause or
4 was not likely to cause such harm, the Board may impose a civil penalty of not
5 more than \$10,000.00.

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

10 (1) \$100,000.00; or

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

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

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

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

20 (3) the economic benefit, if any, that could have been anticipated from
21 ~~an intentional or knowing violation,~~

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

2 (5) the deterrent effect of the penalty;

3 (6) the economic resources of the respondent;

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

5 (8) any other aggravating or mitigating circumstance.

6 (d) Failure to submit returns and other information. After notice and an
7 opportunity to be heard, the Board may order any person, company, or
8 corporation subject to the supervision of the Board or the Department of
9 Public Service who negligently fails to furnish any returns, reports, or
10 information lawfully required by it to pay a civil penalty of not more than
11 \$10,000.00.

12 (e) Perjury. A person who knowingly, under oath, makes a false return or
13 statement or who knowingly, under oath, when required by law, gives false
14 information to the Board, or the Department of Public Service, or who
15 knowingly testifies falsely in any material matter before either of them, shall
16 be deemed to have committed perjury and shall be punished accordingly.

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

20 (g) Affidavit of compliance. At any time, the Board may require a person,
21 company, or corporation to file an affidavit under oath or affirmation that the

1 ~~person, company, or corporation or any facility or plant thereof is in~~
2 compliance with the terms and conditions of an order, approval, certificate, or
3 authorization issued under this title or rules adopted under this title. A request
4 for an affidavit of compliance under this subdivision may be delivered by hand
5 or by certified mail. Failure to file such an affidavit within the period
6 prescribed by the Board or the material misrepresentation of a fact in an
7 affidavit shall be a violation subject to civil penalty under subdivision (a)(1) of
8 this section and shall also be grounds for revocation or rescission of the order,
9 approval, certificate, or authorization as to which the Board required the
10 affidavit.

11 (h) Investigation; notice of probable violation. The Department may
12 investigate any alleged violation of section 248 or 248a of this title, a rule or
13 order of the Board that implements or was adopted pursuant to one or both of
14 those sections, or a condition of a certificate of public good issued pursuant to
15 one of those sections. The Department may initiate the investigation on
16 receipt of a complaint, at the request of the Board or other agency of the State,
17 or on the Department's own initiative. If after investigation the Department
18 finds a probable violation or one or more of the identified provisions of law,
19 the Department may issue a notice of violation to the person alleged to have
20 committed the violation, with a copy to the complainant or requesting agency,
21 if any.

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

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

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

6 ~~(B) A concise statement of the facts giving rise to the violation and~~
7 ~~the evidence supporting the existence of those facts.~~

8 ~~(C) Identification of the response options available pursuant to~~
9 ~~subdivision (4) of this subsection and of the consequences of failure to respond~~
10 ~~to respond set forth in subdivision (6) of this subsection.~~

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

13 ~~(E) If a civil penalty is proposed, the amount of the proposed civil~~
14 ~~penalty and a concise statement of how the amount of the proposed penalty~~
15 ~~considers the factors set forth in subsection (c) of this section.~~

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

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

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

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

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

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

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

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

20 (6) When a timely response under this subsection is not filed, the Board
21 may enter the notice as a final order of the Board, either at the request of the

1 ~~Department or on its own initiative. The notice and opportunity to respond~~
2 shall be considered to satisfy the requirements of subsection (a) of this section
3 for notice and opportunity for hearing.

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

8 (8) When a response to a notice is filed under this subsection, the Board
9 shall issue a final order after conducting any requested hearing. A final order
10 may contain a statement of actions, if any, required to be taken and the date by
11 which such actions must be taken and the amount of any civil penalty imposed,
12 after consideration of the factors set forth in subsection (c) of this section.

