

H.360

An act relating to accelerated community broadband deployment

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

* * * Legislative Findings and Intent * * *

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds that:

(1) For over a decade, Vermont has pursued many approaches and strategies designed to ensure that every Vermonter has access to reliable, affordable, high-speed broadband.

(2) In 2018, through Acts and Resolves No. 169, the General Assembly found that broadband is essential for supporting economic and educational opportunities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement.

(3) We further found in Act No. 169 that the lack of a thriving competitive market in Vermont, particularly in isolated locations, disadvantages the ability of consumers and businesses to protect their interests sufficiently, and we recognized that the State may exercise its traditional role in protecting consumers.

(4) In 2019, through Acts and Resolves No. 79, the General Assembly found that despite the FCC's "light-touch" regulatory approach under Title I of the Communications Act of 1934, rather than "utility-style" regulation under

Title II, existing broadband providers are not providing adequate service to many rural areas where fewer potential customers reduce the profitability necessary to justify network expansion.

(5) Accordingly, reaching the last mile will require a grassroots approach founded on input from and support of local communities. Existing broadband grant programs do not offer the scale to solve this problem, and traditional capital sources typically shy away from businesses with limited revenue history and little equity or collateral.

(6) To this end, public investment in programs and personnel that provide local communities with much-needed resources and technical assistance is required.

(7) In 2020, the COVID-19 public health emergency served as an accelerant to the socioeconomic disparities between the connected and the unconnected in our State. Vermonters who cannot access or cannot afford broadband, many of whom are geographically isolated, face challenges with respect to distance learning; remote working; accessing telehealth services; and accessing government programs and services, including our institutions of democracy, such as the court system.

(8) Indeed, the ongoing public health emergency has highlighted the extent to which robust and resilient broadband networks are critical to our

economic future as a whole and provide a foundation for our educational, health care, public health and safety, and democratic institutions.

(9) Broadband infrastructure is critical infrastructure fundamental to accessing other critical services in sectors such as energy, public safety, government, healthcare, education, and commerce.

(10) The goal of universal broadband needs to be elevated as a top priority of the State to meet the economic, health, safety, educational, and social needs of Vermonters.

(11) While private broadband providers have brought broadband services to many households, businesses, and locations in Vermont, significant gaps remain.

(12) When existing broadband providers fail to achieve the goal of providing reliable, high-quality, universal broadband, it is imperative for the State to support and facilitate the construction of broadband infrastructure through financial and other means.

(13) Communications union districts (CUDs) were created by the State to coordinate and implement creative and innovative solutions in their respective territories, particularly where existing providers are not providing adequate service that meets the needs of their residents and businesses while ensuring public accountability.

(14) CUDs are thus positioned to be the unofficial “provider of last resort” for broadband and ensure public accountability for serving all Vermonters within their respective service territories. Yet CUDs have limited access to financial capital necessary for expansion of broadband to unserved and underserved areas of the State.

(15) All Vermont electric ratepayers are supporting the rollout of clean energy technologies, however not all ratepayers are able to access those technologies because they do not have access to adequate broadband. Equity in the energy sector requires universal broadband.

(16) The Department of Public Service simultaneously plays a regulatory role in the telecommunications market while also supporting the development of CUDs in an unregulated competitive broadband market.

(17) To ensure universal broadband in Vermont, there is a need for greater coordination of grassroots broadband solutions both among the CUDs themselves and also with respect to their other potential partners, such as electric distribution utilities, nonprofit organizations, the federal government, and private broadband providers.

(18) The Department of Public Service estimates that 82 percent of Vermont addresses (254,000 locations) lack access to 100 Mbps symmetrical service. The total cost to provide 100 Mbps symmetrical service to each of these locations is approximately \$1,000,000,000.00. This figure is based on

estimates in the Magellan Advisors' report commissioned by the Department,
and it includes estimates of both fixed and variable capital costs for fiber to the
premise infrastructure (Feasibility Study of Electric Companies Offering
Broadband in Vermont, dated December 31, 2019).

(b) Therefore, this act is intended to protect the public interest by:

- (1) ensuring broadband availability to all Vermonters and Vermont addresses;
- (2) ensuring public accountability for maintaining and upgrading critical broadband infrastructure;
- (3) increasing the reliability of the electric grid and ensuring equal access to clean energy services among all electric ratepayers;
- (4) protecting Vermonters' privacy and unrestricted access to the Internet;
- (5) alleviating the inherent tension the Department of Public Service currently experiences as a result of its dual roles as both regulator and community project developer;
- (6) directing public resources to the development of public broadband assets intended to provide universal access;
- (7) developing favorable taxing, financing, and regulatory mechanisms to support communications union districts; and

(8) providing time-limited leadership for coordinating the buildout of Vermont's communications union districts and their partners and for developing financing mechanisms to fully support that buildout through a newly created State entity, the Vermont Community Broadband Authority, designed specifically to effectuate these purposes.

* * * Vermont Community Broadband Authority * * *

Sec. 2. 30 V.S.A. chapter 91A is added to read:

CHAPTER 91A: VERMONT COMMUNITY BROADBAND AUTHORITY

§ 8081. POLICY, FINDINGS, AND PURPOSE

(a) Policy. It is the policy of the State of Vermont to support and accelerate community efforts that advance the State's goal of achieving universal access to reliable, high-quality, affordable broadband.

