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S.199

An act relating to mergers and governance of communications union districts

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

Sec. 1. FINDINGS; PURPOSE

(a) The General Assembly finds:

(1) For nearly a decade, the General Assembly has consistently found that commercial carriers have failed to provide broadband service to many rural areas of Vermont, leaving over 80,000 locations currently without access to modern internet service. See, e.g., 2015 Acts and Resolves No. 41, 2019 Acts and Resolves No. 79, and 2021 Acts and Resolves No. 71.

(2) An attempt to provide universal access to reliable, high-quality broadband service through the construction of 200 cellular towers providing 4G LTE data, or “fixed wireless access,” was unsuccessful due to challenges presented by dense woodlands, hilly terrain, and the failure of equipment to meet manufacturer performance claims.

(3) Recognizing that neither the market nor modern wireless technology would come to Vermont’s rescue, the General Assembly in 2015 enabled the creation of special-purpose municipalities called communications union districts (CUDs). A CUD is a regional entity empowered to construct and operate a broadband network. As a municipality, a CUD can issue revenue

1 bonds to help construct its network. However, a CUD is prohibited by law
2 from taxing or otherwise imposing costs on residents of the district.

3 (4) The CUD concept was initially enacted in Vermont at the request of
4 ECFiber, a municipal internet service provider operating pursuant to a 23-town
5 interlocal contract. ECFiber began issuing revenue bonds in 2016, as
6 Vermont's first CUD.

7 (5) The success ECFiber has enjoyed with bringing world-class, fiber-
8 optic broadband service to all locations within its member towns led to
9 legislative efforts to promote and accelerate the creation of additional CUDs
10 throughout Vermont. See, e.g., 2019 Acts and Resolves No. 79.

11 (6) Since 2019, nine additional CUDs have been formed. Over 200
12 towns send more than 400 volunteer delegates to the governing boards of these
13 districts, a level of citizen involvement across large geographic areas greatly
14 facilitated by virtual meetings.

15 (7) All 10 CUDs are in the process of partnering with private companies
16 to build and operate resilient fiber-optic networks. All are committed to
17 universal service and digital equity.

18 (8) Recent federal funding available to CUDs through grant programs
19 administered by the Vermont Community Broadband Board has enabled
20 several CUDs to complete planning and start network construction.

1 (9) For example, ECFiber has constructed high-speed fiber-optic service
2 to over 25,000 locations and will complete service to another 8,000 locations
3 in its expanded 31-town district by 2025. Approximately 20,000 of those
4 locations would otherwise be classified as unserved or underserved.

5 (10) Although CUDs are municipalities, they are unusual in that they
6 operate in a larger competitive environment and therefore sometimes compete
7 for customers with well-funded commercial providers. This distinguishes
8 them from typical municipal enterprises, such as water districts and electric
9 departments, which often operate as regulated monopolies in their respective
10 service territories. As a result, a CUD needs to protect its business data in a
11 manner that other municipal enterprises do not. Such protection will ensure a
12 CUD is not competitively disadvantaged and unfairly prevented from
13 accomplishing its public mission.

14 (11) Despite the influx of recent and anticipated federal funding for
15 broadband deployment, the General Assembly has recognized that public funds
16 are not sufficient to support CUDs on an ongoing basis. Accordingly, existing
17 Vermont law requires that any broadband project financed through a grant
18 from the Vermont Community Broadband Board must demonstrate an
19 economically sustainable business model that ultimately will be eligible for
20 financing in the private or municipal bond market. In other words, a CUD

1 must show it is a going business concern able to stand on its own, without
2 having to rely on public funding.

3 (b) The purpose of this act is to further support the efforts of CUDs to
4 provide high-quality, reliable broadband service in unserved and underserved
5 communities by enabling CUDs to become more responsive to economies of
6 scale as those opportunities arise and take full advantage of emerging
7 organizational structures. To that end, the provisions of this act simplify the
8 process by which two or more CUDs can merge and provide additional
9 flexibility related to CUD governance and business practices.

10 Sec. 2. 30 V.S.A. § 3082a is added to read:

11 § 3082a. MERGER

12 (a) Authority. Notwithstanding 24 V.S.A. chapter 49, a district may merge
13 with one or more other districts as provided in this section. Such merger shall
14 include all member municipalities of each of the merging districts.