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

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

20 * * * Name Change to Public Utility Commission * * *

21 ~~Sec. 8. 30 V.S.A. § 5 is amended to read.~~

1 ~~§ 2. PUBLIC SERVICE BOARD UTILITY COMMISSION~~

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

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

7 (c) ~~Members of the Board Commission other than the Chair shall be~~
8 appointed in accordance with this subsection. Whenever a vacancy occurs,
9 public announcement of the vacancy shall be made. The Governor shall
10 submit at least five names of potential nominees to the Judicial Nominating
11 Board for review. The Judicial Nominating Board shall review the candidates
12 in respect to judicial criteria and standards only and shall recommend to the
13 Governor those candidates the Board considers qualified. The Governor shall
14 make the appointment from the list of qualified candidates. The appointment
15 shall be subject to the consent of the Senate.

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

20 (e) ~~Notwithstanding 3 V.S.A. § 2004, or any other provision of law,~~

21 ~~members of the Board Commission may be removed only for cause. When a~~

1 ~~Board Commission member who hears all or a substantial part of a case retires~~
2 from office before such case is completed, he or she shall remain a member of
3 the ~~Board~~ Commission for the purpose of concluding and deciding such case,
4 and signing the findings, orders, decrees, and judgments therein. A retiring
5 Chair shall also remain a member for the purpose of certifying questions of
6 law if appeal is taken. For such service, he or she shall receive a reasonable
7 compensation to be fixed by the remaining members of the ~~Board~~ Commission
8 and necessary expenses while on official business.

9 (f) A case shall be deemed completed when the ~~Board~~ Commission enters a
10 final order therein even though such order is appealed to the Supreme Court
11 and the case remanded by that court to the ~~Board~~ Commission. Upon remand
12 the ~~Board~~ Commission then in office may in its discretion consider relevant
13 evidence including any part of the transcript of testimony in the proceedings
14 prior to appeal.

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

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

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

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

21 ~~(1) “Board”~~ “Commission” means the Public Service ~~Board~~ Utility

1 ~~Commission under section 3 of this title, except when used to refer to the~~
2 ~~Clean Energy Development Board.~~

3 Sec. 11. REVISION AUTHORITY

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

8 (1) replace “Public Service Board” with “Public Utility
9 Commission”; and

10 (2) replace “Board” with “Commission” when the existing term “Board”
11 refers to the Public Service Board.

12 * * * Remote Location Access by Citizens to PSB Hearings * * *

13 Sec. 12. PLAN; CITIZENS TO PSB HEARINGS FROM REMOTE
14 LOCATIONS; SPENDING AUTHORITY

15 (a) On or before December 15, 2017, the Division for Telecommunications
16 and Connectivity within the Department of Public Service, in consultation with
17 relevant organizations such as the Vermont Access Network and Vermont
18 access management organizations, shall submit to the House Committee on
19 Energy and Technology and the Senate Committees on Finance and on Natural
20 Resources and Energy a plan to achieve citizen access to hearings and
21 workshops of the Public Service Board from remote locations across the State.

1 ~~The access shall include interactive capability and the ability to use multiple~~
2 ~~remote locations simultaneously. The plan may build on the Department's~~
3 ~~Vermont Video Connect proposal described in the Report to the General~~
4 ~~Assembly by the Vermont Interactive Technologies Working Group dated Dec.~~
5 ~~9, 2015, submitted pursuant to 2015 Acts and Resolves No. 58, Sec. E.602.1.~~

6 (b) The plan shall include each of the following:

7 (1) assessment of cost-effective interactive video technologies;

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

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

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

12 (c) For the purpose of this section, the Department is authorized to spend
13 \$10,000.00 from its approved budget for fiscal year 2018.

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

15 Sec. 13. REPORT; IMPLEMENTATION OF WORKING GROUP

16 RECOMMENDATIONS

17 On or before December 15, 2017, the Public Service Board shall submit to
18 the House Committee on Energy and Technology and the Senate Committees
19 on Finance and on Natural Resources and Energy a report on the progress
20 made in implementing the recommendations of the Access to Public Service
21 Board Working Group created by 2016 Acts and Resolves No. 174, Sec. 15,

1 ~~including those recommendations that the Group identified as not requiring~~
2 ~~statutory change.~~

3 * * * Effective Dates * * *

4 Sec.14. EFFECTIVE DATES

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

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

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

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement.