(b) Findings. Broadband is an essential service unavailable to many Vermonters. Federal policies that promote an unregulated, competitive broadband market have failed to deliver this essential service in many rural areas of the State. In addition, federal programs designed to subsidize the buildout of broadband in rural areas have fallen far short of delivering broadband to the most remote regions of our State, often as a result of inadequate federal broadband mapping data or insufficient accountability. As a consequence, many locations in Vermont continue to lack access to broadband, and a comprehensive, funded solution through existing federal and

State broadband programs is not available to address this critical need we face in Vermont. Despite these challenges, local communities have assembled in the form of communications union districts to address the digital divide collectively and creatively. These local projects, and ultimately all Vermonters, will benefit from the establishment of robust statewide leadership and support for community broadband solutions.

(c) Purpose. It is the purpose of this chapter to establish the Vermont Community Broadband Authority to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions.

§ 8082. DEFINITIONS

As used in this chapter:

(1) “Authority” means the Vermont Community Broadband Authority established by this chapter.

(2) “Board” means the Board of Directors of the Vermont Community Broadband Authority.

(3) “Connectivity Initiative” means the initiative established under section 7515b of this title.

(4) “Department” means the Department of Public Service.

(5) “Division” means the Division for Telecommunications and Connectivity within the Department of Public Service.

(6) “Fund” means the Vermont Community Broadband Fund established by this chapter.

(7) “Underserved” has the same meaning as in subsection 7515b(a) of this title.

(8) “Unserved” has the same meaning as in subsection 7515b(a) of this title.

§ 8083. ESTABLISHMENT AND ORGANIZATION

(a) The Vermont Community Broadband Authority is hereby created and established as a body corporate and politic and a public instrumentality of the State. The exercise by the Authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The Authority shall have a Board of Directors of seven members as follows:

(1) the Commissioner of Public Service or designee;

(2) the Secretary of Commerce and Community Development or designee;

(2) two public members selected by the Vermont Communications Union District Association;

(3) one public member appointed by the Governor, who shall not be an employee or officer of the State at the time of appointment;

(4) one public member appointed by the Speaker of the House, who shall not be a member of the General Assembly at the time of the appointment; and

(5) one public member appointed by the Senate Committee on Committees, who shall not be a member of the General Assembly at the time of the appointment.

(c) In making appointments of public members, the appointing authorities shall coordinate to ensure that at least one of the public members has expertise in the area of finance. In addition, the appointing authorities shall give consideration to persons with knowledge of communications technology; communications law and policy; broadband deployment in rural, high-cost areas; and electric utility law and policy. However, the public members may not be persons with a financial interest in or owners, employees, or members of a governing board of an Internet service provider or a communications union district. The conflict of interest provision in this subsection shall not be construed to disqualify a member who has ownership in a mutual fund, exchange traded fund, pension plan, or similar entity that owns shares in such enterprises as part of a broadly diversified portfolio.

(d) The public members shall serve terms of three years beginning on February 1 of the year of appointment. However, the public member first appointed by the Governor shall serve an initial term of one year, and the

public members first appointed by the Speaker of the House and the Committee on Committees shall serve initial terms of two years. A vacancy occurring among the public members shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed.

(e) The Authority's powers are vested in the Board of Directors. At its initial organizational meeting, and annually thereafter at the first meeting following February 1, the Board shall elect from among its public members a chair and vice chair. The Board may elect officers as it may determine. Meetings shall be held at the call of the Chair or at the request of three members. A majority of sitting members shall constitute a quorum, and action taken by the Board under the provisions of this chapter may be authorized by a majority of the members present and voting at any regular or special meeting.

(f) Members other than ex officio members shall be entitled to per diem compensation authorized under 32 V.S.A. § 1010 for each day spent in the performance of their duties, and each member shall be reimbursed from the Fund for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

(g) The Authority shall hire and employ an Executive Director who shall serve as the Authority's chief administrative officer and shall direct and supervise the Authority's administrative affairs and technical activities in

accordance with any rules and policies set forth by the Authority. In addition to any other duties, the Executive Director shall:

- (1) attend all meetings of the Authority, act as its secretary, and keep minutes of its proceedings;
- (2) approve all accounts of the Authority, including accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the Authority;
- (3) make recommendations to the Board of Directors for financial awards or assistance authorized by this chapter, including grants and loans;
- (4) make an annual report to the Authority documenting the actions of the Authority and such other reports as the Authority may request; and
- (5) perform such other duties as may be directed by the Authority in the carrying out of the purposes and provisions of this chapter.

(h) The Executive Director may retain or employ technical experts and other officers, agents, employees, and contractors as are necessary to give effect to the purposes of this chapter, including in the areas of finance, network planning, technical design, and grant writing, and may fix their qualifications, duties, and compensation. The Authority shall use the Office of the Attorney General for legal services as well as contract for legal services as needed.

