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H.84

Introduced by Representatives Sibia of Dover, Gannon of Wilmington,
Jickling of Randolph, and Pajala of Londonderry

Referred to Committee on

Date:

Subject: Public Service; telecommunications siting; Act 250;

Statement of purpose of bill as introduced: This bill proposes to remove
Act 250 jurisdiction over telecommunications facilities and grant permanent
jurisdiction to the Public Utility Commission. It broadens the scope of de
minimis modifications and shortens the review period for applications under
30 V.S.A. § 248a.

An act relating to the siting of telecommunications facilities

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

Sec. 1. 10 V.S.A. § 6001(3) is amended to read:

(3)(A) “Development” means each of the following:

* * *

(ix) Any support structure proposed for construction, which is
primarily for ~~communication~~ or broadcast purposes and which will extend
vertically 20 feet or more above the highest point of an attached existing structure
or 50 feet or more above ground level in the case of a proposed new support

1 structure, ~~in order to transmit or receive communication signals for commercial,~~
2 ~~industrial, municipal, county, or State purposes,~~ independently of the acreage
3 involved.

4 * * *

5 Sec. 2. 10 V.S.A. § 6001(3)(D) is amended to read:

6 (D) The word “development” does not include:

7 * * *

8 (ii) The construction of improvements for an electric generation or
9 transmission facility that requires a certificate of public good under 30 V.S.A.
10 § 248, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a
11 telecommunications facility ~~issued~~ that requires a certificate of public good
12 under 30 V.S.A. § 248a.

13 * * *

14 Sec. 3. 10 V.S.A. § 6001(26) is amended to read:

15 (26) ~~“Telecommunications facility” means a support structure which is~~
16 ~~primarily for communication or broadcast purposes and which will extend~~
17 ~~vertically 20 feet, or more, above the highest point of an attached existing~~
18 ~~structure or 50 feet or more above ground level in the case of a proposed new~~
19 ~~support structure, in order to transmit or receive communication signals for~~
20 ~~commercial, industrial, municipal, county, or state purposes. [Repealed.]~~

1 Sec. 4. 10 V.S.A. § 6030 is amended to read:

2 § 6030. ~~MAP OF WIRELESS TELECOMMUNICATIONS FACILITIES~~

3 ~~The Board shall maintain a map that shows the location of all wireless~~
4 ~~telecommunications facilities in the State. [Repealed.]~~

5 Sec. 5. 10 V.S.A. § 6081 is amended to read:

6 § 6081. PERMITS REQUIRED; EXEMPTIONS

7 * * *

8 (b) Subsection (a) of this section shall not apply to a subdivision exempt
9 under the regulations of the Department of Health in effect on January 21,
10 1970 or any subdivision ~~which~~ that has a permit issued prior to June 1, 1970
11 under the Board of Health regulations, or has pending a bona fide application
12 for a permit under the regulations of the Board of Health on June 1, 1970, with
13 respect to plats on file as of June 1, 1970 provided such permit is granted prior
14 to August 1, 1970. Subsection (a) of this section shall not apply to
15 development ~~which~~ that is not also a subdivision, ~~which~~ that has been
16 commenced prior to June 1, 1970, if the construction will be completed by
17 March 1, 1971. Subsection (a) of this section shall not apply to a State
18 highway on which a hearing pursuant to 19 V.S.A. § 222 has been held prior to
19 June 1, 1970. ~~Subsection (a) of this section shall not apply to any~~
20 ~~telecommunications facility in existence prior to July 1, 1997, unless that~~
21 ~~facility is a "development" as defined in subdivision 6001(3) of this title.~~

1 Subsection (a) of this section shall apply to any substantial change in such
2 excepted subdivision or development.

3 * * *

4 (m) ~~No permit is required for the replacement of a preexisting~~
5 ~~telecommunications facility, in existence prior to July 1, 1997, provided the~~
6 ~~facility is not a development as defined in subdivision 6001(3) of this title,~~
7 ~~unless the replacement would constitute a substantial change to the~~
8 ~~telecommunications facility being replaced, or to improvements ancillary to~~
9 ~~the telecommunications facility, or both. No permit is required for repair or~~
10 ~~routine maintenance of a preexisting telecommunications facility or of those~~
11 ~~ancillary improvements associated with the telecommunications facility.~~

12 [Repealed.]

