

Journal of the Senate

TUESDAY, APRIL 12, 2011

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 27. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 15, 2011, it be to meet again no later than Tuesday, April 19, 2011.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 107.

By Senator Giard,

An act relating to docking the tail of a horse or a bovine.

To the Committee on Agriculture.

Rules Suspended; Bills Committed

S. 98.

Senate bill entitled:

An act relating to authorizing owner-financed property sales.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Finance, as the bill had not made cross-over, Senator Campbell moved that Senate Rule 49 be suspended and the bill be committed to the Committee on Rules with the report of the Committee on Finance *intact*,

Which was agreed to.

S. 104.

Senate bill entitled:

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Finance, as the bill had not made cross-over, Senator Campbell moved that Senate Rule 49 be suspended and the bill be committed to the Committee on Rules with the report of the Committee on Finance *intact*,

Which was agreed to.

H. 411.

House bill entitled:

An act relating to the application of Act 250 to agricultural fairs.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Agriculture, as the bill had not made cross-over, Senator Campbell moved that Senate Rule 49 be suspended and the bill be committed to the Committee on Rules with the report of the Committee on Agriculture *intact*,

Which was agreed to.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 105. An act relating to miscellaneous agricultural subjects.

Bill Amended; Third Reading Ordered

S. 78.

Senator Illuzzi, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Reported that the bill ought to pass.

Senator Lyons, for the Committee on Natural Resources and Energy, to which the bill was referred, reported as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivisions (12), (13) and (14) in their entirety and inserting in lieu thereof new subdivisions (12), (13) and (14) to read as follows:

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board's average time for reviewing an application under section 248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines.

(13) Vermont should ensure that all telecommunications carriers in the state can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

Second: By striking out Secs. 2 (certificate of public good; communications facilities), 3 and 3a (stormwater management), 4 (Act 250; calculation of acreage), and 5 and 6 (appeals; agency of natural resource permits) in their entirety and inserting in lieu thereof six new sections to be numbered Secs. 2, 3, 3a, 4, 5 and 6 to read as follows:

* * * Telecommunications Facilities, Certificates of Public Good * * *

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) “Ancillary improvements” means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(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, provided:

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

(B) The total amount of impervious surface surrounding the facility or structure is not increased by more than 300 square feet;

(C) The total height or width of the facility or structure, including equipment, antennas, and ancillary improvements, is not increased by more than 10 feet; and

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

(3)(A) “Limited size and scope” means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications

facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (2)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and~~ the public health and safety, and the public's use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an

ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. This presumption may be rebutted on a showing that there is good cause to find other than as stated in the letter.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of

this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the ~~petition~~ application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its ~~petition~~ application, and provide notice and a copy of the ~~petition~~ application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. ~~The~~ At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this

subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; the commissioner of public service and its director for public advocacy; and the landowners of record of property adjoining the site or sites unless, in accordance with subdivision (j)(2)(B) (waiver standard) of this section, the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that ~~a petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Stormwater Discharge Permits;
Telecommunications Facilities * * *

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 90 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF NATURAL RESOURCES; PROSPECTIVE REPEAL

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

(c) This section shall be repealed on July 1, 2014.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) No permit or permit amendment is required for the following improvements associated with the construction or installation of a communications line:

(A) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(B) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, “communications line” means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals; Agency of Natural Resource
Permits * * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review by the public service board under, respectively, 30 V.S.A. § 248 §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service

board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, “board,” “plant,” and “renewable energy” have the same meaning as under 30 V.S.A. § 8002, and “telecommunications facility” has the same meaning as under 30 V.S.A. § 248a.

* * *

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board’s decision shall be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

* * *

Third: By striking out Sec. 9 (pole attachments; applications; dispute resolution) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act’s passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner. In issuing this order, the board shall have full

authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state lands), in the first sentence of subsection (a), by striking out the following: “30 V.S.A. § 8063(b)” and inserting in lieu thereof the following: 30 V.S.A. § 248a(b)

Fifth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (b)(4), by striking out the second sentence up to the semicolon and inserting in lieu thereof the following: . For the purpose of this subdivision, “natural state” does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law

Sixth: By striking out Sec. 14 (limitations on municipal bylaws) in its entirety and inserting in lieu thereof three new sections to be numbered Secs. 14, 14a and 14b to read as follows:

* * * Local Land Use Bylaws; Exemptions * * *

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement other than an access road that does not exceed a footprint of 200 square feet and a height of 10 feet.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(ii) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. PROSPECTIVE REPEAL

24 V.S.A § 4413(h) shall be repealed on July 1, 2014.

* * * Deployment Plans * * *

Sec. 14b. 30 V.S.A. § 202e is added to read:

§ 202e. TELECOMMUNICATIONS; BROADBAND; DEPLOYMENT PLANS

(a) No later than October 1, 2011, all persons proposing to construct or install in Vermont cables, wires, telecommunications facilities, or other equipment or apparatus shall file plans with the department of public service if the construction or installation relates to the deployment of broadband, telecommunications facilities, or advanced metering infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

(b) The purpose of filing these plans shall include allowing a geographic assessment of the locations in the state in which deployment is proposed and not proposed, the underserved and unserved areas of the state that will or will not be reached by deployment, and the areas of the state that will or will not experience deployment that is redundant with equipment, facilities, or services that are already available or are proposed.

