

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred Senate Bill No. 52
3 entitled “An act relating to the Public Service Board and its proceedings”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

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

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

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

16 (A) ~~hold~~ Hold a public hearing on the proposed plans. The planning
17 commission may request that the petitioner or the Department of Public
18 Service, or both, attend the hearing. The petitioner and the Department each
19 shall have an obligation to comply with such a request. The Department shall
20 consider the comments made and information obtained at the hearing in
21 making recommendations to the Board on the application and in determining

1 whether to retain additional personnel under subdivision (1)(B) of this
2 subsection.

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

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

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

19 (2) The petitioner's application shall address the substantive written
20 comments related to the criteria of subsection (b) of this section received by
21 the petitioner within 45 days of the submittal made under this subsection and

1 the substantive oral comments related to those criteria made at a public hearing
2 under subdivision (1) of this subsection.

3 * * * Energy and Telecommunications Facilities; Service of Application

4 When Determined Complete * * *

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

6 § 246. TEMPORARY SITING OF METEOROLOGICAL STATIONS

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

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

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

19 (1) Shall develop a simple application form and shall require that
20 ~~completed applications be filed~~ the applicant first file the application with the
21 Board, and that, within two business days of notification from the Board that
22 the application is complete, the applicant serve copies of the complete

1 application on the Department of Public Service, the Agency of Natural
2 Resources, the Agency of Transportation, and the municipality in which the
3 meteorological station is proposed to be located.

4 (2) Shall require that if no objections are filed within 30 days of the
5 ~~Board's receipt of a complete application~~ date of service of the complete
6 application under subdivision (1) of this subsection, and the Board determines
7 that the applicant has met all of the requirements of section 248 of this title, the
8 certificate of public good shall be issued for a period that the Board finds
9 reasonable, but in no event for more than five years. Upon request of an
10 applicant, the Board may renew a certificate of public good. Upon expiration
11 of the certificate, the meteorological station and all associated structures and
12 material shall be removed, and the site shall be restored substantially to its
13 preconstruction condition.

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

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

22 * * *

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

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

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

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

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

7 * * *

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

9 (2) Any party seeking to proceed under the procedures authorized by
10 this subsection shall file a proposed certificate of public good and proposed
11 findings of fact with its petition. The Within two business days of notification
12 by the Board that the filing is complete, the party shall serve copies of the
13 complete filing on the parties specified in subdivision (a)(4)(C) of this section
14 and the Board shall give written notice of the proposed certificate and its
15 determination that the filing is complete to the those parties specified in
16 subdivision (a)(4)(C) of this section, to any public interest organization that
17 has in writing requested notice of applications to proceed under this
18 subsection, and to any other person found by the Board to have a substantial
19 interest in the matter. Such notice also shall be published on the Board's
20 website within two days of issuing the determination that the filing is complete
21 and shall request comment within 28 30 days of the initial publication date of
22 service of the complete filing on the question of whether the petition raises a

1 significant issue with respect to the substantive criteria of this section. If the
2 Board finds that the petition 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 Sec. 5. 30 V.S.A. § 248a is amended to read:

6 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS
7 FACILITIES

8 * * *

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

10 * * *

11 (2)(A) Any ~~party~~ person seeking to proceed under the procedures
12 authorized by this subsection shall file a proposed certificate of public good
13 and proposed findings of fact with its application, ~~and provide~~. Within two
14 business days of notification from the Board that the filing is complete, the
15 applicant shall serve notice and a copy of the application, proposed certificate
16 of public good, and proposed findings of fact ~~to~~ on the Commissioner of Public
17 Service and its Director for Public Advocacy, the Secretary of Natural
18 Resources, the Division for Historic Preservation, the Natural Resources Board
19 if the application concerns a telecommunications facility for which a permit
20 previously has been issued under 10 V.S.A. chapter 151, and each of the
21 legislative bodies and municipal and regional planning commissions in the
22 communities in which the applicant proposes to construct or install facilities.

1 ~~At the same time the applicant files the documents specified in this subdivision~~
2 ~~with the Board~~ Within two business days of notification from the Board that
3 the filing is complete, the applicant also shall ~~give~~ serve written notice of the
4 proposed certificate ~~to~~ on the landowners of record of property adjoining the
5 project site or sites unless the Board has previously determined on request of
6 the applicant that good cause exists to waive or modify the notice requirement
7 with respect to such landowners. Such notice shall request comment to the
8 Board within ~~21~~ 30 days of the ~~notice~~ date of service on the question of
9 whether the application raises a significant issue with respect to the substantive
10 criteria of this section. If the Board finds that an application raises a significant
11 issue with respect to the substantive criteria of this section, the Board shall
12 hear evidence on any such issue.

13 * * *

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

1 issue a final determination on an application filed pursuant to this subsection
2 ~~within 90 days of its filing or, if the original filing did not substantially comply~~
3 ~~with the Public Service Board's rules,~~ within 90 days of the date on which the
4 Clerk of the Board notifies the applicant that the filing is complete.

