

House; Senate

House Conferees' proposals highlighted in yellow

Senate Conferees' proposals highlighted in blue

H.360

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon House Bill, entitled:

H.360. An act relating to accelerated community broadband deployment.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * 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.

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(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

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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, health care, 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

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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

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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) In addition to broadband access, it is imperative for the State to address the critical issues of broadband affordability and adoption.

(19) 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;

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(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 Board, designed specifically to effectuate these purposes.

* * * Vermont Community Broadband Board * * *

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

CHAPTER 91A: VERMONT COMMUNITY BROADBAND BOARD

§ 8081. PURPOSE

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

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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, fixed broadband and to establish the Vermont Community Broadband Board to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions.

§ 8082. DEFINITIONS

As used in this chapter:

(1) “Board” means the Vermont Community Broadband Board.

(2) “Broadband service” or “broadband” means a mass-market retail service by wire or radio in Vermont that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.

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

(4) “Eligible provider” means:

(A) a communications union district;

(B) a small communications carrier; or

(C) an Internet service provider 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.

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

(6) “Internet service provider” means a business that provides broadband Internet access service to any person in Vermont.

(7) “Location” means an E-911 business or residential address connected to the electric power grid.

(8) “Municipality” means a city, town, incorporated village, or unorganized town or gore.

(9) “Served” means a location that has access to broadband service capable of speeds of at least 25 Mbps download and 3 Mbps upload.

(10) “Small communications carrier” means a carrier:

(A) a carrier that has elected to be regulated under subsection 227d(a) of this title; or

(B) an Internet service provider that operates in not more than five counties.

(11) “Underserved” means a location that only has access to broadband service capable of speeds of at least 4 Mbps download and 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload.

(12) “Universal service plan” means a plan for providing each unserved and underserved location in a communications union district or in a municipality that was not part of a communications union district prior to June

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1, 2021 access to broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload.

(13) “Unserved” means a location that only has access to broadband capable of speeds of less than 4 Mbps download and 1 Mbps upload.

§ 8083. VERMONT COMMUNITY BROADBAND FUND

(a) There is created a special fund in the State Treasury to be known as the “Vermont Community Broadband Fund.” Expenditures from the Fund shall be made only to implement and effectuate the policies, purposes, and programs established in this chapter. The Fund shall be composed of any monies from time to time appropriated to the Fund by the General Assembly, transferred to the Fund pursuant to subsection 7523(b) of this title, or received from any other source, private or public, subject to the provisions of 32 V.S.A. § 5. Unexpended balances and any earnings shall remain in the Fund for use in accord with the purposes of this chapter.

(b) Authorized expenditures from the Fund include:

(1) grants pursuant to the Broadband Preconstruction Grant Program established in section 8085 of this chapter;

(2) grants pursuant to the Broadband Construction Grant Program established in section 8086 of this chapter;

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(3) funding for communications workforce training and development, in consultation with the Commissioner of Labor, to the extent such funds are not available from other funding sources;

(4) funding for a comprehensive, statewide fiber-optic engineering design as specified in subdivision 8084(a)(6)(I) of this chapter;

(5) administrative expenses of grant recipients in an amount determined by the Board, subject to applicable federal law and guidance; and

(6) Up to \$1,500,000.00 annually to fund the operational expenses of the Board and the Department to the extent the Department's expenses support the work of the Board.

(c) Expenditures from the Fund shall be authorized by the Board.

§ 8084. VERMONT COMMUNITY BROADBAND BOARD

(a) Vermont Community Broadband Board. (1) There is created within the Department of Public Service the Vermont Community Broadband Board. The Board shall have approval authority with respect to budget development, program design, grant awards, and all other funding allocations pursuant to this chapter.