(c) The department of public service shall keep confidential the plans submitted to it under this section. The department may aggregate data and information contained in the plans and may make such aggregated data and information publically available.

(d) In this section:

(1) “Broadband” means high speed Internet access that provides for a download speed of at least four megabytes per second and an upload speed of at least one megabyte per second.

(2) “Deployment” means deployment of broadband equipment and apparatus, telecommunications facilities, and advanced metering infrastructure.

(3) “Plans” means drawings and narrative descriptions of all construction and installation described in subsection (a) of this section that is proposed to commence before July 1, 2014. The plans shall be in sufficient detail to achieve the purpose described in subsection (b) of this subsection. The commissioner of public service shall determine the degree of detail and finality that shall govern the submission of plans under this subsection and may require inclusion in the submission of such information as the commissioner determines to be in the public good. Nothing in this section shall require the submission of information that is designated as confidential under federal law.

(4) “Telecommunications facility” shall be as defined in subsection 248a(b) of this title.

And by renumbering all sections to be numerically correct

And that when so amended the bill ought to pass.

Senator Lyons, on behalf of the Committee on Natural Resources and Energy, moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Natural Resources and Energy, which was agreed to.

Thereupon, Senator Lyons, on behalf of the Committee on Natural Resources and Energy, as substituted, moved to amend the bill as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivisions (12), (13) and (14) in their entirety and inserting in lieu thereof new subdivisions (12), (13) and (14) to read as follows:

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board’s average time for reviewing an application under section

248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines and to manage a potential increase in the volume of applications.

(13) Vermont should ensure that all telecommunications carriers in the state can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

Second: By striking out Secs. 2 (certificate of public good; communications facilities), 3 and 3a (stormwater management), 4 (Act 250; calculation of acreage), and 5 and 6 (appeals; agency of natural resource permits) in their entirety and inserting in lieu thereof four new sections to be numbered Sec. 2, Sec. 3, Sec. 3a, Sec. 4 and Sec. 4a, Sec 5 and Sec. 6 to read as follows:

* * * Telecommunications Facilities, Certificates of Public Good * * *

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to

connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) “De minimis modification” means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements, other than access roads, on a telecommunications facility or existing support structure, or the reconstruction of such a facility or support structure, provided:

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

(B) The total amount of impervious surface surrounding the facility or structure is not increased by more than 300 square feet;

(C) The addition, modification, replacement, or reconstruction does not result in a cumulative increase since the effective date of this act, including equipment, antennas, and ancillary improvements, of more than 10 feet in the total height of the facility or structure and of more than 10 feet in the total width of the facility or structure; and

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

(3)(A) “Limited size and scope” means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. However, on request of an applicant, the board may treat an application that proposes to disturb up to an acre of earth as being of limited size and scope if the board determines that the proposed disturbance does not raise a significant issue with respect to the substantive criteria of this section. For purposes of this subdivision, “disturbed earth” means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) “Telecommunications facility” means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

(2) An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) “Wireless service” means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and~~ the public health and safety, and the public’s use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). Reiteration in this act of the requirement to make findings concerning the public’s use and enjoyment of scenic corridors, highways, and byways is not intended to impose a requirement that is different from or more stringent than the requirement under prior law to make findings with respect to 10 V.S.A. § 6086(a)(8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A presumption respecting compliance with the applicable plan shall be created by

a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. This presumption may be rebutted on a showing that there is good cause to find other than as stated in the letter.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not

raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition application, and provide notice and a copy of the petition application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. ~~The~~ At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a petition application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is

complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; the commissioner of public service and its director for public advocacy; and the landowners of record of property adjoining the site or sites. On request of an applicant, the board shall waive or modify the notice requirement with respect to such adjoining landowners unless, on review of such a request, the board determines that it does not meet the standard for a waiver set out in subdivision (j)(2)(B) of this section. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that ~~a petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Stormwater Discharge Permits; Telecommunications Facilities * * *

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 60 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF NATURAL RESOURCES; PROSPECTIVE REPEAL

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

(c) This section shall be repealed on July 1, 2014.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) The following improvements associated with the construction or installation of a communications line shall not be considered a substantial

change to a utility line cleared and in use for electrical distribution or communications lines and related facilities and shall not require a permit under subsection (a) of this section:

(A) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(B) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, “communications line” means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

(3) Nothing in this subsection shall be construed to expand the scope of jurisdiction under this chapter over electric distribution and communications lines as interpreted and applied prior to the effective date of this act by the district commissions and the land use panel of the natural resources board.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals; Agency of Natural Resource
Permits * * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review by the public service board under, respectively, 30 V.S.A. § 248 §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in

section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, “board,” “plant,” and “renewable energy” have the same meaning as under 30 V.S.A. § 8002, and “telecommunications facility” has the same meaning as under 30 V.S.A. § 248a.

