

1 All proposals in this draft are subject to final approval by the Committee on  
2 Finance. This draft reflects Committee discussion primarily related to the  
3 governance and administration of new ARPA-funded programs. Remaining  
4 provisions of H.360 as passed the House are TBD.  
5

6 \* \* \* Vermont Community Broadband Fund\* \* \*

7 Sec. 1. 30 V.S.A. chapter 91A is added to read:

8 CHAPTER 91A: VERMONT COMMUNITY BROADBAND FUND

9 § 8081. PURPOSE AND INTENT

10 Purpose. In recognition of the historic level of broadband funding currently  
11 available to the State and the critical need for broadband access and adoption,  
12 it is the purpose of this chapter to establish the Vermont Community  
13 Broadband Fund to support policies and programs designed to accelerate  
14 community efforts that advance the State’s goal of achieving universal access  
15 to reliable, high-quality, affordable fixed broadband.

16 ~~(b) Intent. It is the intent of the General Assembly that a broadband project~~  
17 ~~financed pursuant to this chapter demonstrates an economically sustainable~~  
18 ~~business model that ultimately will be eligible for financing in the private or~~  
19 ~~municipal bond market.~~

20 § 8082. DEFINITIONS

21 As used in this chapter:

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

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

6           (3) “Community” means a contiguous geographic area of the State,  
7           without regard to municipal boundaries or size of geographic area, that  
8           contains unserved and underserved locations.

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

10          (5) “Eligible provider” means a:

11           (A) communications union district; or

12           (B) small **communications** carrier.

13           ~~(C) communications union district in partnership with:~~

14           ~~(i) one or more other communications union districts;~~

15           ~~(ii) an Internet service provider; or~~

16           ~~(iii) an electric transmission or distribution utility.~~

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

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

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

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

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

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

8           (B) **an Internet service provider that operates in not more than**  
9           **three counties [or] has fewer than 25 employees. [TBD]**

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

13           (12) “Universal service plan” means a plan for providing each unserved  
14           and underserved location in a community, communications union district, or  
15           service territory of a small telecommunications carrier access to broadband  
16           service capable of speeds of at least 100 Mbps download and 100 Mbps  
17           upload.

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

1     § 8083. VERMONT COMMUNITY BROADBAND FUND

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

10          (b) Authorized expenditures from the Fund include:

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

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

15            (3) \$500,000.00 to the Department of Libraries for equipment  
16     replacement in the FiberConnect Network; [TBD]

17            (4) \$3,000,000.00 to the Department of Housing and Community  
18     Development to award grants to nonprofits and housing authorities for  
19     building wide Wi Fi installations to provide free broadband service to the  
20     residents of multi-unit affordable housing; [TBD]

1 ~~(5) \$5,000,000.00 to provide grants for affordability long-term planning~~  
2 ~~and digital inclusion activities for a period of four years; [TBD]~~

3 ~~(6) \$XXX to support broadband adoption by subsidizing customer~~  
4 ~~equipment installations and services until December 31, 2024 or until all funds~~  
5 ~~are expended, whichever occurs first; [TBD]~~

6 ~~(7) \$XXX to fund the digital inclusion efforts of a broadband corp.;~~  
7 ~~[TBD]~~

8 ~~(8) \$100,000.00 \$XXX to the Department of Labor to fund a broadband~~  
9 ~~occupational needs survey and the broadband installer apprenticeship program~~  
10 ~~to the extent funds are not available from other funding sources;~~

11 ~~(9) administrative expenses of grant recipients in an amount determined~~  
12 ~~by the Board, subject to applicable federal law and guidance, and not to exceed~~  
13 ~~X percent; and~~

14 ~~(10) operational and administrative expenses of the Board; and~~

15 ~~(11) expenses of the Department related to the administration of the~~  
16 ~~programs authorized by this chapter and not otherwise reimbursable under the~~  
17 ~~Department's annual budget.~~