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

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

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

(C) ~~Such commissions shall make~~ Make recommendations, if any, to

~~the Public Service Board and to the petitioner at least seven days prior to filing of the petition with the Public Service Board.~~

(D) Once the petition is filed with the Public Service Board, make recommendations to the Board by the deadline for submitting comments or testimony set forth in the applicable provision of this section, Board rule, or scheduling order issued by the Board.

(2) The petitioner's application shall address the substantive written comments related to the criteria of subsection (b) of this section received by the petitioner within 45 days of the submittal made under this subsection and the substantive oral comments related to those criteria made at a public hearing under subdivision (1) of this subsection.

* * * Energy and Telecommunications Facilities; Service of Application
When Determined Complete * * *

Sec. 2. 30 V.S.A. § 246 is amended to read:

§ 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

(a) As used in this section, a "meteorological station" consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The Public Service Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and the Board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

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

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

(2) ~~Shall require that if no objections are filed within 30 days of the Board's receipt of a complete application~~ date of service of the complete application under subdivision (1) of this subsection, and the Board determines that the applicant has met all of the requirements of section 248 of this title,

the certificate of public good shall be issued for a period that the Board finds reasonable, but in no event for more than five years. Upon request of an applicant, the Board may renew a certificate of public good. Upon expiration of the certificate, the meteorological station and all associated structures and material shall be removed, and the site shall be restored substantially to its preconstruction condition.

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

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

* * *

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

(4)(A) With respect to a facility located in the State, the Public Service Board shall hold a nontechnical public hearing on each petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. From the comments made at the public hearing, the Board shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. If the record does not contain evidence on such an area, the Board shall direct the parties to provide evidence on the area. This subdivision does not require the Board to respond to each individual comment.

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

(C) ~~At the time of filing its application with the Board, copies shall be given by the petitioner to~~ Within two business days of notification from the Board that the petition is complete, the petitioner shall serve copies of the complete petition on the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health, Agency of Natural Resources, Historic Preservation Division, Agency of Transportation, Agency of Agriculture, Food and Markets, and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

(D) Notice of the public hearing shall be published and maintained on the Board's website for at least 12 days before the day appointed for the

hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more information regarding the proposed facility may be viewed.

** * **

Sec. 4. 30 V.S.A. § 248(j)(2) is amended to read:

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. ~~The~~ Within two business days of notification by the Board that the filing is complete, the party shall serve copies of the complete filing on the parties specified in subdivision (a)(4)(C) of this section and the Board shall give written notice of the proposed certificate and its determination that the filing is complete to the those parties specified in subdivision (a)(4)(C) of this section, to any public interest organization that has in writing requested notice of applications to proceed under this subsection, and to any other person found by the Board to have a substantial interest in the matter. Such notice also shall be published on the Board's website within two days of issuing the determination that the filing is complete and shall request comment within 28 30 days of the initial publication date of service of the complete filing on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the Board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the Board shall hear evidence on any such issue.

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

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

** * **

(j) Telecommunications facilities of limited size and scope.

** * **

(2)(A) Any ~~party~~ person seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its application, ~~and provide.~~ Within two business days of notification from the Board that the filing is complete, the applicant shall serve notice and a copy of the application, proposed certificate of public good, and proposed findings of fact to on the Commissioner of Public Service and its Director for Public Advocacy, the Secretary of Natural Resources, the Division for Historic Preservation, 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 each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. At the same time the applicant files the documents specified in this subdivision with the Board Within two business days of notification from the Board that the filing is complete, the applicant also shall give serve written notice of the proposed certificate ~~to~~ on the landowners of record of property adjoining the project site or sites unless the Board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the Board ~~within 21~~ 30 days of the ~~notice~~ date of service on the question of whether the application raises a significant issue with respect to the substantive criteria of this section. If the Board finds that an application raises a significant issue with respect to the substantive criteria of this section, the Board shall hear evidence on any such issue.

* * *

(C) If the Board accepts a request to consider an application under the procedures of this subsection, then unless the Public Service Board subsequently determines that an application raises a significant issue, the Board shall issue a final determination on an application ~~filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 45~~ 60 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the Board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection ~~within 90 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 90~~ days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; and the Commissioner of

Public Service and his or her Director for Public Advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the Board within ~~21~~ 30 days of this notice, a certificate of public good shall be issued. Objections may be filed only by persons entitled to notice of this proposed project pursuant to this subsection. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the Board, the Board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(2) of this section.

