

Journal of the Senate

WEDNESDAY, APRIL 13, 2011

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 46

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 259. An act relating to increasing the number of members on the liquor control board.

H. 442. An act relating to amending the charter of the city of Rutland.

In the passage of which the concurrence of the Senate is requested.

Joint Resolution Placed on Calendar

J.R.S. 28.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

J.R.S. 28. Joint resolution congratulating the Republic of China on its centennial anniversary and supporting its being granted observer or participation status in certain travel and tourism organizations.

Whereas, the United States, and especially the state of Vermont, and the Republic of China (Taiwan) share a historically close relationship marked by strong bilateral trade, educational and cultural exchange, scientific and technological interests, and tourism, and

Whereas, the United States and Taiwan engage in robust bilateral trade; the United States ranks as Taiwan's third largest trading partner; and Taiwan is the ninth largest trading partner of the United States, and

Whereas, in 2010, bilateral trade reached \$62 billion with exports to Taiwan totaling \$26 billion, and Vermont exports a significant amount to Taiwan annually, including machinery, computer and electronic products, and chemicals, and

Whereas, Vermont and the Republic of China—the first republic in Asia and the first full-fledged democracy in Chinese history—share the common values of freedom, democracy, human rights, and rule of law, and

Whereas, since 1999, the Vermont–Taiwan sister relationship has resulted in significant political, economic, educational, and cultural exchanges, and

Whereas, Taiwanese President Ma Ying-jeou has worked tirelessly to uphold democratic principles in Taiwan, ensure the prosperity of the Taiwan people, promote Taiwan’s international standing as a responsible member of the international community, increase participation in international organizations, dispatch humanitarian missions abroad, and further improve relations between the United States and Taiwan, and

Whereas, a large volume of travel and tourism exists between the United States and Taiwan, with the number of outbound departures in 2009 from Taiwan to the United States totaling 477,500, and United States arrivals in Taiwan totaling in excess of 369,000, and

Whereas, it remains in the mutual interest of Vermont and Taiwan that Taiwan be allowed to observe the meetings and activities of international organizations, in particular the International Civil Aviation Organization, so as to ensure the safety of the traveling public, and

Whereas, Taiwan is a key transport hub in the Asia-Pacific region, and the Taipei Flight Information Region under Taiwan’s jurisdiction covers an area of 176 square nautical miles with 1.35 million controlled flights passing through annually, and

Whereas, Taiwan’s participation in the United States Visa Waiver Program (VWP), enabling ROC nationals to travel to the United States for tourism or business purposes for stays of 90 days or less without being required to obtain a visa, would increase tourism and business between Taiwan and the United States, particularly Vermont, and

Whereas, Taiwan presents a low immigration risk for the United States, being a full-fledged democracy characterized by stability and social order, and Taiwan citizens present few, if any, crime or public security issues in the United States, and illegal immigration or visa overstays remain few, with rejection rates of United States visas only 2.2 percent, well below the VWP three percent requirement, and

Whereas, Taiwan, in the spirit of reciprocity, has extended visa waivers to United States citizens since 1993, and 100 nations currently grant Taiwan citizens visa waivers, among them being the members of the European Union, Japan, New Zealand, Singapore, Canada, and the United States territory of Guam, and

Whereas, Vermont and Taiwan look forward to an even stronger friendship over the next century, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly congratulates the Republic of China (Taiwan) and our dear friends in Taiwan on the historic centennial anniversary of the founding of the Republic of China, *and be it further*

Resolved: That the General Assembly supports Taiwan's participation as an observer in the meetings and activities of the International Civil Aviation Organization and participation in the United States Visa Waiver Program, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to President Ma Ying-jeou of the Republic of China, President Barack Obama, Director-General Anne Hung of the Taipei Economic and Cultural Office in Boston, the Vermont Congressional Delegation, and Governor Peter Shumlin.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 108.

By the Committee on Judiciary,

An act relating to effective strategies to reduce criminal recidivism.