13 (n) ~~No permit amendment is required for the replacement of a permitted~~
14 ~~telecommunications facility unless the replacement would constitute a material~~
15 ~~or substantial change to the permitted telecommunications facility to be~~
16 ~~replaced, or to improvements ancillary to the telecommunications facility, or~~
17 ~~both. No permit is required for repair or routine maintenance of a permitted~~
18 ~~telecommunications facility or of those ancillary improvements associated with~~
19 ~~the telecommunications facility. [Repealed.]~~

20 * * *

1 Sec. 6. 30 V.S.A. § 248a is amended to read:

2 § 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

3 FACILITIES

4 * * *

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

6 * * *

7 (2) “De minimis modification” means the addition, modification, or
8 replacement of telecommunications equipment, antennas, or ancillary
9 improvements on a telecommunications facility or existing support structure,
10 whether or not the structure was constructed as a telecommunications facility,
11 or the reconstruction of such a facility or support structure, provided:

12 (A) the height of the facility or support structure, excluding equipment,
13 antennas, or ancillary improvements, is not increased by more than 10 percent
14 or by the height of one additional antenna array with separation from the
15 nearest existing antenna not to exceed 20 feet, whichever is greater;

16 (B) the height and width of the facility or support structure, excluding
17 equipment, antennas, or ancillary improvements, are is not increased; provided,
18 however, that placement of ancillary improvements at or near the base of the
19 support structure, or an increase in the size of the existing impervious surface
20 at the facility, shall not be considered an increase in the width of the facility or
21 support structure;

1 ~~(B)~~(C) the total amount of impervious surface associated with the
2 facility or support structure, including access roads, ~~surrounding the facility or~~
3 ~~support structure~~ and ancillary improvements at or near the base of the support
4 structure, is not increased by more than 300 square feet;

5 ~~(C)~~(D) the addition, modification, or replacement of an antenna or any
6 other equipment on a ~~facility or~~ support structure does not extend vertically
7 more than ~~40~~ 20 feet above the facility or support structure and does not extend
8 horizontally more than ~~40~~ 20 feet from the facility or support structure; and

9 ~~(D)~~(E) the additional equipment, antennas, or ancillary improvements
10 on the support structure, excluding cabling, does not increase the aggregate
11 surface area of the faces of the equipment, antennas, or ancillary improvements
12 on the support structure by more than ~~75~~ 100 square feet.

13 * * *

14 (4)(A) “Limited size and scope” means:

15 (i) a new telecommunications facility support structure, including
16 any ancillary improvements, that does not exceed 140 feet in height; or

17 * * *

18 (f) Review period. If the Public Utility Commission determines that an
19 application does not raise a significant issue, the Commission shall issue a final
20 determination on an application filed pursuant to this section within 60 days of
21 its filing or, if the original filing did not substantially comply with the Public

1 Utility Commission's rules, within 60 days of the date on which the Clerk of
2 the Commission notifies the applicant that the filing is complete. If the
3 Commission rules that an application raises a significant issue, it shall issue a
4 final determination on an application filed pursuant to this section within ~~180~~
5 90 days of its filing or, if the original filing did not substantially comply with
6 the Public Utility Commission's rules, within ~~180~~ 90 days of the date on which
7 the Clerk of the Commission notifies the applicant that the filing is complete.

8 * * *

9 (i) ~~Sunset of Commission authority. Effective on July 1, 2020, no new~~
10 ~~applications for certificates of public good under this section may be~~
11 ~~considered by the Commission. [Repealed.]~~

12 * * *

13 (k) De minimis modifications. An applicant intending to make a de
14 minimis modification of a telecommunications facility shall provide written
15 notice of its intent, including a description of the de minimis modification, its
16 plans for the de minimis modification, and its certification that the project
17 constitutes a de minimis modification under this section, to the following: the
18 landowner of record of the property on which the facility is located; the
19 legislative body of the municipality in which the applicant proposes to
20 undertake such limited modifications to the facility; and the Commissioner of
21 Public Service and his or her Director for Public Advocacy. Unless an

1 objection to the classification of a proposed project as a de minimis
2 modification is filed with the Commission within 30 days of this notice, a
3 certificate of public good shall be issued no later than 60 days following the
4 date the de minimis modification application is deemed complete by the
5 Commission. The application shall be deemed approved on the first day
6 immediately following expiration of the 60-day period. Objections may be
7 filed only by persons entitled to notice of this proposed project pursuant to this
8 subsection. If an objection of the classification of the proposed project as a de
9 minimis modification is timely filed with the Commission, the Commission
10 may determine whether the intended project meets the definition of de minimis
11 modification established in subdivision (b)(2) of this section.

12 * * *

13 Sec. 7. EFFECTIVE DATE

14 This act shall take effect on July 1, 2019.