* * *

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board’s decision may be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

* * *

Third: By striking out Sec. 9 (pole attachments; applications; dispute resolution) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act’s passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband, telecommunications, or cable television deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This

process shall ensure that such projects proceed in a timely and coordinated manner and shall include notice to all potentially affected persons. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state lands), in the first sentence of subsection (a), by striking out “30 V.S.A. § 8063(b)” and inserting in lieu thereof “30 V.S.A. § 248a(b)” and by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Prior to entering into or renewing a lease or license, the secretary shall:

(1) Publish notice of the proposed telecommunications facility site in one daily newspaper of general circulation in the region of the proposed site and on the website maintained by the agency of administration; and

(2) Send by certified mail, return receipt requested, a written notice of the proposed lease or license or renewal to the legislative body of each municipality in which such land is located. The notice shall include a description of the land to be leased or licensed and of the proposed telecommunications facility to be sited on the land, including the facility’s height and location.

Fifth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (a)(2), after the third sentence, by adding a new sentence to read as follows:

A decision by the secretary to contract or enter into or renew a lease or license for the use of a state-owned building, structure, or land for a wireless telecommunications facility shall have no presumptive or binding effect with respect to the facility’s compliance with the standards or criteria used in determining whether to grant any such required approval or permit.

Sixth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (b)(4), by striking out the second sentence up to the semicolon and inserting in lieu thereof the following:

For the purpose of this subdivision, “natural state” does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law

Seventh: By striking out Sec. 14 (limitations on municipal bylaws) in its entirety and inserting in lieu thereof three new sections to be numbered Sec. 14, Sec. 14a and Sec. 14b to read as follows:

* * * Local Land Use Bylaws; Exemptions * * *

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement that does not exceed a footprint of 200 square feet and a height of 10 feet. This subdivision shall exempt an ancillary improvement that is an access road only if the cumulative square footage of access road constructed since the effective date of this act does not exceed 200.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(ii) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) “Ancillary improvement” shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) “Communications line” means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local,

state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. PROSPECTIVE REPEAL

24 V.S.A § 4413(h) shall be repealed on July 1, 2014.

* * * Deployment Plans * * *

Sec. 14b. 3 V.S.A. § 2222b is added to read:

§ 2222b. TELECOMMUNICATIONS; COORDINATION AND PLANNING

(a) The secretary of administration or designee shall be responsible for the coordination of telecommunications initiatives among executive branch agencies, departments, and offices.

(b) In furtherance of the goals set forth in 30 V.S.A. § 8060(b), the secretary shall have the following duties:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for provision of these services to the unserved areas;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to formulate an action plan to accomplish the goals of universal availability of broadband and mobile telecommunications services by the end of the year 2013.

(4) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(5) to support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) through the department of innovation and information, to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for

comparable value to the state, unless payment for use is otherwise required by federal law;

(7) to review all financial transactions, statements, and contracts of the Vermont telecommunications authority established under 30 V.S.A. § 8061; and

(8) to receive all technical and administrative assistance as deemed necessary by the secretary of administration.

(c) Deployment tracking.

(1) Not later than 30 days of the effective date of this act, all persons proposing to construct or install Vermont cables, wires, or telecommunications facilities as defined in 30 V.S.A. § 248a(b)(1) shall file plans with the secretary if the construction or installation relates to the deployment of broadband infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, or by funds granted or loaned by the state of Vermont or one of its instrumentalities.

(2) The plans filed pursuant to subdivision (1) of this subsection shall include data identifying the projected coverage area, the projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities, and shall be updated every 90 days.

(3) The secretary shall use the information provided pursuant to this subsection in performing the duties set forth in subsection (b) of this section.

(4) The secretary shall keep confidential the plans submitted to it under this subsection except that, pursuant to a nondisclosure agreement, the secretary may disclose the information to the Vermont Center for Geographic Information created under 10 V.S.A. § 122 or to some other person or entity for the purpose of aggregating the information. Information so disclosed shall remain confidential.

(5) The secretary may request voluntary disclosure of information such as that set forth in subdivision (2) of this subsection regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. The secretary may enter into a nondisclosure agreement with respect to any such voluntary disclosures and the information disclosed pursuant thereto shall remain confidential.

(6) The secretary may publicly disclose aggregated information based upon the information provided pursuant to this subsection.

(7) The confidentiality requirements of subdivisions (4) and (5) of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

And by renumbering all sections to be numerically correct.

