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H.577

Senators Ashe, Ayer, Degree, Lyons, MacDonald, Mullin, and Sirotkin
move that the Senate propose to the House that the bill be amended as follows:

First: By adding Secs. 5a and 5b and accompanying reader assistance to
read:

* * * Telecommunications Siting; Local Input; Collocation * * *

Sec. 5a. 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. As used in this section:

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

6 (2) “De minimis modification” means the addition, modification, or
7 replacement of telecommunications equipment, antennas, or ancillary
8 improvements on a telecommunications facility or existing support structure,
9 whether or not the structure was constructed as a telecommunications facility,
10 or the reconstruction of such a facility or support structure, provided:

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

13 (B) the total amount of impervious surface, including access roads,
14 surrounding the facility or support structure is not increased by more than
15 300 square feet;

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

20 (D) the additional equipment, antennas, or ancillary improvements on
21 the support structure, excluding cabling, does not increase the aggregate

1 surface area of the faces of the equipment, antennas, or ancillary improvements
2 on the support structure by more than 75 square feet.

3 (3) “Good cause” means a showing of evidence that the substantial
4 deference required under subdivision (c)(2) of this section would create a
5 substantial shortcoming detrimental to the public good or State’s interests in
6 section 202c of this title.

7 (4)(A) “Limited size and scope” means:

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

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

15 (B) For construction described in subdivision (3)(A) of this
16 subsection to be of limited size and scope, it shall not disturb more than
17 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision,
18 “disturbed earth” means the exposure of soil to the erosive effects of wind,
19 rain, or runoff.

1 (5) “Substantial deference” means that the plans and recommendations
2 referenced under subdivision (c)(2) of this section are presumed correct, valid,
3 and reasonable.

4 ~~(4)~~(6) “Telecommunications facility” means a communications facility
5 that transmits and receives signals to and from a local, State, national, or
6 international network used primarily for two-way communications for
7 commercial, industrial, municipal, county, or State purposes and any
8 associated support structure that is proposed for construction or installation
9 which is primarily for communications purposes, and any ancillary
10 improvements that are proposed for construction or installation and are
11 primarily intended to serve the communications facilities or support structure.
12 An applicant may seek approval of construction or installation of a
13 telecommunications facility whether or not the telecommunications facility is
14 attached to an existing structure.

15 ~~(5)~~(7) “Wireless service” means any commercial mobile radio service,
16 wireless service, common carrier wireless exchange service, cellular service,
17 personal communications service (PCS), specialized mobile radio service,
18 paging service, wireless data service, or public or private radio dispatch
19 service.

20 (c) Findings. Before the Public Service Board issues a certificate of public
21 good under this section, it shall find that:

1 (1) The proposed facility will not have an undue adverse effect on
2 aesthetics, historic sites, air and water purity, the natural environment, and the
3 public health and safety, and the public’s use and enjoyment of the I-89 and
4 I-91 scenic corridors or of any highway that has been designated as a scenic
5 road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C.
6 § 162, with due consideration having been given to the relevant criteria
7 specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).
8 However, with respect to telecommunications facilities of limited size and
9 scope, the Board shall waive all criteria of this subdivision other than
10 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty,
11 historic sites, rare and irreplaceable natural areas; endangered species;
12 necessary wildlife habitat). Such waiver shall be on condition that:

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

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

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

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

20 (A) If a proposed new support structure for a new
21 telecommunications facility that provides wireless service will exceed 50 feet

1 in height in a cleared area or will exceed 20 feet in height above the average
2 treeline measured within a 100-foot radius from the structure in a wooded area,
3 the application shall identify all existing telecommunications facilities within
4 the area to be served by the proposed structure and, for each such existing
5 facility, shall include a projection of the coverage and an estimate of additional
6 capacity that would be provided if the applicant's proposed
7 telecommunications equipment were located on or at the existing facility. The
8 applicant also shall compare each such projection and estimate to the coverage
9 and capacity that would be provided at the site of the proposed structure.

10 (B) To obtain a finding that a proposed facility cannot reasonably be
11 collocated on or at an existing telecommunications facility, the applicant must
12 demonstrate that:

13 (i) collocating on or at an existing facility will result in a
14 significant reduction of the area to be served or the capacity to be provided by
15 the proposed facility or substantially impede coverage or capacity objectives
16 for the proposed facility that promote the general good of the State under
17 subsection 202c(b) of this title;

18 (ii) the proposed antennas and equipment will exceed the
19 structural or spatial capacity of the existing or approved tower or facility, and
20 the existing or approved tower or facility cannot be reinforced, modified, or
21 replaced to accommodate planned or equivalent equipment, at a reasonable

1 cost, to provide coverage and capacity comparable to that of the proposed
2 facility;

3 (iii) the owner of the existing facility will not provide space for
4 the applicant's proposed telecommunications equipment on or at that facility
5 on commercially reasonable terms; or

6 (iv) the proposed antennas and equipment will cause radio
7 frequency interference that will materially impact the usefulness of other
8 existing or permitted equipment at the existing or approved tower or facility
9 and such interference cannot be mitigated at a reasonable cost.