15 Section 3053 of this chapter applies to a new combined district formed
16 pursuant to this section.

17 (b) Preliminary merger plan.

18 (1) The merging districts shall prepare a preliminary merger plan. The
19 plan shall include provisions relating to structure, organization, functions,
20 operation, finance, assets, rights, liabilities, contracts, consents required by
21 law, or regulation, including adequate provisions for the satisfaction or

1 assumption of all obligations of the district members concerned. More
2 specifically, the plan shall include provisions clearly stating that, upon the
3 effective date of the merger:

4 (A) all assets of whatever kind, owned, claimed, or held by each
5 district shall become vested in and become assets owned by the combined
6 district without any further act, deed, or instrument being necessary; and

7 (B) the combined district shall assume and be obligated to pay or
8 otherwise perform each and every lawful obligation, debt, claim, bonded
9 indebtedness, and other liability of each district without any further act, deed,
10 or instrument being necessary.

11 (2) Upon approval of the preliminary merger plan by three-quarters vote
12 of a quorum of the board of each of the merging districts, the notice and
13 hearing requirements of subsection (c) of this section shall be implemented.

14 (c) Notice and hearing.

15 (1) Not less than 45 days prior to the public hearing required by
16 subdivision (2) of this subsection, copies of the preliminary merger plan shall
17 be distributed to the legislative bodies of the member municipalities of the
18 merging districts.

19 (2) A public hearing on the plan shall be held in each merging district
20 not less than 30 days prior to the vote referenced in subsection (d) of this
21 section. Notice of each hearing shall be distributed by member municipalities

1 by local posting and electronic communications. In addition, each district shall
2 publish notice in newspapers and other paid media relevant to its service
3 territory. The last notice shall appear not later than three days before the final
4 public hearing required by this subdivision.

5 (3) Not less than 30 days prior to the vote referenced in subsection (d) of
6 this section, notice of the proposed merger shall be distributed to each known
7 creditor of the merging districts and such other entities as may be required by
8 law, regulation, or contract.

9 (d) Vote of approval. Subsequent to the public hearings required by
10 subsection (c) of this section, a joint committee shall prepare a final merger
11 plan for presentation to the boards of the merging districts. The plan shall take
12 effect upon approval by two-thirds vote of a quorum of the board of each of the
13 merging districts.

14 (e) Organizational meeting. The combined district's initial organizational
15 meeting shall be held within 90 days following the final vote to merge required
16 under subsection (d) of this section.

17 (f) Notice to Secretary of State. The district's governing board shall notify
18 the Secretary of State of the merger as provided in subsection 3053(a) of this
19 chapter and shall provide notice to such other entities as may be required by
20 law.

1 Sec. 3. 30 V.S.A. § 3060 is amended to read:

2 § 3060. ORGANIZATIONAL MEETING

3 Annually, on the second Tuesday in May following the appointments
4 contemplated in section 3059 of this chapter or on a date specified in the
5 district's bylaws, the board shall hold its organizational meeting. At such
6 meeting, the board shall elect from among its appointed representatives a chair
7 and a vice chair, each of whom shall hold office for one year and until ~~his or~~
8 ~~her~~ a successor is duly elected. The board's initial organizational meeting shall
9 be held within 90 days ~~of~~ following the vote to form a district under
10 subsection 3051(b) of this title.

11 Sec. 4. 30 V.S.A. § 3069 is amended to read:

12 § 3069. TREASURER

13 The treasurer of the district shall be appointed by the board, and shall serve
14 at its pleasure. The treasurer shall not be a member of the governing board.
15 The treasurer shall have the exclusive charge and custody of the funds of the
16 district and shall be the disbursing officer of the district. When authorized by
17 the board, the treasurer may sign, make, or endorse in the name of the district
18 all checks and orders for the payment of money and pay out and disburse the
19 same and receipt therefor. The treasurer shall keep a record of every
20 obligation issued and contract entered into by the district and of every payment
21 thereon. The treasurer shall keep correct books of account of all the business

1 and transactions of the district and such other books and accounts as the board
2 may require. The treasurer shall render a statement of the condition of the
3 finances of the district at each regular meeting of the board and at such other
4 times as shall be required of the treasurer. The treasurer shall prepare the
5 annual financial statement and the budget of the district for distribution, upon
6 approval of the board, to the legislative bodies of district members. The
7 treasurer shall do and perform all of the duties appertaining to the office of
8 treasurer of a body politic and corporate. The treasurer may delegate authority
9 to perform any or all of the duties described in this section, provided such
10 delegation is approved by the board or authorized in the district's bylaws, and
11 further provided the treasurer retains accountability and oversight authority for
12 any such delegations. Upon removal or the treasurer's termination from office
13 by virtue of removal or resignation, the treasurer shall immediately pay over to
14 the successor all of the funds belonging to the district and at the same time
15 deliver to the successor all official books and papers.