And that when so amended the bill ought to pass.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Natural Resources and Energy, with the following amendments thereto:

First: In Sec. 1 (purpose and findings), by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) It is the purpose of this act to establish policies and programs designed to achieve statewide cellular and broadband deployment in Vermont by the end of the year 2013. Although these technologies are deployed by private sector providers, state regulation of the telecommunications industry as well as government financial assistance can have a significant impact on private sector decisions to invest in and deploy infrastructure, particularly in underserved and unserved areas of the state. Vermont initiatives must recognize that:

(1) the availability of high-speed Internet access will spur economic growth and job creation;

(2) cellular telephone service is increasingly becoming the telephone service of choice for consumers and at the same time can serve as a lifeline for those who choose it; and

(3) the deployment of smart grid technology may facilitate the drive to expand broadband Internet access.

Second: In Sec. 6, 10 V.S.A. § 8506 (consolidated environmental appeals), in subsection (d), in the second sentence, by striking out the word “shall” and inserting in lieu thereof the word may

Third: By striking out Sec. 9 (pole attachment applications and disputes) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of the passage of this act, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of

supporting a broadband, telecommunications, or cable television deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner and shall include notice to all potentially affected persons. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: By striking out Sec. 10, 30 V.S.A. § 8092 (access to fiber on transmission and distribution poles), in its entirety and inserting in lieu thereof a new section to be numbered Sec. 10 to read as follows:

Sec. 10. 30 V.S.A. § 8092 is amended to read:

§ 8092. RATES; TERMS; CONDITIONS

* * *

(h)(1) A company may limit wireline attachments on electric transmission structures exclusively carrying voltages of 110 kV or higher to fiber-optic facilities attached and maintained by the company, if the company allows communications service providers to use fiber-optic facilities installed and maintained by the company and offers to install such fiber-optic facilities on such electric transmission structures where there are not sufficient facilities for use by communications service providers. Rates, terms, and conditions for access to such company-attached and company-maintained facilities shall be made available consistent with the requirements of this section.

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases

fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

* * *

(j) A company having electric transmission or distribution structures carrying voltages of 110 kV or lower may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

Fifth: In Sec. 12, 30 V.S.A. § 227e (leasing and licensing of state land), in subsection (a), by striking out “20” and inserting in lieu thereof 25

Sixth: In Sec. 13, 30 V.S.A. § 227b (leasing and licensing of state land for wireless telecommunications), in subdivision (a)(1), by striking out “20” and inserting in lieu thereof 25

Seventh: In Sec. 15, 30 V.S.A. § 8060 (findings and purpose related to the VTA), in subsection (a), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state, ~~but significant gaps remain.~~ Nevertheless, significant gaps remain in 99 target communities for broadband service, and in community hubs and along the routes which connect them for mobile telecommunications service.

Eighth: In Sec. 15, 30 V.S.A. § 8060 (findings and purpose related to the VTA), in subsection (b), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3) ~~the investment in telecommunications infrastructure in the state which will support that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities.~~

Ninth: By striking out Sec. 16, 30 V.S.A. § 8061 (establishment of the VTA and organization) in its entirety and inserting in lieu thereof a new section to be numbered Sec. 16 to read as follows:

Sec. 16. 30 V.S.A. § 8061 is amended to read:

§ 8061. ESTABLISHMENT OF AUTHORITY; ORGANIZATION

(a) The Vermont telecommunications authority is hereby created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The authority shall have a board of directors of ~~11~~ nine members selected as follows:

(1) The state treasurer or his or her designee;

(2) The secretary of administration or his or her designee;

~~(3) The manager of the Vermont economic development authority or his or her designee;~~

~~(4) Two at-large members~~ One member of the house of representatives appointed by the speaker of the house, ~~who may not be members of the general assembly at the time of appointment;~~

~~(5)~~(4) ~~Two at-large members~~ One member of the senate appointed by the committee on committees of the senate, ~~who may not be members of the general assembly at the time of appointment; and~~

~~(6)~~(5) ~~Two~~ Five at-large members appointed by the governor, who may not be employees or officers of the state at the time of appointment; ~~and~~

~~(7) Two at-large members appointed jointly by the governor, the speaker of the house, and the president pro tem of the senate, who shall be chair and vice chair of the board of directors, and who may not be members of the general assembly or employees or officers of the state at the time of appointment.~~

(c) The authority's powers are vested in the board of directors, and a quorum shall consist of ~~six~~ five members. No action of the authority 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 ~~five~~ four members vote in favor of the action. The governor, the speaker of the house, and the president pro tempore of the senate shall jointly select, from among the at-large members, a chair and vice chair, who may not be members of the general assembly or employees or officers of the state at the time of the appointment.