10 * * *

11 (e) Notice. No less than 45 60 days prior to filing an application for a
12 certificate of public good under this section, the applicant shall serve written
13 notice of an application to be filed with the Board pursuant to this section to
14 the legislative bodies and municipal and regional planning commissions in the
15 communities in which the applicant proposes to construct or install facilities;
16 the Secretary of Natural Resources; the Secretary of Transportation; the
17 Division for Historic Preservation; the Commissioner of Public Service and its
18 Director for Public Advocacy; the Natural Resources Board if the application
19 concerns a telecommunications facility for which a permit previously has been
20 issued under 10 V.S.A. chapter 151; and the landowners of record of property

1 adjoining the project sites. In addition, at least one copy of each application
2 shall be filed with each of these municipal and regional planning commissions.

3 (1) Upon motion or otherwise, the Public Service Board shall direct that
4 further public or personal notice be provided if the Board finds that such
5 further notice will not unduly delay consideration of the merits and that
6 additional notice is necessary for fair consideration of the application.

7 (2) On the request of the municipal legislative body or the planning
8 commission, the applicant shall attend a public meeting with the municipal
9 legislative body or planning commission, or both, within the ~~45-day~~ 60-day
10 notice period before filing an application for a certificate of public good. The
11 Department of Public Service shall attend the public meeting on the request of
12 the municipality. The Department shall consider the comments made and
13 information obtained at the meeting in making recommendations to the Board
14 on the application and in determining whether to retain additional personnel
15 under subsection (o) of this section.

16 (3) With the notice required under this subsection, the applicant shall
17 include a written assessment of the collocation requirements of subdivision
18 (c)(3) of this section, as they pertain to the applicant's proposed
19 telecommunications facility. On the request of the municipal legislative body
20 or the planning commission, the Department of Public Service, pursuant to its
21 authority under subsection (o) of this section, shall retain an expert to review

1 the applicant's collocation assessment and to conduct further independent
2 analysis, as necessary. Within 45 days of receiving the applicant's notice and
3 collocation assessment, the Department shall report its own preliminary
4 findings and recommendations regarding collocation to the applicant and to all
5 persons required to receive notice of an application for a certificate of public
6 good under this subsection (e).

7 * * *

8 (h) Exemptions from other law.

9 (1) An applicant using the procedures provided in this section shall not
10 be required to obtain a permit or permit amendment or other approval under
11 the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the
12 facilities subject to the application or to a certificate of public good issued
13 pursuant to this section. This exemption from obtaining a permit or permit
14 amendment under 24 V.S.A. chapter 117 shall not affect the substantial
15 deference to be given to a plan or recommendation based on a local land use
16 bylaw under subdivision (c)(2) of this section.

17 (2) ~~Ordinances~~ An applicant using the procedures provided in this
18 section shall not be required to obtain an approval from the municipality under
19 an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter
20 that would otherwise apply to the construction or installation of facilities
21 subject to this section ~~are preempted~~. This exemption from obtaining an

1 approval under such an ordinance shall not affect the substantial deference to
2 be given to a plan or recommendation based on such an ordinance under
3 subdivision (c)(2) of this section.

4 (3) Disputes over jurisdiction under this section shall be resolved by the
5 Public Service Board, subject to appeal as provided by section 12 of this title.
6 An applicant that has obtained or been denied a permit or permit amendment
7 under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction
8 of a telecommunications facility may not apply for approval from the Board
9 for the same or substantially the same facility, except that an applicant may
10 seek approval for a modification to such a facility.

11 * * *

12 Sec. 5b. 24 V.S.A. § 4412(8)(C) is amended to read:

13 (C) The regulation of a telecommunications facility, as defined in
14 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter
15 when and to the extent jurisdiction is assumed by the Public Service Board
16 according to the provisions of that section. This exemption from obtaining
17 approval under this chapter shall not affect the substantial deference to be
18 given to a plan or recommendation based on a local land use bylaw under
19 30 V.S.A. § 248a(c)(2).

20

1 Second: By adding Sec. 5c and accompanying reader assistance to read:

2 * * * Department of Public Service; CPG; Complaint Protocol * * *

3 Sec. 5c. DEPARTMENT OF PUBLIC SERVICE; CERTIFICATE OF
4 PUBLIC GOOD; COMPLAINT PROTOCOL

5 (a) Not later than September 1, 2016, the Commissioner of Public Service
6 shall establish and implement a protocol for handling complaints concerning
7 the alleged failure of a company to comply with the terms and conditions of a
8 certificate of public good issued by the Public Service Board under 30 V.S.A.
9 §§ 248 or 248a. The Commissioner may revise the protocol at any time to
10 achieve a more effective and satisfactory response to complaints.