Rules Suspended; Bills Referred

House bill of the following title was read the first time and referred:

H. 259.

An act relating to increasing the number of members on the liquor control board.

On motion of Senator Campbell, the rules were suspended and the bill was referred to the Committee on Rules.

House bill of the following title was read the first time and referred:

H. 442.

An act relating to amending the charter of the city of Rutland.

On motion of Senator Campbell, the rules were suspended and the bill was referred to the Committee on Rules.

Rules Suspended; Bill Committed

H. 202.

Pending entry on the Calendar for notice, on motion of Senator Ayer, the rules were suspended and House bill entitled:

An act relating to a universal and unified health system.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Ayer moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

Bill Amended; Bill Passed

S. 78.

Senate bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs moved to amend the bill by as follows:

First: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (b) (definitions), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

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

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

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

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

Second: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (b) (definitions), in subdivision (3) (limited size and scope), by striking out subparagraph (B) in its entirety and inserting in lieu thereof a new subparagraph (B) to read as follows:

(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. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

Third: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (c) (findings), in subdivision (1), by striking out the second sentence in its entirety and inserting in lieu thereof the following:

However, with respect to telecommunications facilities of limited size and scope, the board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that the board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision.

Fourth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (c) (findings), in subdivision (2),

by striking out the third and fourth sentences in their entirety and inserting in lieu thereof the following:

A rebuttable 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.

Fifth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), after subdivision (e) (notice), by inserting a new subdivision to be lettered subdivision (f) to read as follows:

(f) Review period. ~~Unless~~ If the public service board ~~identifies~~ determines that an application ~~raises~~ does not raise a significant issue, the board shall issue a final determination on an application filed pursuant to this section within ~~90~~ 60 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within ~~90~~ 60 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

Sixth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (j)(1) (telecommunications facilities of limited size and scope), after the first sentence, by inserting the following:

The board may make findings based on the application and the supporting evidence submitted by the applicant.

Seventh: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), in subdivision (j) (telecommunications facilities of limited size and scope), in subdivision (2), by striking out subparagraph (B) in its entirety and inserting in lieu thereof a new subparagraph (B) to read as follows:

(B) ~~Any~~ An applicant seeking a waiver or modification of notice to adjoining landowners under this subsection shall file a request for such a waiver or modification with the public service board not later than 30 days prior to serving written notice under subsection 248a(e) of this section, together with a description of the project and its location, the applicant's reasons for seeking waiver or modification, and the applicant's demonstration

that the standard for granting a waiver or modification is met. Any granting of such a waiver or modification 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. The board shall rule on a waiver or modification request under this subsection within 21 days of the filing of the request.

Eighth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), by striking out subdivision (k) (de minimis modifications) in its entirety and inserting in lieu thereof a new subdivision (k) to read as follows:

(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; and the commissioner of public service and its director for public advocacy. 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 be filed only 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.

Ninth: In Sec. 2, 30 V.S.A. § 248a (certificate of public good for telecommunications facilities), by striking out subdivision (l) (rules) in its entirety and inserting in lieu thereof a new subdivision (l) to read as follows:

(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 Subject to the provisions of subdivision (c)(1) of this section regarding waiver of the substantive criteria set forth in that subdivision, the board 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.

Tenth: In Sec. 3, 10 V.S.A. § 1264 (stormwater management), in subsection (j), in the first sentence, by striking out the following: “and is filed before July 1, 2014”

Eleventh: In Sec. 3a (stormwater management rule; agency of natural resources; prospective repeal), by striking out subsection (c) (prospective repeal) and, in the catchline, by striking out “; PROSPECTIVE REPEAL”

Twelfth: By striking out Sec. 4a (prospective repeal) in its entirety.

Thirteenth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state land; public notice), in subsection (a), in the first sentence, after the words “installation of a” by inserting the word wireless and in subsection (b), in subdivision (2), in the first sentence, after the word “such” by inserting the words leased or licensed

Fourteenth: In Sec. 14, 24 V.S.A. § 4413 (limitations on municipal bylaws), in subsection (h), in subdivision (1) (A), by striking out the following: “200” and inserting in lieu thereof the following: 300 and by striking out the second sentence in its entirety.