§ 8084. VERMONT COMMUNITY BROADBAND FUND

(a) There is created a special fund in the State Treasury to be known as the “Vermont Community Broadband Fund.” The Fund shall be administered by the Authority and expenditures therefrom shall only be made to implement and effectuate the policies and purposes of this chapter. The Fund shall be composed of any monies from time to time appropriated to the Fund by the General Assembly or received from any other source, private or public, approved by the Authority. Unexpended balances and any earnings shall remain in the Fund for use in accord with the purposes of this chapter.

(b) The money transferred to the Fund pursuant to subsection 7523(b) of this title shall be used to fund the operational expenses of the Authority, including a Rural Broadband Technical Assistance Specialist, who shall report to the Executive Director and whose duties shall include providing outreach, technical assistance, and other support services to communications union districts.

(c) From the funds transferred to the Fund under subsection (b) of this section and used to pay the operational expenses of the Authority, any remaining funds shall be used to provide administrative, technical, and financial assistance to communications union districts as authorized in this chapter and, commencing on January 1, 2022, under the Connectivity Initiative established in section 7515b of this title.

§ 8085. GENERAL POWERS AND DUTIES; CONFIDENTIALITY

(a) The Authority shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including those general powers provided to a business corporation by Title 11A and those general powers provided to a nonprofit corporation by Title 11B and including, without limitation of the general powers under Titles 11A and 11B, the power to:

(1) coordinate and facilitate community broadband efforts and to provide resources to communications union districts in the form of administrative and technical support as well as through grants, loans, and other forms of financial assistance consistent with the purposes and provisions of this chapter and as deemed appropriate by the Board of Directors, with input by the Executive Director;

(2) assist communications union districts with development of business plans that reflect local preferences;

(3) facilitate partnerships between communications union districts and potential partners, including incumbent and competitive communications providers and electric transmission and distribution utilities;

(4) advocate at the federal level for programs and policies that will accelerate the deployment of universal broadband in rural Vermont that is capable of speeds of at least 100 Mbps symmetrical;

(5) receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5 and for the purpose of carrying out the purposes of this chapter;

(6) when authorized by one or more communications union districts, apply for grants, loans, permits, licenses, certificates, or approvals, or enter into contractual arrangements for goods or services on behalf of or jointly with a communications union district or districts;

(7) consult with the Vermont Economic Development Authority and the Vermont Municipal Bond Bank with regard to financing community broadband projects;

(8) consult with agencies and departments regarding the establishment or modification of taxes and fees applicable to broadband providers, including the establishment of criteria for the waiver of such taxes and fees when providers offer to furnish comparable value to the State to meet the public good;

(9) assist communications union districts with pursuing route identification for fiber-optic infrastructure and with obtaining pole surveys and negotiating pole attachments;

(10) identify and publish State, federal, nonprofit, and any other broadband funding opportunities and assist communications union districts with completing grant and loan applications;

(11) provide input to the Department of Public Service on the development of the State's Telecommunications Plan; and

(12) do any and all things necessary or convenient to effectuate the purposes and provisions of this chapter and to carry out its purposes and exercise the powers given and granted in this chapter.

(b) Any records or information produced or acquired by the Authority that are trade secrets or confidential business information shall be exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c)(9).

§ 8086. ALLOCATION SYSTEM; FUNDING PRIORITIES

In reviewing funding proposals and determining the allocation of funds pursuant to programs administered by the Authority, the Authority shall give priority to projects that:

(1) provide service to unserved and underserved locations as part of a plan that achieves universal broadband coverage in a community or communications union district;

(2) support broadband service that is capable of speeds of at least 100 Mbps symmetrical;

(3) leverage federal or public-private partnership resources;

(4) support low-income or disadvantaged communities;

(5) promote geographic diversity of fund allocations;

(6) provide consumers with affordable service options; and

(7) 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

(a) There is established the Community Broadband Preconstruction Grant Program to be administered by the Authority. The purpose of the Program is to provide grants to communications union districts for preconstruction costs related to broadband projects. As used in this section, “preconstruction costs” include expenses for feasibility studies, business planning, pole data surveys, engineering and design, and make-ready work associated with the construction of broadband networks, including consultant, legal, and administrative expenses, and any other costs deemed appropriate by the Authority.

(b) To ensure an equitable distribution of funds under this Program and to encourage collaborative work among communications union districts, grant awards shall be scalable and shall be commensurate with the size of a broadband project as determined by the project’s service area, road mileage, the number of unserved or underserved locations, or any other metric deemed appropriate by the Authority. In addition, the Authority may permit a grantee to use a percentage of a grant award for grant management and may develop standards for the disbursement of grant funds in a manner that both supports the efficient and timely use of funds and also ensures accountability.

(c) To ensure the expeditious allocation of funds prior to the organization of the Vermont Community Broadband Authority, the Department of Public Service is authorized to allocate up to \$9,000,000.00 under this Program on or before September 30, 2021.

§ 8088. CONSTRUCTION GRANT AND SUBORDINATED DEBT

PROGRAM

(a) The Authority shall establish the Construction Grant and Subordinated Debt Program for communications union districts to support projects that are consistent with the funding priorities established in section 8086 of this chapter, including by supplementing financing under the Vermont Economic Development Authority's Broadband Expansion Loan Program.