(2) The Board shall consist of five members as follows:

(A) two members appointed by the Governor who shall not be employees or officers of the State at the time of the appointment and at least

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one of whom shall have expertise in the area of finance and one of whom shall be selected by the Governor to serve as the Chair;

(B) one 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 who shall have expertise in the area of broadband deployment in rural, high-cost areas;

(C) one member appointed by the Senate Committee on Committees who shall not be a member of the General Assembly at the time of the appointment and who shall have expertise in the area of communications and electric utility law and policy; and

(D) one member appointed by the Vermont Communications Union District Association.

(3) The 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; however, this provision 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. Members shall serve terms of three years beginning on February 1 of the year of appointment; however, the members first appointed by the Governor shall serve initial terms of four years, the member first appointed by the Speaker of the House shall

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serve an initial term of three years, and the member first appointed by the Committee on Committees shall serve an initial term of two years. A vacancy shall be filled by the respective appointing authority for the balance of the unexpired term. A member may be reappointed. A member may be removed for cause only.

(4) At its initial organizational meeting, and annually thereafter at the first meeting following February 1, the Board shall elect from among its members a 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 two 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.

(5) Members are entitled to a per diem in the amount of \$250.00 for each day spent in the performance of their duties and each member shall be reimbursed for his or her reasonable expenses incurred in carrying out his or her duties under this chapter.

(6) The Board shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including the power to:

(A) coordinate and facilitate community broadband efforts;

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(B) provide resources to communications union districts in the form of administrative and technical support;

(C) provide grants for the preconstruction and construction costs of broadband projects;

(D) facilitate partnerships between communications union districts and their potential partners;

(E) develop policies or recommend to the General Assembly programs that promote a strong communications workforce in Vermont;

(F) develop policies or recommend to the General Assembly programs that promote access to affordable broadband service plans;

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

(H) identify and publish State, federal, nonprofit, and any other broadband funding opportunities;

(I) contract for a comprehensive, statewide fiber-optic engineering design to identify strategies that maximize fiber-optic buildout efficiency and ensure resiliency and interoperability of all existing fiber-optic networks built with public or ratepayer funds, and that takes into consideration all proposed publicly funded fiber-optic projects, the development of which shall not be

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required for or in any way impede the disbursement of grants under this chapter;

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

(K) 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.

(7) The Department shall provide the Board with administrative services.

(8) All meetings of the Board shall be open to the public and conducted in accordance with the Vermont Open Meeting Law. All records of the Board are subject to the Vermont Public Records Act. Any records or information produced or acquired by the Board 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).

(b) Executive Director. (1) The Vermont Community Broadband Fund shall have an Executive Director. The initial Executive Director shall be appointed by the Governor with the advice and consent of the Senate, and subsequent executive directors shall be hired by the Board. The Executive Director shall be an employee of the Department of Public Service. The Executive Director shall be overseen and managed by the Board and shall

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serve as its chief administrative officer. The Executive Director shall direct and supervise the Board's administrative affairs and technical activities in accordance with Board policies. In addition to any other duties necessary for carrying out the purposes of this chapter, the Executive Director shall:

(A) work with the Board in developing and implementing the programs established by this chapter;

(B) approve all accounts of the Board, including accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the Board;

(C) make recommendations to the Board for grant awards or other forms of financial or technical assistance authorized by this chapter;

(D) make an annual report to the Board documenting the actions of the Board and such other reports as the Board may request; and

(E) perform such other duties as may be directed by the Board in the carrying out of the purposes and provisions of this chapter.

(2) 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, engineering and technical design, and grant writing, and may fix their qualifications, duties, and compensation. The Executive Director shall oversee and manage the Rural Broadband Technical Assistance Specialist

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created in subsection 7523(b) of this title. The Executive Director is authorized to hire additional full-time employees pursuant to this subdivision who shall be part of the classified service created in 3 V.S.A. chapter 13.

(c) Administration. The Fund shall be administered by the Department. The Department is authorized to expend monies from the Fund in accordance with this chapter. The Commissioner shall make all decisions necessary to implement this chapter and administer the Fund except those decisions committed to the Board under this section. The Department shall ensure an open public process in the administration of the Fund for the purposes established in this chapter.

