

H.360 – An Act Relating to Accelerated Community Broadband Deployment

House vs. Senate Comparison

Section-by-Section Summary

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As Passed by House	Senate Proposal of Amendment
Findings and Intent (Sec. 1)	<p>Same, except <u>adds</u> one finding (Sec. 1)</p> <ul style="list-style-type: none"> • (18) In addition to broadband access, it is imperative for the State to address the critical issues of broadband affordability and adoption
<p>Vermont Community Broadband Authority (Sec. 2)</p> <ul style="list-style-type: none"> • § 8081. Policy, Findings, and Purpose <ul style="list-style-type: none"> ○ Policy is to support and accelerate community efforts that advance universal access to reliable, high-quality, affordable broadband ○ Finding on federal programs falling short; emergence of CUDs; need for statewide leadership and support ○ Purpose is to establish a new entity, the Vermont Community Broadband Authority, to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions 	<p>Vermont Community Broadband <u>Board</u> (Sec. 2)</p> <ul style="list-style-type: none"> • § 8081. Purpose <ul style="list-style-type: none"> ○ <u>Keeps House purpose and adds</u>: “In recognition of the historic level of broadband funding currently available to the State and the critical need for broadband access and adoption, it is the purpose of this chapter to establish the Vermont Community Broadband Fund to support policies and programs designed to accelerate community efforts that advance the State’s goal of achieving universal access to reliable, high-quality, affordable, <u>fixed</u> broadband”

- § 8082. Definitions

- § 8083. Establishment and Organization

- **Vermont Community Broadband Authority**

- Public instrumentality/essential government functions
 - 7 members
 - Commissioner of Public Service
 - Secretary of Commerce and Community Development
 - 2 members selected by VCUDA
 - 1 member appointed by Governor (not State employee)

- § 8082. Definitions (*Senate adds following definitions*)

- “Community” – a contiguous geographic area of the State, without regard to municipal boundaries or size of geographic area, that contains unserved and underserved locations
 - “Eligible provider” – a CUD or “small communications carrier”
 - “Location” – an E-911 business or residential address connected to the power grid
 - “Served” – access to at least 25/3 Mbps
 - “Unserved” – access to less than 4/1 Mbps (*same*)
 - “Underserved” – access to between 4/1 Mbps and less than 25/3 Mbps (*same*)
 - “Small communications carrier” – a small telecommunications carrier (i.e., a small telephone company) or an ISP that operates in not more than 3 counties
 - “Universal service plan” – a plan for providing each unserved and underserved location in a community, CUD, or service territory of a small telecommunications carrier access to at least 100/100 Mbps broadband

- § 8084. Management of the Fund

- **Vermont Community Broadband Board**

- Within Department of Public Service
 - 3 members
 - Governor appointee - not State employee or officer; expertise in finance; serves as Chair
 - Speaker appointee - not legislator; expertise in the area of broadband deployment in rural, high-cost areas

- 1 member appointed by Speaker (not legislator)
- 1 member appointed by Senate C/Committees (not legislator)
- **Qualifications**
 - Appointing authorities coordinate to ensure at least one of the public members has expertise in finance
 - Communications technology
 - Communications law and policy
 - Broadband deployment in rural, high-cost areas
 - Electric utility law and policy
 - *Not* an owner/employee/member of an ISP or CUD
- 3-year terms, staggered public members (1/2/2)
- Chair and vice chair elected from among public members
- Authority's powers vested in Board of Directors
- Per diem \$50/day (and reasonable expenses)

- **Executive Director**
 - Hired by Authority
 - Serves as chief administrative officer

- Senate C/Committees – not legislator; expertise in communications and electric utility law and policy
- **Qualifications**
 - Expertise addressed by appointing authorities (*no reference to communications technology, per se*)
 - Same conflict-of-interest provision

- 3-year terms, staggered (4/3/2)
- May elect vice chair and other officers
- May be removed only for cause
- Board has approval authority with respect to budget development, program design, grant awards and all other funding allocations under this chapter
- Per diem \$250/day (and reasonable expenses)
- All meetings subject to OML (*explicit*)
- All records subject to PRA, includes confidential business information exemption