(b) Lending and grant decisions under this section shall be made by the Vermont Community Broadband Authority Board of Directors. The Vermont Economic Development Authority shall service all loans made pursuant to this section. In the event of default by a loan recipient, the Vermont Economic Development Authority shall consult with the Vermont Community Broadband Authority prior to commencing any collection action.

§ 8089. ANNUAL REPORT

Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Authority shall submit a report of its activities pursuant to this chapter for the preceding year to the Senate Committee on Finance, the House Committee on

Energy and Technology, and the Joint Information Technology Oversight Committee. The report shall include an operating and financial statement covering the Authority's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Authority. In addition, the report shall include a description of the progress each start-up communications union district has made in achieving long-term financial sustainability that is not dependent upon public funding, an update on its efforts to secure additional federal funds for broadband deployment, and progress made towards meeting the State's goal of ensuring every E-911 location has access to broadband capable of delivering a minimum of 100 Mbps symmetrical service as required in 30 V.S.A. § 202c(b)(10).

§ 8089a. SUNSET; TRANSFER PLAN

- (a) The Authority shall cease to exist on July 1, 2029.
- (b) As part of its annual report submitted on or before January 15, 2029, the Authority shall develop a plan for transferring its assets, liabilities, and legal and contractual obligations to another appropriate State entity. The Authority may include in its report a recommendation regarding the continued existence of the Authority beyond its statutory sunset date.

Sec. 3. ORGANIZATIONAL MEETING; SPACE ALLOCATION

- (a) Within 60 days following the effective date of this act, the Vermont Community Broadband Authority Board of Directors shall hold its initial

organizational meeting. The Department of Public Service shall provide administrative support to the Authority for 180 days commencing on the date of the Authority's initial organizational meeting, which shall be paid for from the Vermont Community Broadband Fund established in Sec. 2 of this act.

(b) Within 60 days following the effective date of this act, the Commissioner of Buildings and General Services shall allocate space for the Vermont Community Broadband Authority established in Sec. 2 of this act.

Sec. 4. REPEALS

The following provisions of law are repealed:

- (1) 2019 Acts and Resolves No. 79, Sec. 10 (Broadband Innovation Grant Program); and
- (2) 2020 Acts and Resolves No. 154, Sec. B1105.2 (amending the Broadband Innovation Grant Program).

Sec. 4a. POSITION TRANSFER

The position of Rural Broadband Technical Assistance Specialist shall be transferred from the Department of Public Service to the Vermont Community Broadband Authority upon the hiring of the Authority's Executive Director. The position shall remain in the classified service created in 3 V.S.A. chapter 13. The Authority shall reimburse the Department for any expenses associated with the position and incurred by the Department in fiscal year 2022 prior to the transfer required by this section.

* * * Universal Service Charge; Vermont Community

Broadband Fund * * *

Sec. 5. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before November 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

(b) ~~Of the money transferred to the Connectivity Fund pursuant to subsection 7523(b) of this title, up to \$120,000.00 shall be appropriated annually to the Department of Public Service to fund a Rural Broadband Technical Assistance Specialist whose duties shall include providing outreach, technical assistance, and other support services to communications union districts established pursuant to chapter 82 of this title and other units of government, nonprofit organizations, cooperatives, and for profit businesses for the purpose of expanding broadband service to unserved and underserved locations. Support services also may include providing business model templates for various approaches, including formation of or partnership with a~~

~~cooperative, a communications union district, a rural economic development infrastructure district, an electric utility, or a new or existing Internet service provider as operator of the network. Any remaining funds shall be used to support the Connectivity Initiative established under section 7515b of this title.~~

[Repealed.]

Sec. 6. 30 V.S.A. § 7523(b) is amended to read:

(b) Beginning on July 1, 2019, the rate of charge established under subsection (a) of this section shall be increased by four-tenths of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the ~~Connectivity Fund established under section 7516 of this title~~ Vermont Community Broadband Fund established under section 8084 of this title.

* * * Transfer of Fiber-optic Assets * * *

Sec. 7. TRANSFER OF FIBER-OPTIC ASSETS

On or before September 30, 2021, the Department of Public Service shall transfer ownership of its fiber-optic assets to the communications union district in which those assets are located. The transfer shall include the transfer of rights and obligations under any existing contracts or lease agreements with third parties regarding the maintenance or use of the fiber-optic assets. In addition, the transfer shall include a requirement that, upon the dissolution of a communications union district, any such fiber assets shall become the property

of the State to be managed by the Department of Public Service. A communications union district may refuse to accept the transfer of assets authorized by this section, in which case the assets shall remain the property of the Department of Public Service. Nothing in this section shall preclude the Department from transferring fiber-optic assets to a communications union district that initially declined to accept such assets prior to September 30, 2021.