(d) In making appointments of at-large and legislative members and the chair, the appointing authorities shall give consideration to citizens of the state with knowledge of telecommunications technology, telecommunications

regulatory law, transportation rights-of-way and infrastructure, finance, and environmental permitting. However, the ~~six~~ legislative and five at-large members, ~~the chair, and the vice chair~~ 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 authority. ~~The six at-large members, the chair and the vice chair shall serve terms of four years beginning July 1 of the year of appointment. However, two of the at large members first appointed by the speaker, and two of the at large members first appointed by the committee on committees shall serve an initial term of two years. Any vacancy occurring among the at large members, the chair or the vice chair shall be filled by the respective appointing authority and be filled for the balance of the unexpired term~~ 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. In addition, at least one at-large member shall represent an area of Vermont determined by the authority to be unserved by broadband at the time of his or her appointment or reappointment, and at least one at-large member shall represent an area of Vermont determined by the authority to be unserved by mobile telecommunications at the time of his or her appointment or reappointment. The legislative and at-large members shall serve terms of two years beginning 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 by the respective appointing bodies for the balance of the unexpired term. A member may be reappointed for up to three consecutive terms.

(e) The authority shall hire and employ an executive director who shall serve as the authority's chief administrative officer and shall direct and supervise the authority's administrative affairs and technical activities in accordance with any rules, regulations, and policies set forth by the authority. In addition to any other duties, the executive director shall:

- (1) Attend all meetings of the authority, act as its secretary, and keep minutes of its proceedings;
- (2) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the authority;
- (3) Make an annual report to the authority documenting the actions of the authority and such other reports as the authority may request;

(4) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter.

(f) Except for those members otherwise regularly employed by the state, the compensation of the authority's members shall be the same as that provided by ~~subsection 32 V.S.A. § 1010(a) of Title 32~~. All members of the authority, including those members otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

Tenth: By adding a new section to be numbered Sec. 16a to read as follows:

Sec. 16a. VTA BOARD; REORGANIZATION

Upon the effective date of this act, the terms of office of the existing members of the board of directors of the Vermont telecommunications authority shall terminate, and new members, for the term commencing in 2011, shall be appointed as provided in this act.

Eleventh: By striking out Sec. 17, 30 V.S.A. § 8062 (powers and duties of the VTA) in its entirety and inserting in lieu thereof a new section to be numbered Sec. 17 to read as follows:

Sec. 17. 30 V.S.A. § 8062 is amended to read:

§ 8062. PURPOSE; POWERS AND DUTIES

(a) To achieve the goals under subsection 8060(b) of this title, the authority is directed:

~~(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state; develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to areas unserved, and develop and maintain an inventory of infrastructure necessary for provision of these services to the areas unserved;~~

~~(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;~~

~~(3) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;~~

~~(4) to coordinate and establish public-private partnerships to extend availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(5) to support and facilitate local initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(6) to provide resources to local, regional, public, and private entities in the form of loans, grants, and other incentives funded through bonded capital and other resources;~~

~~(7) to solicit and consider input from local municipal authorities, districts designated by the federal economic development administration, regional planning commissions, and metropolitan planning organizations on specific projects the authority plans to undertake;~~

~~(8)(2) to inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the state to enable broadband service in unserved areas of the state; take whatever steps are consistent with the powers granted the authority under this chapter to promote the use of those licensed radio frequencies for that purpose; and recommend to the general assembly any further legislative measures with respect to ownership, management, and utilization of these licenses as would promote the general good of the state; and~~

~~(9) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually neutral placement of mobile telecommunications and wireless broadband antenna facilities~~

(3) to construct and install, or cause to be constructed and installed, fiber optic and wireless infrastructure through grants to providers and through direct investments in infrastructure to be owned by the authority, in areas needed to meet the state's objectives as determined by the secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3), provided that direct investment is not undertaken in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service; and

(4) to provide technical and such other support as the secretary of administration deems necessary.

(b) The authority shall have the following powers, which shall be exercised to further the authority's purpose, and shall have all other powers necessary to carry out the duties imposed on the authority by law:

(1) to ~~establish partnerships and~~ enter into contracts with providers of telecommunications services and related facilities to serve unserved people and areas of the state; and to provide financial and other assistance to providers who agree in return to provide mobile telecommunications or broadband services to unserved people and areas of the state; and to facilitate directly or indirectly the efforts of other entities to advance the availability of mobile voice and high speed data or broadband services.