- **Executive Director**
 - Appointed by Gov, with advice and consent of Senate; employee of DPS; overseen and managed by Board; chief admin. officer

- Duties
 - Attend all meetings
 - Approve accounts
 - Make grant/loan recommendations
 - Annual report to Authority
 - General duties
- May retain or employ technical experts and other employees
 - Shall use AGO for legal services as well as contract for legal services, as needed
 - NBRC grant redesignation/position overseen by Authority (*see Sec. 23(d)*)

- § 8084. **Vermont Community Broadband Fund**
 - Special fund permitting unexpended balances to remain in the Fund to implement and effectuate policies and purposes of chapter
 - 0.4% of VUSF revenue goes into Fund
 - Pays operational expenses of the Authority, including a Rural Broadband Technical Assistance Specialist
 - Remaining funds used to support CUDs as authorized by chapter

- Duties
 - Same but adds in lieu of “attend all meetings,” work with the Board in developing and implementing the programs established by this chapter
- May retain or employ technical experts and other employees (*same*)
 - Oversees and manages Rural Broadband Specialist
 - (*Commissioner hires attorney, Sec. 5*)
 - Authorized to hire up to 3 additional classified FTEs
 - NBRC grant redesignation/position overseen by Board

- § 8083. **Vermont Community Broadband Fund**
 - Similar except applies 32 V.S.A. § 5 to non-legislative funding instead of Board approval
 - Does not receive 0.4% of VUSF revenue
 - Authorized expenditures:
 - Preconstruction Grants
 - Construction Grants
 - Communications workforce training and development, in consultation with Commissioner of Labor, to extent such funds are not available from other funding sources
 - Administrative expenses for grant recipients, determined by Board, subject to federal law and guidance

- § 8085. **General Powers and Duties of the Authority**

- Coordinate and facilitate community broadband efforts
- Provide resources to CUDs (technical assistance, grants, loans)
- Facilitate partnerships between CUDs and communications providers and electric utilities
- Advocate at federal level
- Receive and accept funds, subject to 32 V.S.A. § 5
- When authorized, apply for grants/loans/permits, etc. on behalf of or jointly with a CUD or CUDs
- Consult with VEDA and the VT Municipal Bond Bank regarding the financing of community broadband projects
- Consult with other State entities on tax/fee policy
- Identify and publish funding opportunities and assist CUDs with grant/loan applications
- Assist CUDs with fiber route identification and obtaining pole surveys and negotiating pole attachments
- Provide input to the DPS on State Telecom Plan
- Do any and all things necessary and convenient

- Up to \$1.5M for operational expenses of Board and Department to extent Department's expenses are not reimbursable under its annual budget funded by gross receipts tax

- § 8084(a)(6) – **General Powers of the Board**

- Coordinate (*same*)
- Provide resources (*same, except limited to admin and technical support*)
- Grants for preconstruction and construction costs
- Facilitate partnerships (*essentially same*)
- No provision for advocating at federal level
- No provision for receiving funds (*covered under Fund*)
- Consult with VEDA and Bond Bank (*same*)
- No provision for consulting other State entities on taxes/fees
- Identify and publish funding opportunities (*assisting CUDS with grant/loan applications covered in § 8087(b)5*)
- (*Assisting CUDs with fiber route identification covered in § 8087(b)4*)
- Provide input to DPS on State Telecom Plan
- Do any and all things necessary and convenient
- Develop policies and legislative recommendations on communications workforce
- Develop policies and legislative recommendations on broadband affordability

- § 8086. **Allocation System; Funding Priorities**

- Priority to projects that:
 - Provide service to unserved underserved locations as part of a plan that achieves universal broadband coverage in a community or CUD
 - Support service capable of at least 100 Mbps symmetrical
 - Leverage federal or public-private partnership resources
 - Support low-income or disadvantaged communities
 - Promote geographic diversity of funding allocations
 - Provide consumers with affordable service options
 - Include public broadband assets that can be shared by multiple service providers and that can support a variety of public purposes