Fifteenth: By striking out Sec. 14a (prospective repeal) in its entirety and by inserting in lieu thereof a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached. No ordinance under this section may regulate an improvement that is exempt from regulation under subdivision 4413(h) (telecommunications; ancillary improvements of 300 square feet or less; improvements associated with communications lines) of this title.

* * *

Sixteenth: By inserting a new section to be numbered Sec. 14c to read as follows:

Sec. 14c. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(b) Planning and zoning chapter appeals.

(1) Within 30 days of the date of the act or decision, an interested person, as defined in 24 V.S.A. § 4465, who has participated as defined in 24 V.S.A. § 4471 in the municipal regulatory proceeding under that chapter may appeal to the environmental division an act or decision made under that chapter by a board of adjustment, a planning commission, or a development review board; provided, however, that decisions of a development review board under 24 V.S.A. § 4420 with respect to local Act 250 review of municipal impacts are not subject to appeal but shall serve as presumptions under chapter 151 of this title.

(2) Notwithstanding subdivision (1) of this subsection, an interested person may appeal an act or decision under 24 V.S.A. chapter 117 if, upon motion filed by the person no later than the deadline for filing a statement of questions on appeal, the environmental judge determines that:

(A) there was a procedural defect which prevented the person from obtaining interested person status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of interested person status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(d) Requirement that aggrieved Act 250 parties participate before the district commission.

(1) No aggrieved person may appeal an act or decision that was made by a district commission unless the person was granted party status by the district commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the district commission, and retained party status at the end of the district commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status.

(2) Notwithstanding subdivision (d)(1) of this section, an aggrieved person may appeal an act or decision of the district commission if, upon motion filed by the person no later than the deadline for filing a statement of questions on appeal, the environmental judge determines that:

(A) there was a procedural defect which prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status; or

(C) some other condition exists which would result would result in manifest injustice if the person's right to appeal was disallowed.

* * *

And by renumbering all remaining sections to be numerically correct.

Thereupon, pending the question, Shall the bill be amended as recommended Senator Illuzzi on behalf of the Committee on Economic Development, Housing and General Affairs?, Senator Lyons, on behalf of the

Committee on Natural Resources and Energy moved to amend the recommendation of amendment of Senator Illuzzi as follows:

First: By striking out the tenth (stormwater management; time for processing telecommunications facility applications; removal of sunset) and twelfth (Act 250 exemption; removal of sunset) recommendations of amendment in their entirety.

Second: By adding a new seventeenth recommendation of amendment to read as follows:

Seventeenth: By adding a new section to be numbered Sec. 14d to read as follows:

Sec. 14d. PROSPECTIVE REPEALS; EXEMPTIONS FROM MUNICIPAL BYLAWS AND ORDINANCES

Effective July 1, 2014:

(1) 24 V.S.A. § 4413(h) (limitations on municipal bylaws) shall be repealed; and

(2) 24 V.S.A. § 2291(19) (municipal ordinances; wireless telecommunications facilities) is amended to read:

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town, or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services. With respect to the construction or alteration of wireless telecommunications facilities subject to regulation granted in this section, the town, city, or incorporated village shall vest in its local regulatory authority the power to determine whether the installation of a wireless telecommunications facility, whatever its size, will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development, and if the local regulatory authority, originally or on appeal, determines that the facility will impose no impact or a de minimis impact, it shall issue a permit. No ordinance authorized by this section, except to the extent structured to protect historic landmarks and structures listed on the state or national register of historic places may have the purpose or effect of limiting or prohibiting a property owner's ability to place or allow placement of

antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached. ~~No ordinance under this section may regulate an improvement that is exempt from regulation under subdivision 4413(h) (telecommunications; ancillary improvements of 300 square feet or less; improvements associated with communications lines) of this title.~~

Which was agreed to on a division of the Senate, Yeas 15, Nays 14.