(2) to provide financial assistance in the form of ~~loans, grants, guarantees, other financial instruments,~~ or, in accordance with section 8064 of this title, to issue bonds backed by project revenues, the state, or its political subdivisions, or both, for the purpose of building infrastructure capable of delivering mobile telecommunications and broadband services to all Vermonters;

(3) to consult, contract, or partner with the Vermont economic development authority and the Vermont municipal bond bank to provide financial assistance for purposes authorized by this chapter;

~~(4) to coordinate access to and pursue regional and local revolving loan funding and all state, federal, and private funding that is available for telecommunications infrastructure, including financial assistance that may be available to rural economic area partnership (REAP) zones, as designated by the U.S. Department of Agriculture and to contract with financial assistance providers;~~

~~(5)~~(4) to receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5;

~~(6)~~(5) to incorporate one or more nonprofit corporations in Vermont to fulfill the goals of this chapter. Such corporations shall be empowered to borrow money and to receive and accept gifts, grants, or contributions from any source, subject to the provisions of 32 V.S.A. § 5, subject to the limitations imposed by law on the authority. The board of directors of any nonprofit corporation created under this subsection shall be the board of directors of the authority. The corporation shall be organized and operate under the nonprofit corporation laws of the state of Vermont. The authority may contract with the corporation to provide staff and management needs of the corporation;

~~(7) to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband~~

~~services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;~~

~~(8)(6)~~ to construct, install, own, acquire, sell, trade, and lease equipment, facilities, and other infrastructure that could be accessed and used by multiple service providers, the state and local governments, including fiber optic cables, towers, shelters, easements, rights of way, and wireless spectrum of frequencies; provided that any agreement by the authority to sell infrastructure that is capable of use by more than one service provider shall contain conditions that will ensure continued shared use or co-location at reasonable rates, and provided that the proposed activity will not be in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service;

~~(9) in collaboration with the Vermont municipal bond bank, to act as agent and advisor for municipalities that wish to offer municipally backed financial assistance, consistent with chapter 53 of Title 24, to develop telecommunications infrastructure or services in their communities;~~

~~(10)(7)~~ to apply for and obtain required permits for the construction of telecommunications infrastructure;

~~(11)(8)~~ in collaboration with the agency of administration, to lead the ~~management of~~ marketing of state properties to encourage and expedite collocation of infrastructure;

~~(12)(9)~~ to consult with agencies and departments on establishing charges or payments for use by wireless telecommunications and broadband service providers of state property, easements, and rights-of-way to the extent such charges or payments are required by law, and establish the criteria for waiver of such charges or payments when providers offer to furnish comparable value to the state to meet the public good;

~~(13)(10)~~ to sue and be sued in its own name and plead and be impleaded;

~~(14)(11)~~ to administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority; ~~and~~

~~(15)(12)~~ to borrow money and give other evidence of indebtedness or obligations and security consistent with the authority's purpose and needs; and

(13) to pursue route and site identification for fiber optic and wireless infrastructure.

(c) Nothing in this chapter shall be construed to grant power to the authority to offer the sale of telecommunications services to the public.

Twelfth: By striking out Sec. 18, 30 V.S.A. § 8063 (interagency cooperation and assistance), in its entirety and inserting in lieu thereof a new section to be numbered Sec. 18 to read as follows:

Sec. 18. 30 V.S.A. § 8063 is amended to read:

§ 8063. INTERAGENCY COOPERATION AND ASSISTANCE

(a) Other departments and agencies of state government shall assist and cooperate with the authority and shall make available to it information and data as needed to assist the authority in carrying out its duties. The secretary of administration shall establish protocols and agreements among the authority 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 exemptions to the public records act or under other laws due solely to the fact that the information or data is shared with the authority pursuant to this section.

~~(b) With the consent of the governor, and under terms and conditions of transfer approved by the governor, a state agency shall transfer ownership and control to the authority of the agency's interest in any telecommunications facility designated by the authority as appropriate to assist the authority in meeting its statutory purposes. "Telecommunications facility" includes antennae, towers and other support structures, wires and cables, and other equipment.~~

~~(c) To the extent that the authority issues loans, it shall consult with the Vermont economic development authority to ensure that the lending activities and programs of each are coordinated and are not in competition. The authority shall, through contract or agreement, engage the assistance of the Vermont economic development authority in planning and administering lending activities and in evaluating credit worthiness of the borrower for purposes of this chapter.~~

~~(d) The authority shall also strive to identify, consult with, and coordinate lending programs with the administrators of local and regional revolving loan funds in order to leverage the lending capacity of the authority and the regional and local funds, and to ensure that the lending activities of the authority and the revolving loan funds are not in competition.~~

~~(e) No instrumentality of the state shall sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without prior notice to and approval of the authority general assembly.~~

Thirteenth: By striking out Sec. 19, 30 V.S.A. § 8071 (annual reports and audit), in its entirety and inserting in lieu thereof a new section to be numbered Sec. 19 to read as follows:

Sec. 19. 30 V.S.A. § 8071 is amended to read:

§ 8071. QUARTERLY AND ANNUAL REPORTS; AUDIT

(a) On or before the last day of January of each calendar year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. Each report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants; the cost shall be considered an expense of the authority and a copy shall be filed with the state treasurer. Audits performed by a public accountant under this section shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements.

(b) The auditor of accounts of the state and his or her duly authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, sinking funds, investments, and any other matters relating to its financial statements.