5 * * *

6 (k) De minimis modifications. An applicant intending to make a de
7 minimis modification of a telecommunications facility shall provide written
8 notice of its intent, including a description of the de minimis modification, its
9 plans for the de minimis modification, and its certification that the project
10 constitutes a de minimis modification under this section, to the following: the
11 landowner of record of the property on which the facility is located; the
12 legislative body of the municipality in which the applicant proposes to
13 undertake such limited modifications to the facility; and the Commissioner of
14 Public Service and his or her Director for Public Advocacy. Unless an
15 objection to the classification of a proposed project as a de minimis
16 modification is filed with the Board within ~~24~~ 30 days of this notice, a
17 certificate of public good shall be issued. Objections may be filed only by
18 persons entitled to notice of this proposed project pursuant to this subsection.
19 If an objection of the classification of the proposed project as a de minimis
20 modification is timely filed with the Board, the Board may determine whether
21 the intended project meets the definition of de minimis modification
22 established in subdivision (b)(2) of this section.

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(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

1 file a copy of any such petition with the Department. The Department, within
2 12 days, shall review the petition and file a recommendation regarding the
3 petition in the same manner as is set forth in subsection 225(b) of this title.
4 Such recommendation shall set forth reasons why the petition shall be accepted
5 without hearing or shall request that a hearing on the petition be scheduled. If
6 the Department requests a hearing on the petition, or, if the Board deems a
7 hearing necessary, it shall appoint a time and place in the county where the
8 proposed corporation is to have its principal office for hearing the petition, ~~and~~
9 ~~shall make an order for the publication of the substance thereof and the time~~
10 ~~and place of hearing two weeks successively in a newspaper of general~~
11 ~~circulation in the county to be served by the petitioner, the last publication to~~
12 ~~be at least seven days before the day appointed for the hearing. At least~~
13 12 days before this hearing, notice of the hearing shall be published on the
14 Board's website and once in a newspaper of general circulation in the county
15 in which the hearing will occur. The website notice shall be maintained
16 through the date of the hearing. The newspaper notice shall include an Internet
17 address where more information regarding the petition may be viewed. The
18 Director for Public Advocacy shall represent the public at ~~such~~ the hearing. If
19 the Board finds that the operation of such business will promote the general
20 good of the State, it shall give such person, partnership, unincorporated
21 association, or previously incorporated association a certificate of public good
22 specifying the business and territory to be served by such petitioners. For good

1 cause, after opportunity for hearing, the Board may amend or revoke any
2 certificate awarded under the provisions of this section. If any such certificate
3 is revoked, the person, partnership, unincorporated association, or previously
4 incorporated association shall no longer have authority to conduct any business
5 which is subject to the jurisdiction of the Board whether or not regulation
6 thereunder has been reduced or suspended, under section 226a or 227a of this
7 title.

8 * * *

9 * * * Enforcement * * *

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

11 § 2. DEPARTMENT POWERS

12 * * *

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

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

20 § 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

21 * * *

1 (h) In accordance with the process set forth in this subsection, the
2 Department may issue an administrative citation to a person the Department
3 believes violated section 246, 248, 248a, or 8010 of this title, any rule adopted
4 pursuant to those sections, or any certificate of public good issued pursuant to
5 those sections.

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) If the Board has not opened a proceeding pursuant to subdivision
18 (2)(D) of this subsection, the Department may issue a final administrative
19 citation to the person. Within 30 days of receipt of a final administrative
20 citation, the person shall respond in one of the following ways:

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

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

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

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

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

21 (6) If a person agrees to undertake the remedial action set forth in a final
22 administrative citation, failure to undertake the action or comply with a

1 compliance plan approved by the Department shall constitute a separate
2 violation.

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

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

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

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

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

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

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

15 (c) Members of the ~~Board~~ Commission other than the Chair shall be
16 appointed in accordance with this subsection. Whenever a vacancy occurs,
17 public announcement of the vacancy shall be made. The Governor shall
18 submit at least five names of potential nominees to the Judicial Nominating
19 Board for review. The Judicial Nominating Board shall review the candidates
20 in respect to judicial criteria and standards only and shall recommend to the
21 Governor those candidates the Board considers qualified. The Governor shall

1 make the appointment from the list of qualified candidates. The appointment
2 shall be subject to the consent of the Senate.

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

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

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

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

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

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

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

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

10 Sec. 12. REVISION AUTHORITY

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

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

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

19 Sec. 13. RULES; NAME CHANGE

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

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

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

7 Sec. 14. PLAN; CITIZENS' ACCESS TO PSB HEARINGS FROM
8 REMOTE LOCATIONS; SPENDING AUTHORITY

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

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

- 1 (1) assessment of cost-effective interactive video technologies;
2 (2) identification of at least five locations across Vermont that are
3 willing and able to host the access described in subsection (a) of this section;
4 (3) the estimated capital costs of providing such access; and
5 (4) the estimated operating costs for hosting and connecting.
6 (c) For the purpose of this section, the Department is authorized to spend
7 \$10,000.00 from its approved budget for fiscal year 2018.

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

9 Sec. 15. REPORT; IMPLEMENTATION OF WORKING GROUP

10 RECOMMENDATIONS

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

18 * * * Effective Dates * * *

19 Sec.16. EFFECTIVE DATES

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

22

1 (Committee vote: _____)

2

3

Senator _____

4

FOR THE COMMITTEE