

## VERMONT'S "SECTION 248a" SITING APPROVAL OPTION FOR TELECOMMUNICATIONS FACILITIES

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Under 30 V.S.A. § 248a ("Section 248a"), a certificate of public good (CPG) *may* be obtained from the Vermont Public Service Board (PSB) prior to construction or installation of telecommunications facilities. This authority expires July 1, 2017.

- This process was created as an option for telecommunications facilities instead of approval under 10 V.S.A. chapter 151 (Act 250) and local bylaws. Facilities approved under Section 248a are exempt from Act 250 and local land use permits.
- Before issuing a CPG, the PSB must find that the facility will promote the general good of the state consistently with 30 V.S.A. 202c(b), which sets out state telecommunications policy.

Review under Section 248a applies statutory criteria related to environmental and land use impacts, the plans and recommendations of local bodies and, with respect to wireless service, the issue of colocation at existing facilities.

- Environmental and land use criteria incorporated into Section 248a address such matters as air and water pollution, soil erosion, shorelines, aesthetics, wildlife habitat, historic sites, and impacts on public services, facilities, and lands.
- The PSB is required to give "substantial deference" to the local land use plan and "due consideration" to most but not all of the environmental criteria found in Act 250.
- In 2016, the General Assembly amended Section 248a to define "substantial deference" and require more rigorous review of the potential for colocation.

The PSB is the state's public utilities commission. It typically functions like a court. However, Section 248a includes provisions that result in a less formal process.

- The section includes provisions on "de minimis modifications" to facilities under which a certificate is issued unless the change does not qualify as "de minimis."
- The section includes provisions on facilities of "limited size and scope," for which it conditionally waives many of the environmental criteria. The section also makes the application process for these facilities more like a notice and comment process, although a hearing can occur if there is a significant issue.
- The section gives the PSB authority to simplify the process. The PSB has issued an order under which it applies the same process for "limited size and scope" applications to applications that do not qualify as limited size and scope.
- Parties to a Section 248a proceeding include the applicant, the Department of Public Service, the Agency of Natural Resources, and the municipal legislative body and planning commission. Parties may include affected individuals such as adjoining property owners.