16 Sec. 5. 30 V.S.A. § 3074 is amended to read:

17 § 3074. FISCAL YEAR

18 The fiscal year of the district shall commence on January 1 and end on
19 December 31 of each year, unless otherwise specified in the district's bylaws.

1 Sec. 6. 30 V.S.A. § 3075 is amended to read:

2 § 3075. BUDGET

3 (a) Annually, on or before October 21 or on another date specified in the
4 district's bylaws, the board shall approve and cause to be distributed to the
5 legislative body of each district member for review and comment an annual
6 report of its activities, together with a financial statement, a proposed district
7 budget for the next fiscal year, and a forecast presenting anticipated year-end
8 results. The proposed budget shall include reasonably detailed estimates of:

9 (1) deficits and surpluses from prior fiscal years;

10 (2) anticipated expenditures for the administration of the district;

11 (3) anticipated expenditures for the operation and maintenance of any
12 district communications plant;

13 (4) payments due on obligations, long-term contracts, leases, and
14 financing agreements;

15 (5) payments due to any sinking funds for the retirement of district
16 obligations;

17 (6) payments due to any capital or financing reserve funds;

18 (7) anticipated revenues from all sources; and

19 (8) such other estimates as the board deems necessary to accomplish its
20 purpose.

1 (b) Coincident with a regular meeting thereof, the board shall hold a public
2 hearing on or before November 15 of each year or on another date specified in
3 the district's bylaws to receive comments from the legislative bodies of district
4 members and hear all other interested persons regarding the proposed budget.
5 Notice of such hearing shall be given to the legislative bodies of district
6 members at least 15 days prior to such hearing. The board shall give
7 consideration to all comments received and make such changes to the proposed
8 budget as it deems advisable.

9 (c) Annually, on or before December 15 or on another date specified in the
10 district's bylaws, the board shall adopt the budget and appropriate the sums it
11 deems necessary to meet its obligations and operate and carry out the district's
12 functions for the next ensuing fiscal year.

13 (d) Actions or resolutions of the board for the annual appropriations of any
14 year shall not cease to be operative at the end of the fiscal year for which they
15 were adopted. Appropriations made by the board for the various estimates of
16 the budget shall be expended only for such estimates, but by majority vote of
17 the board the budget may be amended from time to time to transfer funds
18 between or among such estimates. Any balance left or unencumbered in any
19 such budget estimate, or the amount of any deficit at the end of the fiscal year,
20 shall be included in and paid out of the operating budget and appropriations in
21 the next fiscal year. All such budget amendments shall be reported by the

1 district treasurer to the legislative bodies of each district member within
2 14 days following the end of the fiscal year.

3 (e) Financial statements and audit results shall be delivered to the
4 legislative bodies of each district member within 10 days following delivery to
5 the board.

6 Sec. 7. 30 V.S.A. § 3084 is amended to read:

7 § 3084. CONFIDENTIALITY; LEGISLATIVE INTENT

8 (a) The purpose of this section is to clarify that any records or information
9 produced or acquired by a district that are trade secrets or confidential business
10 information shall be exempt from public inspection and copying pursuant to
11 1 V.S.A. § 317(c)(9).

12 (b) For purposes of this section, “confidential business information”
13 includes the operational records of any internet service provider under contract
14 with a district for the construction of a broadband network or to provide
15 broadband service, or both, as well as detailed information about the district’s
16 deployment plans if public disclosure could put the district at a competitive
17 disadvantage. Business records of a district carry a presumption of
18 confidentiality. The exemption and presumption specified in this section shall
19 not, however, apply to district governance records and information.

20 Sec. 8. EFFECTIVE DATE

21 This act shall take effect on passage.