(d) Grant administration redesignation. The Board 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 for the purpose of supporting communications union districts. Any position funded by the grant shall be overseen and managed by the Board in a manner that is consistent with grant terms and conditions.

§ 8085. BROADBAND PRECONSTRUCTION GRANT PROGRAM

(a) There is established the Community Broadband Preconstruction Grant Program to be administered by the Board. The purpose of the Program is to provide grants to communications union districts for preconstruction costs related to broadband projects that are part of a universal service plan.

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(b) 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 Board.

(c) 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 Board. In addition, the Board 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.

§ 8086. BROADBAND CONSTRUCTION GRANT PROGRAM

(a) There is established the Broadband Construction Grant Program to finance the broadband projects of eligible providers that are part of a universal service plan.

(b) In evaluating grant proposals under this chapter, the Board shall give priority to broadband projects that:

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(1) leverage existing private resources and assets, with a high priority given to partnerships between a communications union district and a distribution utility;

(2) demonstrate project readiness;

(3) provide broadband service that complies with the consumer protection and net neutrality standards established in 3 V.S.A. § 348;

(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.

(c) The Board shall establish policies and standard grant terms and conditions that:

(1) reflect payment schedules that ensure maximum accountability;

(2) adopt an industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability;

(3) establish standards for recouping grant funds and transferring ownership of grant-funded network assets to the State if a grantee materially fails to comply with the terms and conditions of a grant;

(4) establish a continuity of operations plan applicable to a network owned by a communications union district that, among other things,

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contemplates the Board assuming operational control of a network if necessary to maintain uninterrupted broadband service;

(5) prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board;

(6) allow an applicant to seek reconsideration of an adverse Board decision;

(7) ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance; and

(8) comply with Administrative Bulletin No. 5, the Agency of Administration’s policy for grant issuance and monitoring and Administrative Bulletin 3.5 the Agency of Administration’s policy for procurement and contracting procedures, as appropriate, and any other requirements of federal law and guidance, if applicable.

(d) Before the Board awards a grant under this section, it shall determine that the applicant has produced a viable business plan for its proposed broadband project, which takes into consideration network engineering and design, labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses.

(e) The Board shall not award a grant to an eligible provider who is not a communications union district unless the Board determines that the provider’s

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universal service plan does not conflict with or undermine the universal service plan of an existing communications union district.

(f) The Board may provide a grant to an eligible provider that enables the provision of broadband service in a geographic area currently served, provided that:

(1) the proposed project is a cost-effective method for providing broadband service to nearby unserved and underserved locations that is capable of speeds of at least 100 Mbps download and 100 Mbps upload;

(2) any overbuild is incidental to the overall objectives of the universal service plan required for funding under this Program; and

(3) before awarding the grant, the Board makes a reasonable effort to distinguish served and unserved or underserved locations within the geographic area, including recognition and consideration of known or probable service extensions or upgrades.

(g) It is the intent of the General Assembly that a broadband project financed under this Program demonstrates an economically sustainable business model that ultimately will be eligible for financing in the private or municipal bond market.

§ 8087. CENTRALIZED RESOURCES FOR COMMUNICATIONS UNION DISTRICTS

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(a) The Board shall provide centralized resources and technical and administrative support to communications union districts with respect to the planning, development, and implementation of broadband projects.

(b) In carrying out the purpose of this section, the Board shall:

(1) develop standardized forms, contracts, network business and design models, and templates for use by any communications union district;

(2) assist communications union districts with identifying and negotiating with potential partners, including with respect to the development of a memorandum of understanding or other form of legally-binding commitment pertaining to a broadband project;

(3) 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;

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

(5) assist communications union districts with completing grant and loan applications for funding opportunities that exist outside this chapter; and

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(6) assist communications union districts with obtaining access to fiber-optic networks owned by the State or by an electric distribution utility, where appropriate.