Thereupon, the question, Shall the bill be amended as recommended by Senator Illuzzi on behalf of the Committee on Economic Development, Housing and General Affairs, as amended?, Senator Lyons requested that the *third* recommendation of amendment of Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs be divided.

Which was agreed to.

Thereupon, the bill was amended as recommended by Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, as amended, in the *first* through *second* and *fourth* through *seventeenth* recommendations of amendment?, was decided in the affirmative.

Thereupon, the question, Shall the bill be amended as recommended by Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, as amended, in the *third* recommendation of amendment?, Senator Benning moved to amend the *third* recommendation of amendment as follows:

In Sec. 2, 30 V.S.A. § 248a (certificate of public good for communications facilities), in subsection (c), subdivision (1), in the first sentence, by striking out "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."

Which was agreed to on a roll call, Yeas 16, Nays 14.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Brock, Campbell, Flory, Fox, Giard, Kitchel, Lyons, MacDonald, Mazza, Mullin, Nitka, Pollina, Snelling, White.

Those Senators who voted in the negative were: Ashe, Baruth, Carris, Cummings, Doyle, Galbraith, Hartwell, Illuzzi, Kittell, McCormack, Miller, Sears, Starr, Westman.

Thereupon, the pending question, Shall the bill be amended as recommended by Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs, as amended?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator Illuzzi moved to amend the bill as follows:

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

(1) The Vermont telecommunications authority (VTA) was established under No. 79 of the Acts of 2007 to facilitate the provision of universal access to affordable cellular and broadband services in Vermont.

Second: In Sec. 1, in subsection (b), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) The general assembly has made substantial investments in furtherance of the goal of providing universal access to affordable cellular and broadband services. For example, in fiscal year 2011, the general assembly appropriated \$7,350,000.00 to the VTA to bring broadband services to unserved target communities and underserved business districts, pursuant to Sec. 2(b) of No. 161 and Sec. 4 of No. 78 of the Acts of the 2009 Adj. Sess. (2010). The general assembly has also appropriated, including the appropriation for the next fiscal year, \$2.35 million to fund the operations of the VTA.

Third: In Sec. 1, in subsection (b), by striking out subdivision (9) in its entirety and inserting in lieu thereof a new subdivision (9) to read as follows:

(9) With the recent influx of federal dollars for cellular, broadband, and smart grid initiatives, Vermont is well positioned to achieve the goal of

providing universal availability of cellular and broadband services throughout the state. That technology will include a 4G LTE wireless network.

Fourth: In Sec. 1, in subsection (b), by striking out subdivision (13) in its entirety and inserting in lieu thereof a new subdivision (13) to read as follows:

(13) It is imperative that Vermont create a regulatory environment in which all telecommunications carriers can compete fairly. The VTA made a critical decision when it chose to be a competitor instead of an objective coordinator.

Fifth: In Sec. 1, in subdivision (b), by adding subdivision (15) to read as follows:

(15) It is essential to bring broadband technologies to our educational institutions. In doing so, we further our state's commitment to supporting and enhancing the learning opportunities for our young talent and next generation of Vermont's workforce. Particularly in a rural state where many of our student population are isolated and without the wherewithal to travel, high speed, redundant, reliable, and secure Internet connectivity is imperative.

And by renumbering the remaining sections to be numerically correct

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, Senator Snelling moved to amend the recommendation of amendment in the *fourth* recommendation of amendment by striking out the second sentence in its entirety?, which was agreed to on a division of the Senate, Yeas 23, Nays 6.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Illuzzi?, as amended?, was decided in the affirmative.

Thereupon, pending third reading of the bill, Senator MacDonald moved to amend the bill by adding a new section to be numbered Sec. 25a to read as follows:

Sec. 25a. 3 V.S.A. § 2222c is added to read:

BROADBAND AND WIRELESS DEPLOYMENT

(a) DEFINITIONS

In this chapter:

(1) "Broadband" means high speed Internet access and includes all facilities, equipment, and apparatus used by a person or entity to provide such access to an end user.

