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H.70

Introduced by Representatives Dolan of Waitsfield and Patt of Worcester
Referred to Committee on
Date:
Subject: Public service; telecommunications; siting
Statement of purpose of bill as introduced: This bill proposes to make multiple
changes to 30 V.S.A. § 248a, the statute that governs the siting of
telecommunications facilities, including extending the sunset on applications
for an additional three years.

An act relating to the siting of telecommunications facilities

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

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

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS

FACILITIES

* * *

(b) Definitions. As used in this section:

* * *

(2) “De minimis modification” means the addition, modification, or
replacement of telecommunications equipment, antennas, or ancillary
improvements on a telecommunications facility or existing support structure,

1 whether or not the structure was constructed as a telecommunications facility,
2 or the reconstruction of such a facility or support structure, provided:

3 (A) the height and width of the facility or support structure,
4 excluding equipment, antennas, or ancillary improvements, are not increased;

5 (B) the total amount of impervious surface, including access roads,
6 surrounding the facility or support structure is not increased by more than 300
7 square feet;

8 (C) the addition, modification, or replacement of an antenna or any
9 other equipment on a facility or support structure does not extend vertically
10 ~~more than 10 feet~~ above the facility or support structure and does not extend
11 horizontally more than 10 feet from the facility or support structure; and

12 (D) the additional equipment, antennas, or ancillary improvements on
13 the support structure, excluding cabling, does not increase the aggregate
14 surface area of the faces of the equipment, antennas, or ancillary improvements
15 on the support structure by more than 75 square feet.

16 * * *

17 (c) Findings. Before the Public Utility Commission issues a certificate of
18 public good under this section, it shall find that:

19 (1) The proposed facility will not have an undue adverse effect on
20 aesthetics, historic sites, air and water purity, the natural environment, and the
21 public health and safety, and the public's use and enjoyment of the I-89 and I-

1 91 scenic corridors or of any highway that has been designated as a scenic road
2 pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162,
3 with due consideration having been given to the relevant criteria specified in
4 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). An applicant
5 shall demonstrate there is no practicable alternative to the location of the
6 proposed facility that will have less impact on the criteria of 10 V.S.A. § 6086
7 (a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural
8 areas; endangered species; necessary wildlife habitat). However, with respect
9 to telecommunications facilities of limited size and scope, the Commission
10 shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)
11 (floodways) and (a)(8) (aesthetics, scenic beauty, historic sites, rare and
12 irreplaceable natural areas; endangered species; necessary wildlife habitat).
13 Such waiver shall be on condition that:

14 (A) the Commission may determine, pursuant to the procedures
15 described in subdivision (j)(2)(A) of this section, that a petition raises a
16 significant issue with respect to any criterion of this subdivision; and

17 (B) a telecommunications facility of limited size and scope shall
18 comply, at a minimum, with the requirements of the Low Risk Site Handbook
19 for Erosion Prevention and Sediment Control issued by the Department of
20 Environmental Conservation, regardless of any provisions in that handbook
21 that limit its applicability.

1 (2) Unless there is good cause to find otherwise, substantial deference
2 has been given to the plans of the affected municipalities; to the
3 recommendations of the municipal legislative bodies and the municipal
4 planning commissions regarding the municipal plans; and to the
5 recommendations of the regional planning commission concerning the regional
6 plan. Nothing in this section or other provision of law shall prevent a
7 municipal body from basing its recommendations to which substantial
8 deference is required under this subdivision ~~(2)~~ on an ordinance adopted under
9 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the
10 municipality in which the facility is located. A rebuttable presumption
11 respecting compliance with the applicable plan shall be created by a letter from
12 an affected municipal legislative body or municipal planning commission
13 concerning compliance with the municipal plan and by a letter from a regional
14 planning commission concerning compliance with the regional plan.

15 (3) If the proposed facility relates to the provision of wireless service,
16 the proposed facility reasonably cannot be colocated on or at an existing
17 telecommunications facility, or such colocation would cause an undue adverse
18 effect on aesthetics.