§ 8088. INTERAGENCY COOPERATION AND ASSISTANCE

Other departments and agencies of the State government, including the E-911 Board, shall assist and cooperate with the Board and shall make available to it information and data as needed to assist the Board in carrying out its duties. The Secretary of Administration shall establish protocols and agreements among the Board and departments and agencies of the State for this purpose. Nothing in this section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemption to the Public Records Act or under other laws due solely to the fact that the information or data is shared with the Board pursuant to this section.

§ 8089. ANNUAL REPORT

(a) Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Board shall submit a report of its activities pursuant to this chapter for the preceding year to the Senate Committees on Finance and on Natural Resources and Energy, 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 Board's operations during the year, including a summary of all grant awards and contracts and agreements

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entered into by the Board. 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 subdivision 202c(b)(10) of this title.

(b) As part of its first annual report, the Board shall include recommended legislation for policies and programs not authorized under this chapter but consistent with its purpose or for any other policies and programs it deems appropriate. The report shall include recommendations concerning increased access to and use of fiber-optic networks owned by the State or by an electric distribution utility in furtherance of the goals of this chapter. In addition, and with input from relevant stakeholders, the Board shall make recommendations on whether and to what extent authorized expenditures under the Fund should be expanded to include:

(1) funding for equipment replacement in the Department of Libraries’ FiberConnect Network;

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(2) funding for building-wide Wi-Fi installations at multi-unit affordable housing owned by nonprofits and housing authorities for the purpose of providing free broadband service to the residents thereof;

(3) funding for digital inclusion efforts, such as subsidized customer equipment installations and broadband service, grants for long-term affordability planning, and outreach and digital literacy training;

(4) funding for co-worker spaces;

(5) additional funding for communications workforce development initiatives; and

(6) funding for any other broadband programs or initiatives.

§ 8089a. SUNSET; TRANSFER PLAN

(a) The Fund and Board shall cease to exist on July 1, 2029.

(b) As part of its annual report submitted on or before January 15, 2029, the Board shall develop a plan for transferring its assets, liabilities, and legal and contractual obligations to another appropriate State entity. The Board may include in its report a recommendation regarding the continued existence of the Board 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 Board shall hold its initial organizational meeting and the Governor shall appoint an Executive Director.

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(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 Board.

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. 5. POSITIONS

(a) The position of Rural Broadband Technical Assistance Specialist shall be subject to the oversight and management of the Commissioner of Public Service until the appointment of the Executive Director of the Vermont Community Broadband Board. The position shall remain in the classified service created in 3 V.S.A. chapter 13.

(b) The Commissioner is authorized to hire one full-time employee to provide administrative services for the Board. This position shall be part of the classified service created in 3 V.S.A. Chapter 13. The Commissioner is authorized to hire one full-time attorney to provide legal services for the Board. This position shall be an exempt position and shall be subject to the oversight and management of the Executive Director of the Vermont

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Community Broadband Board upon his or her appointment. The salaries and benefits for these two positions shall constitute expenses that are to be reimbursed to the Department from the Fund pursuant to 30 V.S.A. § 8083(b)(5).

Sec. 6. INTERIM GRANTS; DEPARTMENT OF PUBLIC SERVICE

Notwithstanding any other provision of law to the contrary, to ensure the expeditious disbursement of available funds prior to the organization of the Vermont Community Broadband Board, the Department is authorized to allocate and disburse up to a total of \$20,000,000.00, or up to \$25,000,000.00 if an additional \$5,000,000.00 is approved by the Joint Fiscal Committee, under the Broadband Preconstruction Grant Program and the Broadband Construction Grant Program on or before December 31, 2021 or until the Board is operational, whichever occurs first.

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

Sec. 7. TRANSFER OF FIBER-OPTIC ASSETS

On or before September 30, 2021, subject to review and approval by the State Treasurer, 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

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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.

* * * Universal Service Charge; 0.4 Percent Revenue; Vermont Community

Broadband Fund * * *

Sec. 7a. 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~~

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~~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. 7b. 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 8083 of this title, and up to \$120,000.00 shall be used to fund a Rural Broadband Technical Assistance Specialist whose duties shall include providing outreach,

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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.