11 (b) The purpose of this section is to create a single location within State
12 government for receipt and tracking of all complaints described in subsection
13 (a) of this section. The protocol shall include a process for filing,
14 investigating, and responding to complaints in a timely manner, as well as a
15 procedure for tracking the number and nature of complaints received and a
16 summary of actions taken by the Department of Public Service in response to
17 each complaint, which information shall be aggregated and reported annually
18 to the General Assembly beginning January 1, 2017, notwithstanding 2 V.S.A.
19 § 20(d). In addition, the Department shall keep a record of complaints filed
20 under the protocol. A summary of the record shall be published on a website
21 maintained by the Department to increase public awareness and transparency,

1 which may reduce the occurrence of redundant complaint filings. The
2 Commissioner’s protocol shall include standards and procedures for
3 consolidating complaints of a similar nature involving the same company and
4 procedures under which a company receiving a complaint informs the
5 Department of the complaint and its nature and such information as the
6 Commissioner determines is necessary to track its progress and response.

7 (c) A complainant shall not be required to direct a complaint to a company
8 prior to submitting a complaint with the Department of Public Service pursuant
9 to the complaint protocol established under this section.

10 (d) The Commissioner may retain experts and other personnel as identified
11 in 30 V.S.A. § 20 to investigate complaints, and may allocate the reasonable
12 expenses incurred in retaining such personnel to the company as provided
13 under 30 V.S.A. § 21.

14 (e) The complaint protocol established under this section shall be in
15 addition to any procedure established under 30 V.S.A. § 208. Unresolved
16 complaints may be considered by the Public Service Board pursuant to its
17 authority under Title 30, including 30 V.S.A. § 8(f), and Public Service Board
18 Rules.

19 (f) With its report filed under this section on or before January 1, 2018, the
20 Commissioner shall make recommendations regarding the establishment of
21 and payment for an ongoing process for monitoring a company’s compliance

1 with a certificate of public good for the purpose of reducing the filing of
2 individual complaints under this section.

3 Third: By adding Sec. 5d and accompanying reader assistance to read:

4 * * * VTA Grants; Compliance; Refund * * *

5 Sec. 5d. VTA GRANT; COMPLIANCE; REFUND

6 (a) With funds appropriated by the General Assembly in 2011 Acts and
7 Resolves No. 40, Secs. 3 and 49, the Vermont Telecommunications Authority
8 (VTA) awarded VTel Wireless, a subsidiary of the Vermont Telephone
9 Company, a \$2,644.093.00 grant to purchase equipment to deploy mobile
10 voice service over its wireless broadband 4G LTE (WOW) network by
11 December 31, 2014. The equipment purchased by VTel does not currently
12 comply with the FCC's E-911 location accuracy requirements and, therefore,
13 has not been deployed.

14 (b) Consistent with all applicable State and federal requirements, VTel
15 shall provide mobile voice service over its WOW network to not less than
16 2,000 Vermont customers on or before November 1, 2017.

17 (c) On or before November 15, 2017, VTel Wireless shall submit to the
18 Department of Public Service, the successor in interest to the VTA, written
19 evidence substantiating compliance with subsection (b) of this section. If the
20 Department of Public Service finds that VTel Wireless has not complied with

1 subsection (b) of this section, VTel shall refund the State of Vermont
2 \$2,644,093.00.

3 (d) Any money refunded to the State under this section shall be deposited
4 into the Connectivity Fund and used solely to support the Connectivity
5 Initiative established under 30 V.S.A. § 7515b.

6 Fourth: By adding Sec. 5e and accompanying reader assistance to read:

7 * * * Communications Union Districts; Budget; Hearing;

8 Date Changes * * *

9 Sec. 5e. 30 V.S.A. § 3075 is amended to read:

10 § 3075. BUDGET

11 (a) Annually, ~~not later than September 15~~ on or before October 21, the
12 board shall approve and cause to be distributed to the legislative body of each
13 district member for review and comment an annual report of its activities,
14 together with a financial statement, a proposed district budget for the next
15 fiscal year, and a forecast presenting anticipated year-end results. The
16 proposed budget shall include reasonably detailed estimates of:

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

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

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

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

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

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

6 (7) anticipated revenues from all sources; and

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

9 (b) Coincident with a regular meeting thereof, the board shall hold a public
10 hearing ~~not later than November 1~~ on or before November 15 of each year to
11 receive comments from the legislative bodies of district members and hear all
12 other interested persons regarding the proposed budget. Notice of such hearing
13 shall be given to the legislative bodies of district members at least ~~30 days~~ 15
14 days prior to such hearing. The board shall give consideration to all comments
15 received and make such changes to the proposed budget as it deems advisable.

16 (c) Annually, ~~not later than December 1~~ on or before December 15, the
17 board shall adopt the budget and appropriate the sums it deems necessary to
18 meet its obligations and operate and carry out the district's functions for the
19 next ensuing fiscal year.

20 (d) Actions or resolutions of the board for the annual appropriations of any
21 year shall not cease to be operative at the end of the fiscal year for which they

1 were adopted. Appropriations made by the board for the various estimates of
2 the budget shall be expended only for such estimates, but by majority vote of
3 the board the budget may be amended from time to time to transfer funds
4 between or among such estimates. Any balance left or unencumbered in any
5 such budget estimate, or the amount of any deficit at the end of the fiscal year,
6 shall be included in and paid out of the operating budget and appropriations in
7 the next fiscal year. All such budget amendments shall be reported by the
8 district treasurer to the legislative bodies of each district member within 14
9 days of the end of the fiscal year.

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