(2) “Mbps” means megabits per second.

(3) “Wireless communications service” means retail communications service that allows for two-way transmission of voice and data using a local, state, national, or international network and in which the end user connects to the network using a circuit-switched handheld device with a built-in antenna that transmits voice or data through radio waves to a receiver that is located at or on a telecommunications facility as defined in section 248a of this title.

(b) REPORT; BROADBAND AND WIRELESS DEPLOYMENT; UNDERSERVED AND UNSERVED AREAS

On or before January 30, 2012, the secretary of administration or designee shall report to the general assembly each of the following:

(1) As of January 1, 2014, based upon data submitted by the providers, the areas of the state that will not be served by broadband. The report shall reflect both areas currently served as of the date of the report, as well as areas proposed to be served on or before January 1, 2014, including broadband and wireless communications services funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. The report shall include a map and a narrative description of each of the following, as of January 1, 2014:

(A) The areas served and the areas not served by broadband that has a download speed of at least 0.768 mbps and an upload speed of at least 0.2 mbps.

(B) The areas served and the areas not served by broadband that has a combined download and upload speed of at least five mpbs.

(C) The areas served and the areas not served by wireless communications service.

(2) Estimates as can reasonably be identified of the cost to:

(A) Provide broadband that has a download speed of at least 0.768 mbps and an upload speed of at least 0.2 mbps to areas not served by such broadband.

(B) Provide broadband that has a combined download and upload speed of at least five mbps to areas not served by such broadband.

(C) Provide wireless communications service to the areas identified under subdivision (1)(C) of this subsection as not receiving such service.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator MacDonald moved to amend the bill by adding a new section to be numbered Sec. 25b to read as follows:

Sec. 25b. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state improved communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

- (1) Strengthen the state's role in telecommunications planning.
- (2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.
- (3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.
- (4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.
- (5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.
- (6) Support competitive choice for consumers among telecommunications service providers and promote open access among competitive service providers on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered.
- (7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.
- (8) Support, to the extent practical and cost-effective, deployment of broadband infrastructure that:
 - (A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(9) In the deployment of broadband infrastructure pursuant to the objectives set forth in S.78 of the Acts of 2011, encourage the use of existing facilities, such as existing utility poles and corridors and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the bill by adding a new section to be numbered Sec. 24b to read as follows:

Sec. 24b. DUTIES OF THE VERMONT TELECOMMUNICATIONS AUTHORITY THROUGH FISCAL YEAR 2013

(a) **Findings and Purpose.** With limited state financial resources available to fulfill the mission of the Vermont telecommunications authority (VTA), as described in 30 V.S.A. § 8060, it is critical that any state funds spent in furtherance of that mission do not have the effect of providing broadband or cellular service to an unserved area that is already intended to be served by a telecommunications project on or before January 1, 2014, including projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. It is in the public interest, therefore, to cease further public expenditures through the VTA for new telecommunications facilities and instead, for a limited time, focus the VTA's resources on performing a thorough and specific identification of all areas in Vermont that would remain unserved as of January 1, 2014 without the benefit of state financial assistance, as required by subsections (b) and (c) of this section.

(b) **Limited VTA Authority.** Notwithstanding the provisions of 30 V.S.A. §§ 8061 through 8079, the VTA shall not, prior to January 15, 2012:

(1) expend state funds or issue bonds for the construction or installation of telecommunications facilities;

(2) issue a request for proposals for the construction or installation of telecommunications facilities; or

(3) expend state funds to secure site control for the purpose of constructing or installing telecommunications facilities.

