

S.301

Introduced by Senators Brock, Benning, Collamore, Cummings and McNeil

Referred to Committee on Finance

Date: January 16, 2020

Subject: Public service; siting; telecommunications facilities

Statement of purpose of bill as introduced: This bill proposes to repeal the sunset on the certificate of public good process for telecommunications facilities under 30 V.S.A. § 248a.

~~An act relating to repealing the sunset on 30 V.S.A. § 248a.~~

*An act relating to miscellaneous telecommunications changes*

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

~~Sec. 1. FINDINGS~~

~~The General Assembly finds:~~

~~(1) The Public Utility Commission was granted jurisdiction over the siting of telecommunications facilities in 2007 with the enactment of 30 V.S.A. § 248a.~~

~~(2) 30 V.S.A. § 248a created the certificate of public good process that allows applicants for the siting of telecommunications facilities to apply for one permit, a certificate of public good, instead of multiple permits.~~

~~(3) 30 V.S.A. § 248a was enacted with a sunset date of July 1, 2010 and that date has been amended four times. Repealing the sunset date for the~~

1 ~~ion would make the certificate of public good process permanent and provide~~  
2 ~~certainty to applicants.~~

3 Sec. 2. 30 V.S.A. § 248a(i) is amended to read:

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 [Repealed.]~~

7 Sec. 3. EFFECTIVE DATE

8 ~~This act shall take effect on passage.~~

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

~~(i) *Sunset of Commission authority. Effective on July 1, 2020 2025, no new applications for certificates of public good under this section may be considered by the Commission.*~~

~~Sec. 2. REPORT ON CRITERIA~~

~~*On or before February 1, 2021, the Public Utility Commission shall review the criteria used in awarding a certificate of public good under 30 V.S.A. § 248a and report to the Senate Committee on Finance and the House Committee on Energy and Technology any changes that should be made in light of the recent developments in telecommunications technology.*~~

~~Sec. 3. 2019 Acts and Resolves No. 79. Sec. 25 is amended to read:~~

~~Sec. 25. OUTAGES AFFECTING E-911 SERVICE; REPORTING;  
RULE; E-911 BOARD~~

~~*The E-911 Board shall adopt a rule establishing protocols for the E-911 Board to obtain or be apprised of, in a timely manner, system outages applicable to wireless service providers, providers of facilities-based, fixed voice service that is not line-powered and to electric companies for the purpose of enabling the E-911 Board to assess 911 service availability during such outages. An outage for purposes of this section includes any loss of E-911 calling capacity, whether caused by lack of function of the telecommunications subscriber's backup power equipment, lack of function within a telecommunications provider's system network failure, or an outage in the electric power system. For purposes of this section, a network failure*~~

~~des the failure of backup power equipment that is owned and controlled solely by the telecommunications provider. The rule shall incorporate the threshold criteria established under 47 C.F.R. Part 4, § 4.9(e) as it pertains to outage reporting requirements applicable to wireless service providers. The E-911 Board shall file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before February 1, 2020 September 30, 2020.~~

~~Sec. 4. OUTAGE REPORTING; LEGISLATIVE INTENT;  
RECOMMENDATION~~

~~The General Assembly recognizes that, with respect to outage reporting requirements applicable to wireless service providers, the federal threshold criteria established under 47 C.F.R. Part 4, § 4.9(e) may not provide data at a sufficient level of granularity to adequately inform the E-911 Board of outages that raise significant public safety concerns for Vermonters. However, the General Assembly also recognizes that more particularized reporting requirements will impose additional burdens on Vermont wireless service providers. Accordingly, to the extent a wireless service provider has the capability of providing more granular outage data than is required under applicable FCC rules, such provider may voluntarily report that data to the E-911 Board. The E-911 Board shall review all outage data reported by wireless service providers and make a recommendation to the General Assembly on or before January 1, 2021 as to whether the threshold criteria should be adjusted in any manner to promote the public's health, safety, and security.~~

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

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

~~§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS  
FACILITIES~~

~~\* \* \*~~

~~(i) Sunset of Commission authority. Effective on July 1, 2020 2023, no new applications for certificates of public good under this section may be considered by the Commission.~~

~~\* \* \*~~

~~(q)(1) Emergency waiver. Notwithstanding any other provisions of this section, when the Governor has declared a state of emergency pursuant to 20 V.S.A. § 9 and for 180 days after the declared state of emergency ends, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of a~~

temporary telecommunications facility necessary for maintaining or improving access to telecommunications services. Waivers issued under this subsection shall be valid for a period not to exceed the duration of the declared emergency plus 180 days.