* * *

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the ~~45-day~~ 60-day notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

* * *

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

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

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

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

~~and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. At least 12 days before this hearing, notice of the hearing shall be published on the Board's website and once in a newspaper of general circulation in the county in which the hearing will occur. The website notice shall be maintained through the date of the hearing. The newspaper notice shall include an Internet address where more information regarding the petition may be viewed. The Director for Public Advocacy shall represent the public at such the hearing. If the Board finds that the operation of such business will promote the general good of the State, it shall give such person, partnership, unincorporated association, or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the Board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the Board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.~~

* * *

* * * Enforcement * * *

Sec. 7. 30 V.S.A. § 2 is amended to read:

§ 2. DEPARTMENT POWERS

* * *

~~(h) The Department shall investigate when it receives a complaint that there has been noncompliance with section 246, 248, 248a, or 8010 of this title, any rule adopted pursuant to those sections, or any certificate of public good issued pursuant to those sections, including a complaint of such noncompliance received pursuant to section 208 of this title or the complaint protocol established under 2016 Acts and Resolves No. 130, Sec. 5c.~~

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

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

* * *

~~(h) In accordance with the process set forth in this subsection, the Department may issue an administrative citation to a person the Department believes violated section 246, 248, 248a, or 8010 of this title, any rule adopted~~

pursuant to those sections, or any certificate of public good issued pursuant to those sections.

(1) An administrative citation, whether draft or final, shall:

(A) state each provision of statute and rule and each condition of a certificate of public good alleged to have been violated;

(B) include a concise statement of the facts giving rise to the alleged violation and the evidence supporting the existence of those facts;

(C) request that the person take the remedial action specified in the notice or pay a civil penalty of not more than \$5,000.00 for the violation, or both; and

(D) if remedial action is requested, state the reasons for seeking the action.

(2) The Department shall initiate the process by issuing a draft administrative citation to the person and sending a copy to each municipality in which the person's facility is located, each adjoining property owner to the facility, the complainant if any, and, for alleged violations of the facility's certificate of public good, each party to the proceeding in which the certificate was issued.

(A) At the time the draft citation is issued, the Department shall file a copy with the Board and post the draft citation on its website.

(B) Commencing with the date of issuance, the Department shall provide an opportunity of 30 days for public comment on the draft citation. The Department shall include information on this opportunity in the draft citation.

(C) Once the public comment period closes, the Department:

(i) Shall provide the Board with a copy of each comment received.

(ii) May file a revised draft citation with the Board. The revised draft citation may be accompanied by a stipulation or agreed settlement with a request for Board approval.

(D) The Board may on its own initiative open a proceeding to investigate the violation alleged in the draft citation. The Board shall take any such action within 15 days of the close of the public comment period, or the filing of a revised draft citation, whichever is later. Such a Board proceeding shall supersede the draft citation.

(3) If the Board has not opened a proceeding pursuant to subdivision (2)(D) of this subsection, the Department may issue a final administrative

citation to the person. Within 30 days of receipt of a final administrative citation, the person shall respond in one of the following ways:

(A) Request a hearing before the Board on the existence of the alleged violation, the proposed penalty, and the proposed remedial action.

(B) Pay any civil penalty set forth in the notice and agree to undertake such remedial action as is set forth in the notice and submit to the Department for its approval a plan for compliance. In such a case, the final administrative citation shall be enforceable in the same manner as an order of the Board.

(C) Decline to contest the existence of the alleged violation and request a hearing on either the proposed penalty or remedial action, or both. When exercising this option, a person may agree to either the proposed penalty or remedial action and seek a hearing only on the penalty or action with which the person disagrees.

(4) When a person requests a hearing under subdivision (3) of this subsection, the Board shall open a proceeding and conduct a hearing in accordance with the provisions of this section on the alleged violation and such remedial action and penalty as are set forth in the notice. Notwithstanding any contrary provision of this section, a penalty under this subdivision (4) shall not exceed \$5,000.00.