* * * Connectivity Initiative; Department of Public Service * * *

Sec. 8. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service broadband that is capable of speeds of at least 25 Mbps download and 3 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time 100 Mbps symmetrical. Within this category of service locations, priority shall be given first to unserved and then to underserved locations that are part of a plan to achieve universal broadband coverage in a community or communications union district. As used in this section, “unserved” means a location having access to only satellite or dial-up Internet service that only has access to broadband capable of speeds of less than 4 Mbps download and 1

Mbps upload and “underserved” means a location ~~having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than that only has access to broadband capable of speeds of at least 4 Mbps download and 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload.~~ Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The Department of Public Service shall publish annually a list of ~~census blocks E-911 locations~~ eligible for funding based on the Department’s most recent broadband mapping data. The Department annually shall solicit proposals from ~~service providers~~ communications union districts and from service providers working in conjunction with a communications union district to provide universal broadband service in a community or communications union district, to deploy broadband to eligible ~~census blocks E-911 locations~~. Funding shall be available for capital improvements only, not for operating and maintenance expenses. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;

- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) whether the proposal would use the best available technology that is economically feasible;
- (5) the availability of service of comparable quality and speed; ~~and~~
- (6) the objectives of the State's Telecommunications Plan; ~~and~~
- (7) the extent to which a proposal leverages federal or private funding opportunities.

(c) In order to ensure that grants are disbursed based on the value of work completed, the Department shall develop with each grantee a payment schedule that reflects the verified percentage of project completion. To verify project completion, the grantee shall retain a Department-approved third party to conduct independent field testing, which the Department may supplement with provider-supplied data and crowd-sourced user data. If deemed necessary by the Department, the Department may advance a grantee funds necessary for project commencement. The Department shall retain five percent of an award for two years after project completion to ensure continued compliance with contract terms. A grantee shall reimburse the Department any funds received for contracted work that is not completed pursuant to contract specifications.

(d) The Department shall maintain a publicly accessible inventory of completed broadband projects financed in whole or in part with grants under this section.

* * * Connectivity Initiative; Vermont Community Broadband Authority * * *

Sec. 9. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The Connectivity Initiative shall be administered by the Vermont Community Broadband Authority. The purpose of the Connectivity Initiative is to provide each service location in Vermont access to broadband that is capable of speeds of at least 100 Mbps symmetrical. Within this category of service locations, priority shall be given first to unserved and then to underserved locations that are part of a plan to achieve universal broadband coverage in a community or communications union district. As used in this section, “unserved” means a location that only has access to broadband capable of speeds of less than 4 Mbps download and 1 Mbps upload and “underserved” means a location that only has access to broadband capable of speeds of at least 4 Mbps download and 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload.

(b) The Department of Public Service shall publish annually a list of E-911 locations eligible for funding based on the Department’s most recent broadband mapping data. The Department Authority annually shall solicit

proposals from communications union districts and from service providers working in conjunction with a communications union district to provide universal broadband service in a community or communications union district, to deploy broadband to eligible E-911 locations. Funding shall be available for capital improvements only, not for operating and maintenance expenses. The Department Authority shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department Authority also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) whether the proposal would use the best available technology that is economically feasible;
- (5) the availability of service of comparable quality and speed;
- (6) the objectives of the State's Telecommunications Plan; and
- (7) the extent to which a proposal leverages federal or private funding opportunities.

(c) In order to ensure that grants are disbursed based on the value of work completed, the Department Authority shall develop with each grantee a

payment schedule that reflects the verified percentage of project completion.

To verify project completion, the grantee shall retain a ~~Department~~-approved Authority-approved third party to conduct independent field testing, which the ~~Department~~ Authority may supplement with provider-supplied data and crowd-sourced user data. If deemed necessary by the ~~Department~~ Authority, the ~~Department~~ Authority may advance a grantee funds necessary for project commencement. The ~~Department~~ Authority shall retain five percent of an award for two years after project completion to ensure continued compliance with contract terms. A grantee shall reimburse the ~~Department~~ Authority any funds received for contracted work that is not completed pursuant to contract specifications.

(d) The ~~Department~~ Authority shall maintain a publicly accessible inventory of completed broadband projects financed in whole or in part with grants under this section.

* * * Telecommunications and Connectivity Advisory Board * * *

Sec. 10. 30 V.S.A. § 202f is amended to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY
BOARD

(a) There is created the Telecommunications and Connectivity Advisory Board for the purpose of making recommendations to the Commissioner of Public Service regarding his or her telecommunications responsibilities and

duties as provided in this section. The Connectivity Advisory Board shall consist of eight members selected as follows:

(1) the State Treasurer or designee;

(2) the Secretary of Commerce and Community Development or designee;

(3) five at-large members appointed by the Governor, who shall not be employees or officers of the State at the time of appointment; and

(4) the Secretary of Transportation or designee.

(b) A quorum of the Connectivity Advisory Board shall consist of four voting members. No action of the Board shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least four members vote in favor of the action. The Governor shall select, from among the at-large members, a chair and vice chair.

(c) In making appointments of at-large members, the Governor shall give consideration to citizens of the State with knowledge of telecommunications technology, telecommunications regulatory law, transportation rights-of-way and infrastructure, finance, environmental permitting, and expertise regarding the delivery of telecommunications services in rural, high-cost areas.

However, the five at-large members may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in-kind or financial support from the

Department of Public Service. The conflict of interest provision in this subsection shall not be construed to disqualify a member who has ownership in a mutual fund, exchange traded fund, pension plan, or similar entity that owns shares in such enterprises as part of a broadly diversified portfolio. The at-large members shall serve terms of two years beginning on February 1 in odd-numbered years and until their successors are appointed and qualified.