(2) A person seeking a waiver under this subsection shall file a petition with the Commission and shall provide copies to the Department of Public Service and the Agency of Natural Resources. The Commission shall require that additional notice be provided to those listed in subsection (e) of this section and any affected communications union districts. Upon receipt of the petition, the Commission shall conduct an expedited preliminary hearing.

(3) An order granting a waiver may include terms, conditions, and safeguards to mitigate significant adverse impacts, including the posting of a bond or other security, as the Commission deems proper, based on the scope and duration of the requested waiver.

(4) A waiver shall be granted only when the Commission finds that:

(A) good cause exists due to an emergency situation;

(B) the waiver is necessary to maintain or provide access to wireless telecommunications services;

(C) procedures will be followed to minimize significant adverse impacts under the criteria specified in subdivision (c)(1) of this section; and

(D) taking into account any terms, conditions, and safeguards that the Commission may require, the waiver will promote the general good of the State.

(5) Upon the expiration of a waiver, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation, or alteration of the facilities subject to the waiver, as it finds will best promote the general good of the State.

## **Sec. 2. REPORT ON CRITERIA**

On or before February 1, 2021, the Public Utility Commission shall review the criteria used in awarding a certificate of public good under 30 V.S.A. § 248a and report to the Senate Committee on Finance and the House Committee on Energy and Technology any changes that should be made in light of the recent developments in telecommunications technology.

*Sec. 3. EXTENSION OF SECTION 248a NOTICE PERIOD DURING  
COVID-19 STATE OF EMERGENCY*

*Notwithstanding any contrary provision of law, during the declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, when an applicant provides notice that it will be filing an application for a certificate of public good under 30 V.S.A. § 248a, a municipal legislative body or a planning commission may request, and the Public Utility Commission shall grant, a 30 day extension to the original notice period for a total 90 day notice period. This extended notice period shall be available on any notice of application for a certificate of public good pursuant to 30 V.S.A. § 248a filed during the declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, except those for de minimis modifications.*

*Sec. 4. 2019 Acts and Resolves No. 79, Sec. 25 is amended to read:*

*Sec. 25. OUTAGES AFFECTING E-911 SERVICE; REPORTING;  
RULE; E-911 BOARD*

*(a) ~~The~~ Contingent upon the event described in subsection (b) of this section, the E-911 Board shall adopt a rule establishing protocols for the E-911 Board to obtain information about or be apprised of, in a timely manner, system outages applicable to wireless service providers, to providers of facilities-based, fixed voice service that is not line-powered, and to electric companies for the purpose of enabling the E-911 Board to assess 911 service availability during such outages. An outage for purposes of this section includes any loss of E-911 calling capacity, ~~whether caused by lack of function of the telecommunications subscriber's backup power equipment, lack of function within a telecommunications provider's system~~ network failure, or an outage in the electric power system. ~~The E-911 Board shall file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before February 1, 2020.~~*

*(b) When one or more states with a combined population of 20,000,000 residents adopts a rule or enacts a law that applies a lower reporting threshold than is required under 47 C.F.R. Part 4, § 4.9(e)(1)(ii) as it pertains to wireless service providers, the E-911 Board shall initiate the rulemaking required under subsection (a) of this section and shall incorporate the lowest above-referenced reporting threshold applicable to wireless service providers into its proposed rule, which shall be filed with the Secretary of State pursuant to 3 V.S.A. § 838 not more than 60 days after the rulemaking has commenced. Subsequent reporting thresholds adopted or enacted outside Vermont shall not trigger a new rulemaking under this section.*

*Sec. 5. EFFECTIVE DATE*

*This act shall take effect on passage.*