18 ~~(10) Up to \$1,500,000.00 to fund the operational expenses of the Board~~  
19 ~~and also of the Department to the extent the Department's expenses are not~~  
20 ~~reimbursable under its annual budget funded by the gross receipts tax.~~

21 § 8084. MANAGEMENT OF THE FUND

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

6               (2) The Board shall consist of **three** members as follows:

7               (A) one public member appointed by the Governor who shall not be  
8       an employee or officer of the State at the time of the appointment and who  
9       shall expertise in the area of finance;

10              (B) one public member appointed by the Speaker of the House who  
11       shall not be a member of the General Assembly at the time of the appointment  
12       and who shall have expertise in the area of broadband deployment in rural,  
13       high-cost areas; and

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

18              (3) The public members may not be persons with a financial interest in  
19       or owners, employees, or members of a governing board of an Internet service  
20       provider or a communications union district; however, this provision shall not  
21       be construed to disqualify a member who has ownership in a mutual fund,

1 exchange-traded fund, pension plan, or similar entity that owns shares in such  
2 enterprises as part of a broadly diversified portfolio. The public members shall  
3 serve terms of three years beginning on February 1 of the year of appointment;  
4 however, the public member first appointed by the Governor shall serve an  
5 initial term of one year, and the public members first appointed by the Speaker  
6 of the House and the Committee on Committees shall serve initial terms of two  
7 years. A vacancy occurring among the public members shall be filled by the  
8 respective appointing Board for the balance of the unexpired term. A member  
9 may be reappointed. A member may be removed for cause only.

10 (4) At its initial organizational meeting, and annually thereafter at the  
11 first meeting following February 1, the Board shall elect from among its public  
12 members a chair and vice chair. The Board may elect officers as it may  
13 determine. Meetings shall be held at the call of the Chair or at the request of  
14 two members. A majority of sitting members shall constitute a quorum, and  
15 action taken by the Board under the provisions of this chapter may be  
16 authorized by a majority of the members present and voting at any regular or  
17 special meeting. Two members may discuss or deliberate the business of the  
18 Board outside an open meeting consistent with 1 V.S.A. § 310(a)(3)(B)-(D)  
19 [Pearson].

20 (5) Public members are entitled to a per diem in the amount of \$250.00  
21 for each day spent in the performance of their duties and each member shall be

1 reimbursed for his or her reasonable expenses incurred in carrying out his or  
2 her duties under this chapter.

3 (6) The Board shall have all the powers necessary and convenient to  
4 carry out and effectuate the purposes and provisions of this chapter, and may  
5 delegate any of its powers to the Executive Director, including the power to:

6 (A) coordinate and facilitate community broadband efforts;

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

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

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

13 (E) enter into contracts and apply for grants on behalf of or jointly  
14 with one or more communications union districts develop policies or  
15 recommend to the General Assembly programs that promote a strong  
16 communications workforce in Vermont as well as access to affordable  
17 broadband service plans;

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

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

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

8           (I) provide input to the Department of Public Service on the  
9           development of the State’s Telecommunications Plan; and

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

13           (7) In performing its duties, the Board may use the legal and technical  
14           resources of the Department. The Department shall provide the Board with  
15           administrative services.

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

19           (b) Executive Director. (1) The Vermont Community Broadband Fund  
20           shall have a Executive Director who shall be an employee of the Department of  
21           Public Service hired by the Governor. The Executive Director shall be

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

6 (A) attend all meetings of the Board, act as its secretary, and keep  
7 minutes of its proceedings;

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

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

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

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

17 (2) The Executive Director may retain or employ technical experts and  
18 other officers, agents, employees, and contractors as are necessary to give  
19 effect to the purposes of this chapter, including in the areas of finance, network  
20 planning, engineering and technical design, and grant writing, and may fix  
21 their qualifications, duties, and compensation. The Executive Director shall

1 oversee and manage the Rural Broadband Technical Assistance Specialist.