(c) **VTA Charge.** Beginning on the effective date of this act and until January 15, 2012, the primary goal of the VTA shall be to identify areas in

Vermont that would remain unserved on or after January 1, 2014 without the benefit of state financial assistance and to devise a detailed strategic plan to fill those gaps in broadband and cellular service. The strategic plan shall seek to minimize the use of state funds and shall require the least amount of new construction or installation of telecommunications facilities necessary to fulfill its goal under this subsection. The strategic plan shall be delivered to the joint fiscal committee not later than January 15, 2012, and shall be implemented only upon approval by the joint fiscal committee.

(d) Subsection (b) of this section shall not interfere with any contractual rights or responsibilities entered into by the VTA on or before the effective date of this act.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Ashe?, Senator Ashe requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the bill by adding a new section to be numbered Sec. 24c to read as follows:

Sec. 24c. REPORT ON VTA'S SUSTAINABILITY ONCE 100 PERCENT COVERAGE ACHIEVED

(a) The mission of the Vermont Telecommunications Authority (VTA), as described in 30 V.S.A § 8060 (b)(1) and (2), is to ensure "that all residences and business in all regions of the state have access to affordable broadband services" and to ensure "the ubiquitous availability of mobile telecommunication services" by the end of 2010, now to be extended to 2013.

(b) It is not clear what role the VTA intends to play in Vermont's telecommunications landscape after December 31, 2013 when 100 percent broadband and cell coverage have been achieved in Vermont. It is not clear what source of revenues, if any, will support the VTA's operations into the future. It is not clear that Vermont taxpayers can continue to sustain the VTA's operational budget, which is \$900,000 under Secs. B.101 and D.101 of H.441 of the 2011 legislative session, as passed the House.

(c) The executive director of the VTA shall report to the chairs of the Senate Finance and Senate Economic Development, Housing, and General Affairs Committees, and the House Commerce and Economic Development Committee, with a detailed plan by January 30, 2012 demonstrating the extent to which revenues from VTA-owned infrastructure and lease agreements will be sufficient to fund the VTA's operating expenses beginning January 1, 2014. The report shall also detail how the revenues from those sources will be sufficient, after subtracting out VTA operating costs, to "continuously

upgrade” broadband and cellular infrastructure throughout Vermont equitably and in time with technological advances.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Brock, Benning, Campbell, and White moved to amend the bill in Sec. 16, 30 V.S.A. § 8061 (relating to the establishment and organization of the Vermont telecommunications authority), in subsection (d), after the last sentence, by adding a new sentence to read as follows: Upon expiration of a term, and for one year from the date of such expiration, a former board member shall not obtain employment in Vermont with an enterprise that provides broadband or cellular service.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator McCormack moved to amend the bill in Sec. 2, 30 V.S.A. § 248a (certificate of public good for communications facilities), in subsection (b) (definitions), in subdivision (2) (de minimis modification), in subparagraph (C), after the semicolon by striking out the word: “and”, and in subparagraph (D) by striking out the period and inserting in lieu thereof the following: ; and, and by inserting a new subparagraph (E) to read as follows:

(E) The addition, modification, replacement, or reconstruction will have no more than a trivial impact under the substantive criteria of this section.

Which was disagreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 29, Nays 1.

Senator Carris having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

The Senator who voted in the negative was: McCormack.

Joint Resolutions Adopted in Concurrence**J.R.H. 16.**

Joint House resolution entitled:

Joint resolution authorizing Green Mountain Boys' State educational program to use the state house.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

J.R.H. 18.

Joint House resolution entitled:

Joint resolution urging the Federal Railroad Administration to award a passenger rail improvement grant to the state of Vermont for upgrading the western rail corridor.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Rules Suspended; Bill Messaged

On motion of Senator Campbell, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

S.78.**Message from the House No. 47**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered joint resolution originating in the Senate of the following title:

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

And has adopted the same in concurrence.

The House has considered Senate proposal of amendment to the following House bill:

H. 236. An act relating to extending the limitation of prosecutions for sexual abuse of a vulnerable adult.

And has severally concurred therein.

Adjournment

On motion of Senator Campbell, the Senate adjourned until eleven o'clock and thirty minutes in the morning.