However, three of the five at-large members first appointed by the Governor shall serve an initial term of three years. Vacancies shall be filled for the balance of the unexpired term. A member may be reappointed for up to three consecutive terms. Upon completion of a term of service for any reason, including the term's expiration or a member's resignation, and for one year from the date of such completion, a former Board member shall not advocate before the Connectivity Board, Department of Public Service, or the Public Utility Commission on behalf of an enterprise that provides broadband or cellular service.

(d) Except for those members otherwise regularly employed by the State, the compensation of the Board's members is that provided by 32 V.S.A. § 1010(a). All members of the Board, including those members otherwise regularly employed by the State, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(e) In performing its duties, the Connectivity Advisory Board may use the legal and technical resources of the Department of Public Service. The Department of Public Service shall provide the Board with administrative services.

(f) The Connectivity Advisory Board shall:

(1) ~~have review and nonbinding approval authority with respect to the awarding of grants under the Connectivity Initiative. The Commissioner shall have sole authority to make the final decision on grant awards, as provided in subsection (g) of this section.~~

(2) function in an advisory capacity to the Commissioner on the development of State telecommunications policy and planning, including the action plan required under subdivision 202e(b)(6) of this chapter and the State Telecommunications Plan; and

(3) ~~annually advise the Commissioner on the development of requests for proposals under the Connectivity Initiative.~~

(4) ~~annually provide the Commissioner with recommendations for the apportionment of funds to the High-Cost Program and the Connectivity Initiative.~~

(5)(2) annually provide the Commissioner with recommendations on the appropriate Internet access speeds for publicly funded telecommunications and connectivity broadband projects.

(g) ~~The Commissioner shall make an initial determination as to whether a proposal submitted under the Connectivity Initiative meets the criteria of the request for proposals. The Commissioner shall then provide the Connectivity Advisory Board a list of all eligible proposals and recommendations. The Connectivity Advisory Board shall review the recommendations of the Commissioner and may review any proposal submitted, as it deems necessary, and either approve or disapprove each recommendation and may make new recommendations for the Commissioner's final consideration. The Commissioner shall have final decision making authority with respect to the awarding of grants under the Connectivity Initiative. If the Commissioner does not accept a recommendation of the Board, he or she shall provide the Board with a written explanation for such decision.~~

(h) On November 15, 2019, and annually thereafter, the Commissioner shall submit to the Connectivity Advisory Board an accounting of monies in the Connectivity Fund and anticipated revenue for the next year.

(i)(h) The Chair shall call the first meeting of the Connectivity Advisory Board. The Chair or a majority of Board members may call a Board meeting. The Board may meet up to six times a year.

(j)(i) At least annually, the Connectivity Advisory Board and the Commissioner or designee shall jointly hold a public meeting to review and discuss the status of State telecommunications policy and planning, the

Telecommunications Plan, the Connectivity Fund, the Connectivity Initiative, the High-Cost Program, and any other matters they deem necessary to fulfill their obligations under this section.

~~(k)(j)~~ Information and materials submitted by a telecommunications service provider concerning confidential financial or proprietary information shall be exempt from public inspection and copying under the Public Records Act, nor shall any information that would identify a provider who has submitted a proposal under the Connectivity Initiative be disclosed without the consent of the provider, unless a grant award has been made to that provider. Nothing in this subsection shall be construed to prohibit the publication of statistical information, determinations, reports, opinions, or other information ~~so long as provided~~ the data are disclosed in a form that cannot identify or be associated with a particular telecommunications service provider.

* * * VEDA; Broadband Expansion Loan Program; Lending Capacity * * *

Sec. 11. 10 V.S.A. § 280ee is amended to read:

§ 280ee. BROADBAND EXPANSION LOAN PROGRAM

(a) Creation. There is established within the Authority the Vermont Broadband Expansion Loan Program (~~the Program~~), the purpose of which is to enable the Authority to make loans that expand broadband service to unserved and underserved Vermonters as part of a plan to achieve universal broadband coverage in a community or communications union district.

(b) Intent. It is understood that loans under the Program may be high-risk loans to likely start-up businesses and therefore losses in the Program may be higher than the Authority's historical loss rate. Loans shall be underwritten by the Authority utilizing underwriting parameters that acknowledge the higher risk nature of these loans. The Authority shall not make a loan unless the Authority has a reasonable expectation of the long-term viability of the business. The Program is intended to provide start-up loans until such time as the borrower can refinance the loans through, for example, the municipal revenue bond market.

(c)(1) Requirements. The Authority shall make loans for start-up and expansion ~~that enable Internet service providers to expand broadband availability of broadband projects~~ in unserved and underserved locations as part of a plan to achieve universal broadband coverage in a community or communications union district.