(c) Quarterly Reports. Within 30 days of the end of each quarter, the authority shall, in addition to any other reports required under this section, submit a report of its activities for the preceding quarter to the secretary of administration which shall include the following:

(1) A description of all authority activities to develop or facilitate development of telecommunications infrastructure that furthers the objectives of this chapter.

(2) Financial statements of the authority, a summary of expenditures by the authority since inception, and a forecast of expenditures.

(3) A summary of any financial commitments made by the authority.

(4) A list and summary of all contracts and agreements entered into by the authority, and a list and summary of any rail right-of-way agreements entered into by the authority, including any waivers of charges for comparable value to the state granted under 19 V.S.A. § 26a.

(5) A current business plan for the authority, including an explanation of significant changes subsequent to the most recent previous report.

(6) Identification of the impact of its activity on existing business providers and efforts taken by the authority to avoid direct or indirect competition with existing providers.

(d) The authority shall include in the annual report required under subsection (a) of this section a summary of all the information quarterly reported to the secretary of administration under subsection (c) of this section, as well as a summary of any and all instances in which service providers that have entered into contracts or binding commitments with the authority have materially defaulted, been unable to fulfill their commitments, or have requested or been granted relief from contractual or binding commitments.

Fourteenth: By striking out Sec. 21, 30 V.S.A. § 8078 (competitive process for proposals), in its entirety and inserting in lieu thereof a new section to be numbered Sec. 21 to read as follows:

Sec. 21. 30 V.S.A. § 8078 is amended to read:

§ 8078. SELECTION OF PROPOSALS TO PROVIDE COMPETITIVE PROCESS

(a) Broadband service; competitive process.

(1) For the purposes of this chapter, a premise is “served” with broadband service if it has access to mass-market broadband services meeting the minimum technical characteristics identified pursuant to section 8077 of this title. For the purposes of this chapter, with respect to broadband service, “unserved area” shall mean a contiguous geographic area of the state, without regard to municipal boundaries or size of geographic area, which contains premises that can obtain basic telephone service but are not served.

~~(2) By not later than December 1, 2007, the authority shall identify all served and unserved areas within the state. The authority may rely on readily and publicly available information to estimate the extent of these areas.~~

~~(3)~~ The authority shall seek to enable the development of networks and telecommunications infrastructure necessary to support provision of mass-market broadband services, in all unserved areas of the state, which meet or exceed the minimum technical characteristics identified pursuant to section 8077 of this title.

~~(4)~~⁽³⁾ The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate unserved areas by the end of the year ~~2010~~ 2013 through the development of telecommunications facilities or through binding commitments from service providers to offer broadband service to all unserved areas in a given region. For the purposes of this

process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. The authority shall solicit and accept broadband service expansion commitments in a manner that allows small locally based broadband providers a reasonable opportunity to contribute toward realization of the policy objectives of this chapter. In evaluating proposals, the authority shall consider:

(A) the proposed data transfer rates and other data transmission characteristics of services which would be available to consumers;

(B) the price to consumers of services;

(C) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(D) whether the proposal would utilize the best available technology which is economically feasible; ~~and~~

(E) the ability to achieve the authority's objectives in the most cost-effective manner; and

(F) the availability of service of comparable quality and speed.

~~(5)~~(4) The authority may support or undertake projects that enable provision of broadband service in geographic areas currently served; provided that:

(A) such projects are the most cost-effective method for providing broadband services in nearby unserved areas; and

(B) before undertaking such projects, the authority makes reasonable effort to distinguish served areas and populations from unserved areas and populations within the geographic area that the project would serve, including recognition and consideration of known or probable service extensions or upgrades.

(b) Commercial mobile radio (cellular) service, competitive process.

(1) The authority shall seek to eliminate areas without access to commercial mobile radio service licensed by the Federal Communications Commission by ~~2010~~ the end of the year 2013 through the construction of facilities and binding commitments from commercial mobile radio service providers.

(2) The authority shall seek to expand access to all services that utilize the technical standards which are commonly in use for providing voice and data services through commercial mobile radio service.

(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate areas without coverage from a provider of commercial mobile radio services within the state of Vermont by ~~2010~~ the end of the year 2013 through the development of telecommunications facilities and through binding commitments from service providers to expand service, including all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. In evaluating proposals, the authority shall consider the extent to which a proposal meets coverage objectives while limiting environmental impact and providing opportunities for future development of wireless communications services.

Fifteenth: By striking out Sec. 22, 30 V.S.A. § 8079 (broadband infrastructure investment), in its entirety and inserting in lieu thereof a new section to be numbered Sec. 22 to read as follows:

Sec. 22. 30 V.S.A. § 8079 is amended to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

(a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with retail providers for the purpose of making services available to ~~at least 10,000~~ households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the authority. ~~For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations~~ secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3).

