

# State Legislative Update

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# Act 71 Proposed Changes

VCBB plans to propose a minor change to Act 71.

Currently, Act 71 has two requirements that deal with assets returning to the State:

- 30 V.S.A. 8086(c) (p. 17 of text of Act 71), regarding the Construction Grant program, provides that the Board “shall establish policies and standard grant terms and conditions that ... establish standards for recouping grant funds and transferring ownership of grant-funded network assets to the State if a grantee materially fails to comply with the terms and conditions of a grant.”
- Section 7, “Transfer of Fiber-Optic Assets” (on p. 25 of Act 71), requires that, in the event of a CUD dissolution, its assets shall “become property of the State” to be managed by PSD.

We understand from discussions with CUDs, state officials and professionals in the bond market that one or both of these provisions may make it difficult for CUDs to access the bond market; creditors want assurances that they will be able to obtain a CUD’s assets through liens before entering into financing agreements. Thus, we plan to propose minor edits to provide that a CUD’s assets would remain subject to creditors’ liens.

# Act 71 – Section 8086(c) (continued)

Two alternatives to 30 V.S.A. 8086(c)(3):

- *Option 1 (STATE)*

*The Board shall ... establish standards for recouping grant funds and transferring ownership of grant-funded network assets, which shall remain subject to any outstanding bondholders' or creditors' liens, if applicable, to the State if a grantee materially fails to comply with the terms and conditions of a grant.*

- *Option 2 (RECEIVER)*

*The Board shall ... establish standards for recouping grant funds and transferring ownership of grant-funded network assets, which shall remain subject to any outstanding bondholders' or creditors' liens, if applicable, to ~~the State~~ a court-appointed receiver if a grantee materially fails to comply with the terms and conditions of a grant.*

# Act 71 – Section 8086(c) (continued)

- Input from bond market participants, experienced legal professionals, and VCUDA. Consensus is building that the receiver approach would be acceptable.
- VCUDA did express concerns regarding the meaning of the provision “if a grantee **materially fails to comply** with the terms and conditions of a grant ...”
  - VCUDA members concerned that the uncertainty what “material” events could trigger a transfer could discourage potential lenders.
  - The language of the statute provides the VCBB with the power to “establish standards” in this regard, so does not need to be addressed in legislation.

# Act 71 – Section 7

*Similarly, VCBB proposed two options for possible changes to Section 7.*

- *Option 1 (STATE)*

*In addition, the transfer shall include a requirement that, ~~upon the dissolution of~~ in the event that a communications union district is unable to meet its financial commitments, any such fiber assets shall remain subject to any outstanding bondholders' or creditors' liens, if applicable, and become the property of the State to be managed by the Department of Public Service.*

- *Option 2 (RECEIVER)*

*In addition, the transfer shall include a requirement that, ~~upon the dissolution of~~ in the event that a communications union district is unable to meet its financial commitments, any such fiber assets shall ~~become the property of the State to be managed by the Department of Public Service~~ remain subject to any outstanding bondholders' or creditors' liens, if applicable, and be subject to receivership by a court-appointed receiver.*

# Act 71 – proposal

- Staff requests that Board approve recommending the changes to both provisions with the “receivership” option

# S. 166 – Bill to propose enhanced cleanup provisions for construction sites

- S. 166 proposes to require the Public Utility Commission (PUC) to revise its rules to include enhanced consumer protection provisions related to the cleanup of utility construction sites.
- The bill would require the PUC to amend its rules to ensure that all construction contracts contain terms and conditions specifying standards and responsibility for worksite cleanup. Unless a contract specified otherwise, the utility would be liable for all accidents, environmental cleanup, damages or injuries to any person or property resulting from the construction, maintenance, repair, operation, or use of a utility's facilities.
- It proposes that a violation of the rule, or of any contract provision applicable to responsibility and liability for worksite cleanup, that results in harm or injury to any person or property constitutes an unfair act or practice in commerce.

## S. 166 (cont.)

- The Senate Judiciary Committee had a hearing to discuss the bill on Wednesday, January 26<sup>th</sup>. The Committee discussed some minor changes recommended by the PUC, and legislative counsel circulated a slightly revised version of the bill on January 27<sup>th</sup>. The changes clarify:
  - that rulemaking to enact the change would not be necessary; and
  - the change would be in Rule 3.700, regarding Pole Attachments for utilities
- The Committee is scheduled to have a brief hearing on Tuesday to discuss the bill, and is expected to approve it and recommend that it be reviewed by the Senate Finance Committee.



# S. 222 – Bill to authorize temporary Open Meeting Law procedures

- Approved by Senate on January 12, 2022 and signed by the Governor.
- Will allow for electronic-only meetings, extend time to prepare minutes due to staffing shortages, and allow posting the agenda and notices in electronic locations in lieu of public places.
- Time-limited, will expire on January 15, 2023

# S. 167 – Bill to modernize State telecom policy

- This bill would amend 30 V.S.A. 202c(b)(10) to extend the date by which to achieve 100/100 speeds from the end of 2024 to the end of 2029.
- Introduced by Senator Brock earlier in January.
- For the Board's information at this time. When we learn more, we will update the Board.

# VCBB Hearings last week

- Last Friday, the House Energy and Technology Committee held a hearing to discuss the critical communication expansion program and broadband investment aspects of the Governor's proposed budget. June Tierney and Clay Purvis from the PSD discussed the communication program, and the Committee had many questions about it; a follow-up meeting will be scheduled in the coming weeks to continue the discussion and hear Christine's testimony regarding broadband investment.

# Governor's Budget

- Governor's 2023 Budget proposes \$95M for broadband connectivity (source: the IJA SFRF)
  - Broadband Deployment \$95M Currently, there are approximately 60,000 locations in Vermont without broadband. These locations are defined either as unserved (no broadband service at all) or underserved (service is available at less than 25/3 Mbps. i.e., dial-up or DSL). Of these 60,000 locations, 45,251 do not have plans for any existing carrier to deploy wired service via the FCC's Rural Digital Opportunity Fund or otherwise. Funds would be allocated to the Vermont Community Broadband Board.
- Governor is also committed to deploying \$100M from IJA to broadband deployment
  - Broadband internet access has proved to be an essential utility service during the COVID-19 Pandemic, as it facilitates remote healthcare, education, and work, as well as citizen participation in civic life and communication with government. To build off the \$150 million investment from last year, the Governor is recommending another \$95 million. In addition to this funding, the Governor is committed to deploying \$100 million from IJA to broadband deployment.
- Other programs may allow for collaboration and broadband build-out
  - State libraries – connectivity
  - State parks – connectivity
  - Others (e.g. other infrastructure, workforce development, etc.)