(2) The Authority shall establish policies and procedures for the Program necessary to ensure the expansion of broadband availability to the largest number of Vermont addresses as possible. The policies shall specify that:

(A) loans may be made in an amount of up to \$4,000,000.00;

(B) eligible borrowers include ~~communications union districts and other units of government, nonprofit organizations, cooperatives, and for-profit businesses;~~

(i) communications union districts;

(ii) Internet service providers working in conjunction with a communications union district to expand broadband service to unserved and underserved locations as part of a plan to achieve universal broadband coverage in the district; and

(iii) Internet service providers working in conjunction with a municipality that was not part of a communications union district prior to December 1, 2020 to expand broadband service to unserved and underserved locations as part of a plan to achieve universal broadband coverage in such municipality;

~~(C) a loan shall not exceed 90 percent of project costs;~~

~~(D) interest and principal may be deferred up to two three years;~~

~~(E)(D) a maximum of \$10,800,000.00 in Authority loans may be made outstanding under the Program commencing on June 20, 2019; and~~

~~(F)(E) the provider shall offer to all customers broadband service that is capable of speeds of at least 100 Mbps symmetrical; and~~

(F) not more than one-sixth of the total allowable loans under this Program shall be available to eligible borrowers under subdivision (2)(B)(iii) of this subsection (c).

(3) To ensure the limited funding available through the Program supports the highest-quality broadband available to the most Vermonters and prioritizes delivering services to the unserved and underserved, the Authority shall consult with the Department of Public Service and the Vermont Community Broadband Authority.

(d) On or before January 1, 2020, and annually thereafter, the Authority shall submit a report of its activities pursuant to this section to the Senate Committee on Finance and the House Committees on Commerce and Economic Development and on Energy and Technology. Each report shall include operating and financial statements for the two most recently concluded State fiscal years. In addition, each report shall include information on the Program portfolio, including the number of projects financed; the amount, terms, and repayment status of each loan; and a description of the broadband projects financed in whole or in part by the Program.

Sec. 12. 10 V.S.A. § 280ff is amended to read:

§ 280ff. FUNDING

(a) The State Treasurer, in consultation with the Secretary of Administration, shall negotiate an agreement with the Authority incorporating

the provisions of this section and consistent with the requirements of this subchapter.

(b) ~~Repayment from or appropriation~~ State appropriations to the Authority ~~in years 2021 and until the Program terminates~~ is are based on the Authority's contributions to loan loss reserves for the Program in accordance with generally accepted accounting principles. Any difference between the actual loan losses incurred by the Authority in ~~a fiscal year 2020 through Program termination~~ shall be adjusted in the following year's appropriation.

(1) ~~The Program shall terminate when all borrowers enrolled in the Program have repaid in full or loans have been charged off against the reserves of the Authority.~~

~~(2) Upon termination of the Program, any remaining funds held by the Authority and not used for the Program shall be repaid to the State~~ This is a revolving loan program.

~~(3)~~(2) The accumulated total of the appropriation shall not exceed \$8,500,000.00 over the life of the Program.

~~(4)~~(3) The Authority shall absorb its historical loan loss reserve rate before any State funds are expended.

~~(5)~~(4) Additionally, the Authority shall absorb up to \$3,000,000.00 in Program losses shared with the State on a pro rata basis.

Sec. 13. [Deleted.]

Sec. 14. [Deleted.]

* * * CUDs; Public Records Act; Trade Secret Exemption; Intent * * *

Sec. 15. 30 V.S.A. § 3084 is added to read:

§ 3084. CONFIDENTIALITY; LEGISLATIVE INTENT

The purpose of this section is to clarify that any records or information produced or acquired by a district that are trade secrets or confidential business information shall be exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c)(9). Such records or information shall be available for public inspection after project completion.

* * * Property Tax Exemption; Broadband Infrastructure * * *

Sec. 16. 32 V.S.A. § 3802 is amended to read:

§ 3802. PROPERTY TAX

The following property shall be exempt from taxation:

* * *

(19) Real and personal property, except land, owned by an electric distribution utility that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is leased to a communications union district or to an Internet service provider working in conjunction with a communications union district, and is primarily for the purpose of providing broadband service capable of

speeds of at least 100 Mbps symmetrical. This exemption applies only to broadband infrastructure constructed on or after July 1, 2021.

(20) Real and personal property, except land, owned by an Internet service provider that comprises broadband infrastructure, including structures, machinery, lines, poles, wires, and fixtures, provided the infrastructure is capable of speeds of at least 100 Mbps symmetrical, is part of a plan to achieve universal broadband coverage in a community or communications union district with unserved and underserved locations, is constructed on or after July 1, 2021, and further provided:

(A) this plan is affirmed in writing by the Department of Public Service; and

(B) the broadband service is being provided pursuant to a contractual arrangement entered into between the Internet service provider and either a communications union district in which the broadband infrastructure is located or other municipality in which the broadband infrastructure is located, provided such other municipality was not part of a communications union district prior to December 1, 2020.

Sec. 17. 32 V.S.A. § 3800(n) is added to read:

(n) The statutory purpose of the exemptions for broadband infrastructure in subdivisions 3802(19) and (20) of this title is to lower the cost of broadband deployment in unserved and underserved areas of Vermont.

Sec. 18. 32 V.S.A. § 3602a is amended to read:

§ 3602a. FACILITIES USED IN THE GENERATION, TRANSMISSION,

OR DISTRIBUTION OF ELECTRIC POWER

All structures, machinery, poles, wires, and fixtures of all kinds and descriptions used in the generation, transmission, or distribution of electric power that are so fitted and attached as to be part of the works or facilities used to generate, transmit, or distribute electric power shall be set in the grand list as real estate. Nothing in this section shall alter the scope of the ~~exemption in subdivision exemptions in subdivisions~~ 3803(2) and 3802(19) and (20) of this title, nor shall it alter the taxation of municipally owned improvements accorded by section 3659 of this title.

