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H.657

Representative Stebbins of Burlington moves that the report of the Committee on Environment and Energy be amended by inserting a reader assistance heading and a new Sec. 13a to read as follows:

* * * State Highway ROW; Leases and Licenses; Communications
Property * * *

Sec. 13a. 19 V.S.A. § 26a is amended to read:

§ 26a. DETERMINATION OF RENT TO BE CHARGED FOR LEASING
OR LICENSING STATE-OWNED PROPERTY UNDER THE
AGENCY’S JURISDICTION

(a) Except as otherwise provided by subsection (b) of this section, or as otherwise provided by law, leases or licenses negotiated by the Agency under 5 V.S.A. §§ 204 and 3405 and section 26 and subsection 1703(d) of this title ordinarily shall require the payment of fair market value rent, as determined by the prevailing area market prices for comparable space or property. However, the Agency may lease or license State-owned property under its jurisdiction for less than fair market value when the Agency determines that the proposed occupancy or use serves a public purpose or that there exist other relevant factors, such as a prior course of dealing between the parties, that justify setting rent at less than fair market value.

1 (b)(1) ~~Unless~~ Notwithstanding any other provision of law to the contrary
2 and unless otherwise required by federal law, beginning on or before ~~October~~
3 ~~1, 2024~~ July 1, 2025, the Agency shall annually assess, collect, and deposit in
4 the Transportation Fund a reasonable charge ~~or payment~~ with respect to leases
5 or licenses for access to or use of State-owned rights-of-way by ~~providers of~~
6 ~~broadband or wireless communications facilities or services~~ communications
7 service providers for communications property as defined in 32 V.S.A.
8 § 3602b. ~~The Agency may waive such charge or payment in whole or in part if~~
9 ~~the provider offers to provide comparable value to the State so as to meet the~~
10 ~~public good as determined by the Agency and the Department of Public~~
11 ~~Service. For the purposes of this section, the term “comparable value to the~~
12 ~~State” shall be construed broadly to further the State’s interest in ubiquitous~~
13 ~~broadband and wireless service availability at reasonable cost. Any waiver of~~
14 ~~charges or payments for comparable value to the State granted by the Agency~~
15 ~~may not exceed five years. Thereafter, the Agency may extend any waiver~~
16 ~~granted for an additional period not to exceed five years if the Agency makes~~
17 ~~affirmative written findings demonstrating that the State has received and will~~
18 ~~continue to receive value that is comparable to the value to the provider of the~~
19 ~~waiver, or it may revise the terms of the waiver in order to do so.~~

20 (2) As used in this subsection, “reasonable charge” means:

1 (A) \$270.00 for each wireless communications facility small wireless
2 facility, as defined in 47 C.F.R. § 1.6002(l), as may be amended.

3 (B) A per-linear-foot fee for digital subscriber line, coaxial cable, and
4 fiber optic line cable, as follows:

5 (i) \$0.02 in a county that has a population of fewer than 25,000;

6 (ii) \$0.07 in a county that has a population of at least 25,000 but
7 fewer than 100,000; and

8 (iii) \$0.13 in a county that has a population of at least 100,000.

9 (C) All other communications property shall be subject to a fair,
10 reasonable, and nondiscriminatory fee schedule established by the Secretary of
11 Transportation.

12 (3) The charge required by this subsection shall not apply to
13 communications property owned by:

14 (A) a communications union district;

15 (B) a small communications carrier as defined in 30 V.S.A.

16 § 8082(10);

17 (C) an internet service provider that qualifies as an eligible provider
18 under 30 V.S.A. § 8082(4), provided the lease or license for access to or use of
19 State-owned rights-of-way is part of a universal service plan as defined in 30
20 V.S.A. § 8082(12), as certified by the Vermont Community Broadband Board;

1 (D) a cable television service provider, provided the property is part
2 of a cable television system subject to a certificate of public good issued by the
3 Public Utility Commission under 30 V.S.A. chapter 13; or

4 (E) an electric transmission or distribution utility.

5 (4) The Secretary may adjust the fees prescribed in this section to
6 account for inflationary changes as measured by the Consumer Price Index.

7 (5) The Secretary may propose for approval by the General Assembly
8 standards and procedures for waiving the fees required by this subsection.

9 (c) Nothing in this section shall authorize the Agency to impose a charge or
10 payment for the use of a highway right-of-way that is not otherwise authorized
11 or required by State or federal law.

12 (d) ~~Nothing in this section shall be construed to impair any contractual~~
13 ~~rights existing on June 9, 2007.~~ The State shall have no authority under this
14 section to waive any sums due to a railroad. The State shall also not offer any
15 grants or waivers of charges for any new broadband installations in segments
16 of rail corridor where an operating railroad has installed or allowed installation
17 of fiber optic facilities prior to June 9, 2007 unless the State offers equivalent
18 terms and conditions to the owner or owners of existing fiber optic facilities.

19 (e) Beginning on or before January 1, 2025 and annually thereafter, the
20 holder of a lease or license pursuant each communications provider subject to
21 subsection (b) of this section shall provide to the Secretary of Transportation a

1 detailed inventory of all property in the State-owned rights-of-way pursuant to
2 such lease or license. The inventory shall include the regulatory status of the
3 lease or license holder, categorization of all communications property by type
4 and by its location in the right of way, and a description of the service or
5 services enabled by such property, as applicable be submitted in a form and
6 manner prescribed by the Secretary of Transportation consistent with the
7 purpose of this section. The Secretary shall conduct routine audits to
8 determine the accuracy of the information submitted pursuant to this
9 subsection.

10 (f) The inventories required by subsection (e) of this section are exempt
11 from public inspection and copying under the Public Records Act and shall be
12 kept confidential. However, they may be shared with other State agencies,
13 boards, or departments, such as the Department of Taxes, the Agency of
14 Digital Services, the Department of Public Service, the Public Utility
15 Commission, and the Department of Public Safety, for regulatory purposes.
16 Likewise, such other agencies, boards, and departments of State government
17 shall assist and cooperate with the Secretary of Transportation and shall make
18 available information and data as needed to assist the Secretary in carrying out
19 the Secretary's duties. The Secretary of Administration shall establish
20 protocols and agreements for interagency cooperation and assistance pursuant
21 to this subsection. Nothing in this subsection shall be construed to waive any

1 privilege or protection otherwise afforded data and information under an
2 exemption to the Public Records Act or under any other State or federal law
3 due solely to the fact that the information or data is shared pursuant to this
4 subsection.

5 (g) Notwithstanding 2 V.S.A. § 20(d), beginning on January 1, 2026 and
6 annually thereafter, the Agency Secretary shall submit a written report to the
7 General Assembly itemizing all charges and payments collected under this
8 section, as well as an aggregated statewide inventory of the communications
9 property described in subsection (e) of this section. The statewide inventory
10 shall be shared with the Commissioner of Taxes, the Commissioner of Public
11 Service, and the Secretary of Administration.