- § 8087. **Community Broadband Preconstruction Grant Program**

- Grants for CUDs for preconstruction costs related to broadband projects
- Eligible costs include – feasibility studies, business planning, pole data surveys, engineering and design, and make-ready
- Grants are scalable
- DPS may allocate up to \$9M on or before September 30, 2021

- § 8088. **Construction Grant and Subordinated Debt Program**

- Grants and loans for CUDs to support broadband projects
- Consistent with funding priorities in § 8086
- May supplement financing available under VEDA’s Broadband Expansion Loan Program
- Grant and lending decisions made by Authority

- No standalone provision on funding priorities, however:

- Requirement of a “universal service plan” is embedded in the preconstruction and construction grant programs
- All other House priorities are included under the construction grant program, which also includes required grant terms and conditions (*modification to the leverage provision; see below § 8086*)

- § 8085. **Broadband Preconstruction Grant Program**

- Grants for CUDs for preconstruction costs related to broadband projects that are part of a universal service plan
- Same provision on eligible costs
- Same provision on scalable grants
- No specific authorization on interim disbursements here (*but similar provision in Sec. 6*)

- § 8086. **Broadband Construction Grant Program**

- No loans
- Grants for eligible providers for broadband projects that are part of a universal service plan

- Loans serviced by VEDA

- **Funding priorities** same as House § 8086, except:
 - Regarding leveraging provision, limited to private resources/assets, includes high priority for partnerships between a CUD and a DU
 - Demonstrates project readiness
 - Complies with consumer protection and net neutrality standards
- **Policies and standard grant terms and conditions** established by Board that:
 - Reflect payment schedules that ensure maximum accountability
 - Adopt an industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability
 - Establish standards for recouping grant funds and transfer ownership of grant-funded network assets to the State if a grantee materially fails to comply with grant terms and conditions
 - Prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board
 - Ensure project completion with a reasonable period of time and consistent with federal law and guidance
 - Comply with Administrative Bulletins 3.5 and 5
- Before awarding grant, Board must determine applicant has produced a **viable business plan** for proposed project, which takes into consideration network engineering and design, labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and other relevant capital and operational expenses

- Before awarding grant to **provider who is not a CUD**, Board shall make a reasonable effort to determine that the carrier's universal service plan does not conflict with or undermine the deployment plans of an existing CUD
- Board may allow projects in a **geographic area that is currently served**, provided:
 - The project is the most cost-effective method for providing broadband to nearby unserved and underserved locations; and
 - Before awarding grant, Board makes a reasonable effort to distinguish served/unserved/underserved locations in the geographic area, including recognition and consideration of known or probable service extensions or upgrades
- Board may award a grant to any ISP to **projects not part of a universal service plan** (such as a line extension or upgrade) if it finds that the project will provide unserved and underserved locations at least 25/3 Mbps on or before December 31, 2021 and is in a geographic area that is not part of a CUD
- **Legislative intent** is to finance broadband projects that demonstrate an economically-sustainable business model that ultimately will be eligible for financing in the private or municipal bond market
- § 8087. **Centralized Resources for CUDs**
 - Board provides centralized resources/technical/admin support to CUDs for planning/developing/implementing broadband projects
 - Board shall:

- § 8089. **Annual Report**

- Authority annually reports to legislative committees
- Description of start-up CUD progress towards achieving long-term financial sustainability not dependent on public funding
- Progress towards meeting State goal (100 Mbps by end of year 2024)

- Develop standardized forms, contracts, network business and design models, and templates
- Assist with identifying and negotiating with potential partners, including MOUs or other legally-binding commitments for a project
- Apply for grants/loans/permits, etc., or enter into contractual arrangements for goods or services, on behalf of or jointly with a CUD or CUDs (*same as § 8085(a)(6)*)
- Assist with route identification and pole surveys and attachments (*same as § 8085(a)(9)*)
- Assist with grant and loan applications outside chapter
- Assist with obtaining access to fiber networks owned by the State or by an electric transmission or distribution utility, where appropriate

- § 8088. **Interagency Cooperation and Assistance**

- Other State entities assist and cooperate with Board
- Secretary of Admin establishes protocols
- Privileges and protections not waived