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; or (2) ~~initiatives by public-private partnerships or retail vendors; or~~ (3) programs that provide financial incentives to consumers, ~~in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers or~~ providers. The authority shall select proposals for target communities that best

achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

(c) Criteria. Any request for proposals developed under this section shall include the following requirements:

(1) The technology and infrastructure used by a telecommunications provider participating in a project pursuant to this section shall support the delivery of services with an upload speed of at least one megabit per second, and combined download and upload speeds equal to or greater than five megabits per second. However, the Vermont telecommunications authority may waive the one megabit upload speed requirement if it determines this is in the best interest of the consumers.

(2) Infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.

(d) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:

(1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;

(2) the level of adoption of broadband service by residential and business users within the community;

(3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;

(4) the number of potential new subscribers in each community and the total level of funding available for the program;

(5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state; ~~and~~

(6) pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of

~~Agriculture, which will be awarded no later than October 1, 2010 or any other federally funded programs that may exist to support telecommunications; and~~

~~(7) the action plan prepared by the secretary of administration under 3 V.S.A. § 2222b(b)(3).~~

~~(e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100 percent coverage pursuant to this chapter and, once that is achieved, to then deliver fiber quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.~~

~~(f) Beginning July 1, 2010, the authority may invest up to \$500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.~~

Sixteenth: By adding a new section to be numbered Sec. 22a to read as follows:

Sec. 22a. 3 V.S.A. § 2222b is added to read:

§ 2222b. TELECOMMUNICATIONS; COORDINATION AND PLANNING

(a) The secretary of administration or designee shall be responsible for the coordination of telecommunications initiatives among executive branch agencies, departments, and offices.

(b) In furtherance of the goals set forth in 30 V.S.A. § 8060(b), the secretary shall have the following duties:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for provision of these services to the unserved areas;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to formulate an action plan to accomplish the goals of universal availability of broadband and mobile telecommunications services by the end of the year 2013;

(4) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(5) to support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) through the department of innovation and information, to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;

(7) to review all financial transactions, statements, and contracts of the Vermont telecommunications authority established under 30 V.S.A. § 8061; and

(8) to receive all technical and administrative assistance as deemed necessary by the secretary of administration.

(c) Deployment tracking.

(1) Not later than 30 days after the effective date of this act, all persons proposing to construct or install Vermont cables, wires, or telecommunications facilities as defined in 30 V.S.A. § 248a(b)(1) shall file plans with the secretary if the construction or installation relates to the deployment of broadband infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, or by funds granted or loaned by the state of Vermont or one of its instrumentalities.

(2) The plans filed pursuant to subdivision (1) of this subsection shall include data identifying the projected coverage area, the projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities, and shall be updated every 90 days.

(3) The secretary shall use the information provided pursuant to this subsection in performing the duties set forth in subsection (b) of this section.

(4) The secretary shall keep confidential the plans submitted to it under this subsection except that, pursuant to a nondisclosure agreement, the

secretary may disclose the information to the Vermont Center for Geographic Information created under 10 V.S.A. § 122 or to some other person or entity for the purpose of aggregating the information. Information so disclosed shall remain confidential.

(5) The secretary may request voluntary disclosure of information such as that set forth in subdivision (2) of this subsection regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. The secretary may enter into a nondisclosure agreement with respect to any such voluntary disclosures, and the information disclosed pursuant thereto shall remain confidential.

(6) The secretary may publicly disclose aggregated information based upon the information provided pursuant to this subsection.

(7) The confidentiality requirements of subdivisions (4) and (5) of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Seventeenth: By striking out Sec. 23 (relating to a smart grid coordinator) in its entirety.

Eighteenth: In Sec. 24 (relating to the satellite grant program), in subsection (c), by striking out the words “telecommunications division” in their entirety and inserting in lieu thereof the words Vermont telecommunications authority

Nineteenth: By striking out Sec. 25 (relating to JFC approval of VTA contracts and expenditures) in its entirety.

And by renumbering the remaining sections to be numerically correct

And that after passage the title of the bill be amended to read:

“An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont.”

And that when so amended the bill ought to pass.

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as substituted?, Senator Campbell, moved to suspended the rules to take up the amendments of the Committee on Finance first, which was agreed to.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Finance?, Senator Cummings requested and was granted leave to withdraw the *sixteenth* recommendation of amendment of the Committee on Finance, which was agreed to.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Finance in the *first* through *fifteenth* and the *seventeenth* through *nineteenth* recommendations of amendment?, was decided in the affirmative.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Lyons requested and was granted leave to withdraw the *third* recommendation of amendment of the Committee on Natural Resources and Energy, which was agreed to.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy in the *first* and *second* and *fourth* through *seventh* recommendations of amendment?, was decided in the affirmative.

Thereupon, pending the question Shall the bill be read a third time?, Senator Sears moved that consideration of the bill be postponed until the next legislative day, which was disagreed to on a division of the Senate, Yeas 9, Nays 21.

Thereupon, the recurring question, Shall the bill be read a third time?, was decided in the affirmative.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 13, 2011.