Sec. 19. 32 V.S.A. § 3620 is amended to read:

§ 3620. ELECTRIC UTILITY POLES, LINES, AND FIXTURES

Electric utility poles, lines, and fixtures owned by nonmunicipal utilities shall be taxed at appraisal value as defined by section 3481 of this title, ~~except as provided under subdivisions 3802(19) and (20) of this title.~~

* * * Communications Workforce Development * * *

Sec. 20. BROADBAND OCCUPATIONAL NEEDS SURVEY

(a) The Commissioner of Labor shall conduct an occupational needs survey to determine workforce needs in the communications sector specific to broadband buildout and maintenance. In conducting this survey, the

Commissioner shall solicit input from employers and subcontractors throughout the State. The Department of Public Service and communications union districts shall assist the Department of Labor in identifying employers with workforce needs connected to this act. The purpose of the survey is to identify current and future employment opportunities and the prerequisite skills needed for widespread worker recruitment and building a talent pipeline to support the goals of this act.

(b) The Commissioner shall report his or her findings and recommendations to the relevant legislative committees of jurisdiction on or before January 15, 2022.

(c) Employers who do not participate in supplying information for this report will not be eligible for grant funding under this act.

Sec. 21. FTTX; INCUMBENT TRAINING PROGRAM

Vermont Technical College, in consultation with the Vermont Department of Labor, shall establish an incumbent training program for communications installers and technicians. The goal of the program is to provide skills upgrades for existing employees. Up to \$40,000.00 is appropriated from the Vermont Department of Labor's fiscal year 2022 Training Fund to support this training program.

Sec. 22. BROADBAND INSTALLER APPRENTICESHIP PROGRAM

The Commissioner of Labor, working with broadband employers, shall establish a federally registered apprenticeship program that meets one or more occupational needs related to the installation and maintenance of broadband networks.

* * * Appropriations; Fund Transfers * * *

Sec. 23. APPROPRIATIONS; GRANT ADMINISTRATION

(a)(1) To the extent necessary, for appropriations using federal funds provided to the State by the American Rescue Plan Act of 2021 (ARPA), the Commissioner of Finance and Management is authorized to expend the funds in anticipation of receipts.

(2) In fiscal year 2021, to the extent permitted by federal law and guidance, \$150,000,000.00 of federal funds allocated to the State by the ARPA shall be appropriated as follows:

(A) \$30,000,000.00 to the Vermont Community Broadband Fund to support the Community Broadband Preconstruction Grant Program established in Sec. 2, 30 V.S.A. § 8087, of this act;

(B) \$120,000,000.00 to the Vermont Community Broadband Fund to support the Construction Grant and Subordinated Debt Program established in Sec. 2, 30 V.S.A. § 8088, of this act; and

(3) In fiscal year 2021, to the extent permitted by federal law and guidance, \$100,000.00 of federal funds allocated to the State by the ARPA shall be appropriated to the Department of Labor to support the broadband occupational needs survey required by Sec. 20 of this act and the broadband installer apprenticeship program established in Sec. 22 of this act as follows:

(A) \$3,000.00 to finance the development of the apprenticeship program;

(B) \$90,000.00 to support the related instruction tuition and on-the-job training contracts with employer-sponsors under the apprenticeship program; and

(C) \$7,000.00 to support non-federally funded work related to developing, conducting, and reporting on the occupational needs survey.

(c) In fiscal year 2022, the Authority is authorized to expend \$500,000.00 in anticipated receipts pursuant to 30 V.S.A. § 7523(b) (0.4 percent of the Vermont Universal Service Charge) to support the start-up costs of the Vermont Community Broadband Authority.

(d) The Vermont Community Broadband Authority shall be redesignated as the responsible entity for administering the \$1,000,000.00 grant award to the Department of Public Service by the Northern Border Regional Commission (NBRC) for the purpose of supporting communications union districts. Any position funded by the grant shall be overseen and

managed by the Authority in a manner that is consistent with grant terms and conditions.

* * * Legislative Priorities for Federal Funds * * *

Sec. 24. LEGISLATIVE PRIORITIES; FEDERAL FUNDS

With respect to federal funds potentially available to the State of Vermont in fiscal years 2021 and 2022, the General Assembly establishes as a high priority providing support for community efforts that advance the State's goal of achieving universal access to reliable, high-quality, affordable broadband consistent with the policies, purposes, and programs established under 30 V.S.A. chapter 91A, concerning the Vermont Community Broadband Authority established in Sec. 2 of this act.

* * * Effective Dates * * *

Sec. 25. EFFECTIVE DATES

This act shall take effect on passage, except that:

- (1) Secs. 16–19 (property tax exemption for broadband infrastructure)
shall take effect on July 1, 2021; and
- (2) Sec. 4 (repeal of the Broadband Innovation Grant Program), Sec. 9 (administration of the Connectivity Initiative by the Vermont Community Broadband Authority), and Sec. 10 (Telecommunications and Connectivity Advisory Board)
shall take effect on January 1, 2022.