- § 8089. **Annual Report**

- Same except report also goes to SNRE
- Adds requirements for first report, due January 15, 2022
 - Recommendations for new policies and programs
 - Recommendations concerning increased access to fiber networks owned by State or an electric transmission or distribution utility
 - Recommendations on additional Fund expenditures, including:
 - D/Libraries FiberConnect Network

<ul style="list-style-type: none"> • § 8089a. Sunset; Transfer Plan <ul style="list-style-type: none"> ○ Authority sunsets on July 1, 2029 ○ Final annual report to General Assembly shall include a transfer plan and may include recommendation for continued existence of VCBA 	<ul style="list-style-type: none"> • Wi-Fi installations at affordable housing owned by nonprofits and housing authorities for purpose of providing free broadband to residents • Digital inclusion efforts, such as subsidized customer equipment installations and service, grants for long-term affordability planning, outreach and digital literacy training • Co-worker spaces • Communications workforce development initiatives • Any other programs or initiatives <ul style="list-style-type: none"> • § 8089a. Sunset; Transfer Plan <ul style="list-style-type: none"> ○ Essentially same (<i>applies to <u>Fund and Board</u></i>)
<p>Organizational Meeting; Space Allocation (Sec. 3)</p> <ul style="list-style-type: none"> • Within 60 days, VCBA holds its initial organizational meeting • DPS provides administrative support for 180 days, from VCB Fund • Within 60 days BGS allocates space for VCBA 	<p>Same, except (Sec. 3):</p> <ul style="list-style-type: none"> • Within 60 days, Board holds initial organization meeting <u>AND Governor appoints Executive Director</u> • No provision for DPS administrative support; however, already covered in Sec. 2; Fund administered by DPS; authorized to expend money and make decisions to implement chapter and administer Fund, except those decisions committed to the Board; shall ensure an open process • Secs. 2 and 5 - admin expenses covered by Fund

Repeal of Broadband Innovation Grant Program (effective January 1, 2022) (Sec. 4)	Same (Sec. 4)
Position Transfer (Sec. 4a) <ul style="list-style-type: none"> Rural Broadband Technical Assistance Specialist transferred from DPS to Authority upon hiring of Executive Director Remains a classified position 	Positions (Sec. 5) <ul style="list-style-type: none"> Essentially same provisions applicable to Rural Specialist Commissioner authorized to hire: <ul style="list-style-type: none"> 1 FTE (classified position) to provide admin support to Board 1 FTE (exempt position) attorney to provide legal services to Board and who shall be subject to oversight and management of Executive Director, upon his or her appointment Salaries and benefits reimbursed from Fund
Vermont Universal Service Charge (Secs. 5-6) <ul style="list-style-type: none"> Requires revenue from 0.4% (about \$950K annually) of the total 2.4% charge to go to the VCB Fund (for operational expenses of Authority, then remaining funds for programs) <i>(Existing law requires these funds go to DPS for Rural Broadband Technical Assistance Specialist (\$120K), then Connectivity Initiative)</i> 	Not included
<i>(See Sec. 2 above, § 8087)</i> <ul style="list-style-type: none"> DPS may allocate up to \$9M for <u>preconstruction</u> grants on or before September 30, 2021 	Interim Grants; Department of Public Service (Sec. 6) <ul style="list-style-type: none"> DPS authorized to allocate and disburse up to a total of <u>\$20M</u> (or up to \$25M if an additional \$5M is approved by JFC) Under the Broadband <u>Preconstruction</u> Grant Program and the Broadband <u>Construction</u> Grant Program