(5) If a person pays the civil penalty set forth in a final administrative citation, then the Department shall be precluded from seeking and the Board from imposing additional civil penalties for the same alleged violation unless the violation is continuing or is repeated.

(6) If a person agrees to undertake the remedial action set forth in a final administrative citation, failure to undertake the action or comply with a compliance plan approved by the Department shall constitute a separate violation.

(7) The Board may approve disposition of a final administrative citation by stipulation or agreed settlement submitted before entry of a final order.

(8) Penalties assessed under this subsection shall be deposited in the General Fund.

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

Sec. 9. 30 V.S.A. § 3 is amended to read:

§ 3. PUBLIC SERVICE BOARD UTILITY COMMISSION

(a) The Vermont Public Service Board Utility Commission shall consist of a Chair and two members. The Chair and each member shall not be required to

be admitted to the practice of law in this State.

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

(c) Members of the Board Commission other than the Chair shall be appointed in accordance with this subsection. Whenever a vacancy occurs, public announcement of the vacancy shall be made. The Governor shall submit at least five names of potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board shall review the candidates in respect to judicial criteria and standards only and shall recommend to the Governor those candidates the Board considers qualified. The Governor shall make the appointment from the list of qualified candidates. The appointment shall be subject to the consent of the Senate.

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

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

(f) A case shall be deemed completed when the Board Commission enters a final order therein even though such order is appealed to the Supreme Court and the case remanded by that court to the Board Commission. Upon remand the Board Commission then in office may in its discretion consider relevant evidence including any part of the transcript of testimony in the proceedings prior to appeal.

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

Sec. 10. 30 V.S.A. § 7001(1) is amended to read:

(1) "~~Board~~" "Commission" means the Public Service-Board Utility Commission under section 3 of this title.

Sec. 11. 30 V.S.A. § 8002(1) is amended to read:

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

Sec. 12. REVISION AUTHORITY

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Council shall make the following revisions throughout the statutes as needed for consistency with Secs. 9–11 of this act, as long as the revisions have no other effect on the meaning of the affected statutes:

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

(2) replace “Board” with “Commission” when the existing term “Board” refers to the Public Service Board.

Sec. 13. RULES; NAME CHANGE

(a) The rules of the Public Service Board in effect on July 1, 2017 shall become rules of the Vermont Public Utility Commission (the Commission).

(b) In those rules, the Commission is authorized to change all references to the Public Service Board so that they refer to the Commission. Unless accompanied by one or more other revisions to the rules, such a change need not be made through the rulemaking process under the Administrative Procedure Act.

** * * Remote Location Access by Citizens to PSB Hearings * * **

Sec. 14. PLAN; CITIZENS’ ACCESS TO PSB HEARINGS FROM
REMOTE LOCATIONS; SPENDING AUTHORITY

(a) On or before December 15, 2017, the Division for Telecommunications and Connectivity within the Department of Public Service, in consultation with relevant organizations such as the Vermont Access Network and Vermont access management organizations, shall submit to the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy a plan to achieve citizen access to hearings and workshops of the Public Service Board from remote locations across the State. The access shall include interactive capability and the ability to use multiple remote locations simultaneously. The plan may build on the Department’s Vermont Video Connect proposal described in the Report to the General Assembly by the Vermont Interactive Technologies Working Group dated Dec. 9, 2015, submitted pursuant to 2015 Acts and Resolves No. 58, Sec. E.602.1.

(b) The plan shall include each of the following:

(1) assessment of cost-effective interactive video technologies;

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

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

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

(c) For the purpose of this section, the Department is authorized to spend an amount not to exceed \$10,000.00 from its approved budget for fiscal year 2018.

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

*Sec. 15. REPORT; IMPLEMENTATION OF WORKING GROUP
RECOMMENDATIONS*

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

** * * Effective Dates * * **

Sec.16. EFFECTIVE DATES

This section and Secs. 14 and 15 shall take effect on passage. The remainder of this act shall take effect on July 1, 2017.