2 The Executive Director is authorized to hire up to three additional full-time  
3 employees pursuant to this subdivision who shall be part of the classified  
4 service created in 3 V.S.A. chapter 13.

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

12 (d) Grant administration redesignation. The Board shall be redesignated as  
13 the responsible entity for administering the \$1,000,000.00 grant award to the  
14 Department of Public Service by the Northern Border Regional Commission  
15 for the purpose of supporting communications union districts. Any position  
16 funded by the grant shall be overseen and managed by the Board in a manner  
17 that is consistent with grant terms and conditions.

18 **§ 8085. GRANT ELIGIBILITY**

19 **To be eligible for a preconstruction or construction grant under this chapter,**  
20 **a proposed broadband project must be part of a universal service plan. The**  
21 **Board may award a grant to a project that does not fully implement a universal**

1 ~~service plan if the Board finds that the applicant can demonstrate a reasonable~~  
2 ~~likelihood of obtaining additional financing for comprehensive universal~~  
3 ~~service plan implementation.~~

4 § 8085. BROADBAND PRECONSTRUCTION GRANT PROGRAM

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

9 (b) As used in this section, “preconstruction costs” include expenses for  
10 feasibility studies, business planning, pole data surveys, engineering and  
11 design, and make-ready work associated with the construction of broadband  
12 networks, including consultant, legal, and administrative expenses, and any  
13 other costs deemed appropriate by the Board.

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

1        (d) To ensure the expeditious allocation of funds prior to the organization  
2        of the Vermont Community Broadband Board, the Department is authorized to  
3        allocate up to \$9,000,000.00 under this Program on or before September 30,  
4        2021.

5        § 8086. BROADBAND CONSTRUCTION GRANT PROGRAM

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

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

11       (1) leverage existing private resources and assets, with a high priority  
12       given to partnerships between a communications union district and a  
13       distribution utility [electric cooperative? Jo's Fiber?];

14       (2) demonstrate project readiness;

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

17       (4) support low-income or disadvantaged communities;

18       (5) promote geographic diversity of fund allocations;

19       (6) provide consumers with affordable service options; and

20       (7) include public broadband assets that can be shared by multiple  
21       service providers and that can support a variety of public purposes.

- 1        (c) The Board shall establish policies and standard grant terms and  
2        conditions that:
- 3            (1) ensure grant awards are disbursed based on the value of construction  
4        completed and verified by the Board, or as needed to commence construction;
- 5            (2) reflect engineering standards that promote network reliability,  
6        resiliency, and interoperability and the installation of future proof technologies  
7        [Bray's language];
- 8            (3) establish standards for recouping grant funds and transferring  
9        ownership of grant-funded network assets to the State if a grantee materially  
10       fails to comply with the terms and conditions of a grant;
- 11          (4) prohibit the sale or transfer of grant-funded network assets without  
12       the prior written approval of the Board;
- 13          (5) ensure project completion within a reasonable period of time and  
14       consistent with applicable federal law and guidance; and
- 15          (6) comply with Administrative Bulletin No. 5, the Agency of  
16       Administration's policy for grant issuance and monitoring and Administrative  
17       Bulletin 3.5 the Agency of Administration's policy for procurement and  
18       contracting procedures, as appropriate, and any other requirements of federal  
19       law and guidance, if applicable.
- 20          (d) Before the Board awards a grant under this section, it shall determine  
21       that the applicant has produced a detailed business plan for its proposed

1 broadband project, which takes into consideration network engineering and  
2 design, labor needs and availability, supply-chain contingencies for equipment  
3 and materials, make-ready work, and any other relevant capital and operational  
4 expenses.