	<ul style="list-style-type: none"> On or before December 31, 2021 or until the Board is operational, whichever occurs first
<p>Transfer of DPS Fiber Assets to CUDs (Sec. 7)</p> <ul style="list-style-type: none"> On or before September 30, 2021, DPS must transfer ownership of its fiber assets to CUDs, along with related contractual arrangements CUD may choose not to accept fiber assets; assets remain with DPS unless transferred to a CUD subsequently 	<p>Same (Sec. 7)</p>
<p>Connectivity Initiative (existing broadband grant program administered by DPS) (Sec. 8)</p> <ul style="list-style-type: none"> Increases minimum speed requirement to 100 Mbps symmetrical Unserved – less than 4/1 Mbps Underserved – minimum of 4/1 Mbps, but less than 25/3 Mbps Priority for unserved then underserved locations <u>that are part of a plan to achieve universal broadband coverage in a community or communications union district</u> DPS identifies eligible locations by E-911 address rather than census block Eligible entities include CUDs and service providers working in conjunction with a CUD to provide universal broadband service in a community or CUD Funding considerations expanded to include the extent to which a proposal leverages federal or private funding opportunities Payment schedule reflects value of work completed DPS must maintain a public inventory of funded projects 	<p>Not Included</p>

<p>Connectivity Initiative (Sec. 9)</p> <ul style="list-style-type: none"> As of January 1, 2022, this grant program is administered by the Authority 	<p>Not Included</p>
<p>Telecommunications and Connectivity Advisory Board (Sec. 10)</p> <ul style="list-style-type: none"> As of January 1, 2022, this Board, which advises DPS, no longer reviews Connectivity Initiative proposals 	<p>Same (Sec. 8)</p>
<p>VEDA's Broadband Expansion Loan Program (Secs. 11-14)</p> <ul style="list-style-type: none"> Program established in 2019 Loans are for expanding broadband service to unserved and underserved Vermonters, <u>as part of a plan to achieve universal broadband coverage in a community or CUD</u> Intent clarified to specify goal of providing start-up loans until a borrower can refinance through, e.g., the municipal revenue bond market Eligible borrowers limited to: <ul style="list-style-type: none"> CUDs ISPs working in conjunction with a CUD as part of a plan ISPs working in conjunction with a municipality that was not part of a CUD prior to December 1, 2020 (limited to 1/6 of total allowable loans) Interest and principal deferral period may be extended for up to 3 years Revolving loan program <i>[Note: Secs. 13 and 14 were left as placeholders in the event that House decided to pursue an increase in VEDA's total lending</i> 	<p>Same (Secs. 9-10)</p>

<p><i>capacity. These sections would have transferred some of the dormant VTA's bonding authority to VEDA.]</i></p>	
<p>CUD Trade Secrets (Sec. 15)</p> <ul style="list-style-type: none"> • Provides clarification that CUD trade secrets or confidential business information are exempt from disclosure under the Public Records Act until project completion 	<p>Same, <u>except deletes</u> the second sentence, which provides “<u>Such records or information shall be available for public inspection after project completion.</u>” (Sec. 11)</p>
<p>Property Tax Exemption for Broadband Infrastructure (Secs. 16-19)</p> <ul style="list-style-type: none"> • Exemption from State and local taxation • Applies to broadband infrastructure that is: • <u>Owned by an electric distribution utility</u>, and <ul style="list-style-type: none"> ○ Leased to a CUD or to an ISP working in conjunction with a CUD ○ Primarily for the purpose of providing broadband service capable of 100 Mbps symmetrical ○ Constructed on or after July 1, 2021 • <u>Owned by an Internet service provider</u>, and <ul style="list-style-type: none"> ○ Capable of at least 100 Mbps symmetrical service ○ Part of a plan to achieve universal broadband coverage in a community or CUD with unserved and underserved locations: <ul style="list-style-type: none"> ▪ The plan is affirmed in writing by DPS ▪ Broadband service is being provided under a contractual arrangement between the ISP and either a CUD or a municipality that was not part of a CUD prior to December 1, 2020 ○ Constructed on or after July 1, 2021 	<p>Same, <u>except does not</u> extend property tax exemption to <u>broadband infrastructure owned by an ISP; i.e., subdivision (20)</u> (Secs. 12-15)</p>