19 (A) If a proposed new support structure for a new
20 telecommunications facility that provides wireless service will exceed 50 feet
21 in height in a cleared area or will exceed ~~20 feet in height above~~ the average

1 treeline height measured within a 100-foot radius from the structure in a
2 wooded area, the application shall identify all existing telecommunications
3 facilities within the area to be served by the proposed structure and, for each
4 such existing facility, shall include a projection of the coverage and an estimate
5 of additional capacity that would be provided if the applicant's proposed
6 telecommunications equipment were located on or at the existing facility. The
7 applicant also shall compare each such projection and estimate to the coverage
8 and capacity that would be provided at the site of the proposed structure.

9 * * *

10 (e) Notice. ~~Not~~ Not less than ~~60~~ 80 days prior to filing an application for a
11 certificate of public good under this section, the applicant shall serve written
12 notice of an application to be filed with the Commission pursuant to this
13 section to the legislative bodies and municipal and regional planning
14 commissions in the communities in which the applicant proposes to construct
15 or install facilities; the Secretary of Natural Resources; the Secretary of
16 Transportation; the Division for Historic Preservation; the Commissioner of
17 Public Service and its Director for Public Advocacy; the Natural Resources
18 Board if the application concerns a telecommunications facility for which a
19 permit previously has been issued under 10 V.S.A. chapter 151; and the
20 landowners of record of property adjoining the project sites. In addition, at
21 least one copy of each application shall be filed with each of these municipal

1 and regional planning commissions. The notices to the legislative body and
2 planning commission of the municipality shall attach a statement that itemizes
3 the rights and opportunities available to those bodies under subdivisions (c)(2)
4 and (e)(2) of this section and under subsections (m), (n), and (o) of this section
5 and informs them of the guide published under subsection (p) of this section
6 and how to obtain a copy of that guide.

7 * * *

8 (2) ~~On the request of the municipal legislative body or the planning~~
9 ~~commission, the~~ The applicant shall attend host a public meeting with the
10 municipal legislative body or planning commission, or both, within the ~~60-day~~
11 80-day notice period before filing an application for a certificate of public
12 good. The meeting shall be held in the evening and have a remote
13 participation option. The Department of Public Service shall attend the public
14 meeting on the request of the municipality. The Department shall consider the
15 comments made and information obtained at the meeting in making
16 recommendations to the Commission on the application and in determining
17 whether to retain additional personnel under subsection (o) of this section.

18 (3) With the notice required under this subsection, the applicant shall
19 include a written assessment of the colocation requirements of subdivision
20 (c)(3) of this section, as they pertain to the applicant's proposed
21 telecommunications facility. The applicant shall complete all studies

1 necessary for the application's approval, including site location options,
2 aesthetic studies, propagation studies, build out plans, and evaluations of
3 colocations options, and present them at the public meeting. On the request of
4 the municipal legislative body or the planning commission, the Department of
5 Public Service, pursuant to its authority under subsection (o) of this section,
6 shall retain an expert to review the applicant's colocation assessment and to
7 conduct further independent analysis, as necessary. Within 45 days ~~of~~ after
8 receiving the applicant's notice and colocation assessment, the Department
9 shall report its own preliminary findings and recommendations regarding
10 colocation to the applicant and to all persons required to receive notice of an
11 application for a certificate of public good under this subsection ~~(e)~~.

12 * * *

13 (i) Sunset of Commission authority. Effective on July 1, ~~2023~~ 2026, no
14 new applications for certificates of public good under this section may be
15 considered by the Commission.

16 * * *

17 (r) Intervention. A request to intervene as a party to a case under this
18 section shall be filed with the Commission within 60 days after the date the
19 application is filed with the Commission. A request to intervene shall comply
20 with the Commission's standard procedures for filing a motion to intervene.

1 (s) Attorney's fees. The court shall assess against an applicant found to
2 have violated the requirements of this section reasonable attorney's fees and
3 other litigation costs reasonably incurred by a municipality in any case under
4 this section in which the municipality has substantially prevailed.

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on passage.