5 (e) [Overbuilds (modeled after 8078(b)) (TBD)] The Board may provide a  
6 grant to a project that enables the provision of broadband service in a  
7 geographic area currently served, provided that:

8 (1) the project is the most cost-effective method for providing  
9 broadband service to nearby unserved and underserved locations; and

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

14 (f) The Board may award a grant to an Internet service provider to finance  
15 a broadband project, such as a line extension or upgrade, that ~~does not meet the~~

1 ~~grant eligibility requirements contained in section 8085 of this chapter~~ is not  
2 part of a universal service plan if it finds that the project:

3 (1) will provide unserved and underserved locations with broadband  
4 service capable of speeds of at least 25 Mbps download and 3 Mbps upload on  
5 or before December 31, 2021; and

6 (A) is consistent with any existing universal service plan; or

7 (C) is in a geographic area that is not part of a communications union  
8 district or of the service territory of small telecommunications carrier.

9 [Another option: appropriate additional funds to LECAP; \$1.6M of  
10 CRF was appropriated in Act 9.]

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

15 § 8087. CENTRALIZED RESOURCES FOR COMMUNICATIONS UNION

16 DISTRICTS

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

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

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

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

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

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

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

16          § 8088. INTERAGENCY COOPERATION AND ASSISTANCE

17          Other departments and agencies of the State government, including the E-  
18          911 Board, shall assist and cooperate with the Board and shall make available  
19          to it information and data as needed to assist the Board in carrying out its  
20          duties. The Secretary of Administration shall establish protocols and  
21          agreements among the Board and departments and agencies of the State for

1 this purpose. Nothing in this section shall be construed to waive any privilege  
2 or protection otherwise afforded to the data and information under exemption  
3 to the Public Records Act or under other laws due solely to the fact that the  
4 information or data is shared with the Board pursuant to this section.

5 § 8089a. ANNUAL REPORT [*and quarterly reports?*]

6 (a) Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year,  
7 the Board shall submit a report of its activities pursuant to this chapter for the  
8 preceding year to the Senate Committee on Finance, the House Committee on  
9 Energy and Technology, and the Joint Information Technology Oversight  
10 Committee. The report shall include an operating and financial statement  
11 covering the Board’s operations during the year, including a summary of all  
12 grant awards and contracts and agreements entered into by the Board. In  
13 addition, the report shall include a description of the progress each start-up  
14 communications union district has made in achieving long-term financial  
15 sustainability that is not dependent upon public funding, an update on its  
16 efforts to secure additional federal funds for broadband deployment, and  
17 progress made towards meeting the State’s goal of ensuring every E-911  
18 location has access to broadband capable of delivering a minimum of 100  
19 Mbps symmetrical service as required in subdivision 202c(b)(10) of this title.

20 (b) As part of its first annual report, the Board shall include recommended  
21 legislation for policies and programs not authorized under this chapter but

1 consistent with its purpose or for any other policies and programs it deems  
2 appropriate. The report shall include a recommendation that would allow  
3 eligible providers to access dark fiber owned by the State or VELCO. In  
4 addition, and with input from relevant stakeholders, the Board shall make a  
5 recommendation on whether and to what extent authorized expenditures under  
6 the Fund should be expanded to include:

7 (A) funding for equipment replacement in the Department of Libraries’  
8 FiberConnect Network;

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

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

15 (D) funding for co-worker spaces;

16 (E) additional funding for communications workforce development  
17 initiatives; and

18 (F) funding for any other broadband programs or initiatives.

19 § 8089. SUNSET; TRANSFER PLAN

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

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

6        Sec. 2. ORGANIZATIONAL MEETING; SPACE ALLOCATION

7        (a) Within 60 days following the effective date of this act, the Vermont  
8        Community Broadband Board shall hold its initial organizational meeting.

9        (b) Within 60 days following the effective date of this act, the  
10       Commissioner of Buildings and General Services shall allocate space for the  
11       Vermont Community Broadband Board.

12       Sec. 3. APPROPRIATION

13       In fiscal year 2022, the sum of \$100,000,000.00 is appropriated from the  
14       American Rescue Plan Act of 2021 State Fiscal Relief Fund to the Vermont  
15       Community Broadband Fund to be expended in a manner consistent with 30  
16       V.S.A. § chapter 91A.