<ul style="list-style-type: none"> • Statutory purpose of the exemptions is to lower the cost of broadband deployment in unserved and underserved areas of Vermont • Takes effect July 1, 2021 	
<p>Broadband Occupational Needs Survey (Sec. 20)</p> <ul style="list-style-type: none"> • Conducted by Commissioner of Labor • To determine workforce needs in communications sector • Facilitate worker recruitment and establish a talent pipeline to support goals of act • Report to legislative committees January 15, 2022 • Employers who do not participate in supplying information for the report will not be eligible for grant funding under this act 	<p>Same (Sec. 16)</p>
<p>Incumbent Training Program (Sec. 21)</p> <ul style="list-style-type: none"> • Established by VTC, in consultation with DOL • For current communications installers and technicians • Goal is to provide skills upgrade for existing employees • Supported by a FY 2022 Training Fund appropriation (up to \$40K). There is not a separate General Fund appropriation in this act 	<p>Same (Sec. 17)</p>
<p>Broadband Installer Apprenticeship Program (Sec. 22)</p> <ul style="list-style-type: none"> • Established by the Commissioner of Labor, working with broadband employers • Shall be a federally registered apprenticeship program • Program must meet one or more occupational needs related to installation and maintenance of broadband networks 	<p>Same (Sec. 18)</p>

<p>Not applicable</p>	<p>Utility Poles in Easements Across Private Property (Sec. 19)</p> <ul style="list-style-type: none"> • Utility easements shall include as an authorized utility use the installation of fiber for providing broadband service to the public • Serves the public good and facilitates the construction of broadband networks consistent with Act
<p>Appropriations; Grant Administration (Sec. 23)</p> <ul style="list-style-type: none"> • Commissioner of Finance and Management authorized to expend funds in anticipation of federal ARPA funds allocated to the State • In FY 2021, \$150M of ARPA funds appropriated as follows: <ul style="list-style-type: none"> ○ \$30M for the Community Broadband Preconstruction Grant Program ○ \$120M for the Construction Grant and Subordinated Debt Program • In FY 2021, \$100K of ARPA funds to the Department of Labor and allocated as follows: <ul style="list-style-type: none"> ○ \$3K for development of the apprenticeship program ○ \$90K for tuition and contracts with employers under the apprenticeship program ○ \$7K to cover the non-federally funded aspects of the occupational needs survey • In FY 2022, the VCBA is authorized to expend \$500K in anticipated receipts under 30 V.S.A. § 7523(b) (0.4 percent of the Vermont Universal Service Charge) to support its start-up costs • VCBA redesignated as administrator of \$1,000,000.00 grant award to the Department of Public Service by the Northern Border Regional Commission <ul style="list-style-type: none"> ○ Award supports CUDs 	<p>No Appropriation (but see H.439 – Senate Proposal of Amendment)</p> <ul style="list-style-type: none"> • Sec. G.500(a)(1) provides: <u>\$100,000,000.00</u> is appropriated in fiscal year 2022, from the ARPA State Fiscal Relief Fund consistent with H.360 in order to support and accelerate the State’s goal of achieving universal access to reliable, high-quality, affordable broadband. It is the intent of the General Assembly that an additional <u>\$50,000,000.00</u> be provided for statewide connectivity in fiscal year 2023 through fiscal year 2025 from this source or other State or federal funds that may become available • <u>No</u> advance receipts from VUSF (<i>not applicable</i>) • <u>No</u> specific appropriation for DOL survey or apprenticeship program, <u>but</u> funding for communications workforce development, generally, is authorized Fund expenditure (See Sec. 2) • Redesignation of NBRC grant covered in Sec. 2

<ul style="list-style-type: none"> ○ Funds one position, which shall be overseen and managed by VCBA 	
<p>Legislative Priorities for Federal Funds (Sec. 24)</p> <ul style="list-style-type: none"> • Federal funds potentially available to the State in FYs 2021 and 2022 • High priority for providing support for community efforts consistent with VCBA policies, purposes, and programs 	<p>Same (Sec. 20)</p>
<p>Effective Dates (Sec. 25)</p> <ul style="list-style-type: none"> • Effective on passage except: <ul style="list-style-type: none"> ○ Property tax exemption effective July 1, 2021 ○ Repeal of BIG Program; VCBA administration of Connectivity Initiative; TCAB revised role, effective January 1, 2022 	<p>Same, except (Sec. 21):</p> <ul style="list-style-type: none"> • No reference to Connectivity Initiative administration (<i>not applicable</i>)