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

Sec. 7c. 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. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. 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

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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 to deploy broadband to eligible ~~census blocks~~ E-911 locations. Funding shall be available for capital improvements only, not for operating and maintenance expenses, and shall be available only for projects that the Department determines do not conflict with or undermine the deployment plans of a communications union district. 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;

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(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 * * *

House; Senate

Sec. 7d. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The Connectivity Initiative shall be administered by the Vermont Community Broadband Board. 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 ~~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 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~~ Board annually shall solicit proposals from communications union districts and from service providers

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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, and shall be available only for projects that the Department determines do not conflict with or undermine the deployment plans of a communications union district. The ~~Department~~ Board shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the ~~Department~~ Board 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.

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(c) In order to ensure that grants are disbursed based on the value of work completed, the ~~Department~~ Board 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~~ a Board-approved third party to conduct independent field testing, which the ~~Department~~ Board may supplement with provider-supplied data and crowd-sourced user data. If deemed necessary by the ~~Department~~ Board, the ~~Department~~ Board may advance a grantee funds necessary for project commencement. The ~~Department~~ Board 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~~ Board any funds received for contracted work that is not completed pursuant to contract specifications.

(d) The ~~Department~~ Board 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. 8. 30 V.S.A. § 202f is amended to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY
BOARD

House; Senate

(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.

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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

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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.~~

House; Senate

~~(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.

House; Senate

~~(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. 9. 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

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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 municipality 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 municipality 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:

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

(B) eligible borrowers include are ~~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 June 1, 2021 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

House; Senate

(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 Board.

(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. 10. 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

House; Senate

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.

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

House; Senate

Sec. 11. 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).

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

Sec. 12. 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.

Sec. 13. 32 V.S.A. § 3800(n) is added to read:

House; Senate

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

Sec. 14. 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) of this title, nor shall it alter the taxation of municipally owned improvements accorded by section 3659 of this title.

Sec. 15. 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 subdivision 3802(19) of this title.

* * * Communications Workforce Development * * *

Sec. 16. BROADBAND OCCUPATIONAL NEEDS SURVEY

House; Senate

(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. 17. 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

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Vermont Department of Labor’s fiscal year 2022 Training Fund to support this training program.

Sec. 18. 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.

* * * Easements; Private Property; Fiber * * *

Sec. 19. 30 V.S.A. § 127 is added to read:

§ 127. UTILITY POLES IN EASMENTS ACROSS PRIVATE PROPERTY

(a) Utility easements and State rules regarding utility rights of way and pole attachments shall include as an authorized utility use the installation of fiber-optic cable for purposes of providing broadband service to the public or for providing utility network management and monitoring, or both. Such use of the utility easement and right of way is generally of the type contemplated in utility easements, does not materially burden the landowner beyond what was intended in the conveyance or condemnation, serves the public good, and facilitates the construction of broadband networks as contemplated in this act.

(b) This section shall apply to all utility easements and State rules in effect on or after the effective date of this act. This section shall not apply to an

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easement that contains an express prohibition on the installation and operation of fiber-optic cable.

* * * Legislative Priorities for Federal Funds * * *

Sec. 20. 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 Board established in Sec. 2 of this act.

* * * Effective Dates * * *

Sec. 21. EFFECTIVE DATES

This act shall take effect on passage, except that:

(1) Secs. 12-15 (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. 7d (administration of the Connectivity Initiative by the Vermont Community Broadband Authority), and Sec. 8 (Telecommunications and Connectivity Advisory Board) shall take effect on January 1, 2022.

House; Senate

COMMITTEE ON THE PART OF
THE SENATE

SEN. CUMMINGS

SEN. BROCK

SEN. PEARSON

COMMITTEE ON THE PART OF
THE HOUSE

REP. BRIGLIN

REP. PATT

REP. SIBILIA