
OLR Bill Analysis

sHB 6442 (as amended by House "A")*

AN ACT CONCERNING EQUITABLE ACCESS TO BROADBAND.

SUMMARY

This bill contains various provisions related to broadband Internet access service (referred to as “broadband service” below) and broadband Internet access service providers (“broadband providers”). Among other things, it:

1. requires the Office of Policy and Management (OPM) to develop and maintain an up-to-date broadband map with data showing the availability and adoption of broadband service;
2. requires the Department of Energy and Environmental Protection (DEEP) commissioner to establish and administer a grant program to support the deployment of broadband service, subject to the availability of federal funding;
3. requires (a) DEEP to maintain a public listing of federal funding opportunities to facilitate deploying broadband service and (b) broadband providers to notify DEEP if they intend to apply for the funding;
4. requires the Public Utilities Regulatory Authority (PURA) to impose certain requirements on broadband providers when they apply to build certain underground facilities (e.g., notifying other providers about the proposed excavation to reduce the potential for future street excavations in the same location);
5. gives each broadband provider the same right of access to an occupied building as telecommunications service providers have under current law;

6. requires the State Building Code to be revised to require that new construction or major alterations of a commercial or multi-family building include a minimum infrastructure requirement to support broadband service; and
7. expands the annual assessment that supports the Public Utility Control Fund to also cover OPM's expenses related to developing the broadband map and data required by the bill.

Under the bill, "broadband Internet access service" is a mass-market retail service by wire that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the service's operation, but excluding dial-up Internet access service. A "broadband Internet access service provider" is an entity that provides broadband Internet access service through facilities occupying public highways or streets authorized by PURA, including through a certificate of public convenience and necessity, a certificate of video franchise authority, a certificate of cable franchise authority, or as a certified telecommunications provider (see BACKGROUND).

*House Amendment "A" adds the provisions on the grant program and federal funding opportunities to facilitate broadband deployment. Among other things, it also removes numerous provisions from the underlying bill, such as those that would have (1) required property owners to disclose their property's Internet speeds when they publicly list it for sale or rent, (2) allowed municipalities to use grants from the Local Capital Improvement Program to build a municipal broadband network, (3) generally expanded PURA's regulatory powers over broadband providers, (4) required broadband providers to refund customers for service outages that last more than 24 hours, (5) required PURA to develop a "one-touch make-ready" procedure for attaching additional equipment to utility poles; and (6) limited the days and times when a broadband provider can terminate a customer's service due to delinquent payments.

EFFECTIVE DATE: July 1, 2021

§ 2 — BROADBAND MAPPING

The bill requires OPM, in consultation with other state agencies that the OPM secretary deems appropriate, to develop and maintain an up-to-date broadband map with accompanying data showing the availability and adoption of broadband service, including upload and download speeds, in the state. It must do this in accordance with the state laws on geospatial information systems and the state data plan. To develop and maintain the map, OPM may (1) rely on credible and relevant data, as the secretary determines, provided by broadband providers, state agencies, political subdivisions (e.g., municipalities), and other third parties, such as broadband service consumers, and (2) employ outside consultants to develop and maintain the map.

The bill requires (1) each state agency and political subdivision to provide all information requested by OPM to develop and maintain the broadband map and (2) OPM to begin annually publishing the map on its website by December 1, 2022.

Provider Information

The bill requires each broadband provider to provide OPM with information required to develop and maintain an up-to-date broadband map showing broadband service availability and subscription data by broadband Internet speed offered by the provider.

The information must include the maximum advertised downstream and upstream bandwidths and the transmission technology for each address or structure in the state at which service is available from the provider. For each area the provider serves, as long as it is not larger than a census block group, the information must also include the total number of connections and consumer connections for each combination of advertised downstream and upstream bandwidths of the service as sold and transmission technology.

The bill requires the OPM secretary to prescribe the form and manner for providing the information, but it explicitly allows the information to be submitted as a labeled shapefile. Under the bill, a

“shapefile” is a digital storage format containing geospatial or location-based data and attribute information (1) on broadband service availability and (2) that can be viewed, edited, and mapped in geographic information system software.

The bill also requires the secretary, when prescribing the form and manner for providing the information, to make reasonable efforts to conform with the (1) federal Broadband Deployment Accuracy and Technological Availability Act (47 USC 641 et seq., as amended from time to time), (2) Federal Communications Commission’s (FCC) rules adopted under that act, and (3) FCC’s Form 477 filing process.

Confidentiality

Under the bill, the information provided by the broadband providers must be deemed a trade secret and exempt from disclosure under the Freedom of Information Act (FOIA). OPM may provide the information, under a data sharing agreement, to DEEP, the Office of State Broadband, and the Commission for Educational Technology for administering the grant program (see § 3 below), but may not disclose it to a non-governmental individual or entity other than an outside consultant employed as allowed under the bill. Any contract or data-sharing agreement entered into by OPM with other governmental entities or outside consultants must include a confidentiality agreement about the trade secret information under the bill.

The information may also be disclosed (1) in an aggregated form needed to develop and maintain OPM’s broadband map and data described above or (2) with the broadband provider’s permission.

§ 3 — BROADBAND DEPLOYMENT GRANT PROGRAM

The bill requires the DEEP commissioner, by January 1, 2022, to establish and administer a grant program, subject to the availability of federal funding, to support the deployment of broadband service. It allows the commissioner to employ outside consultants to develop and implement the program.

Criteria for Awarding Grants

The commissioner must establish criteria for the grants consistent with any federal requirements for them. The criteria must at least include (1) application requirements; (2) applicant eligibility; (3) addressing unserved areas in distressed municipalities (see “BACKGROUND”); (4) broadband service speed; and (5) an applicant’s commitment to pay at least 20% of the costs for a grant-eligible project with the applicant’s own funding, as long as it does not derive from government grants, loans, or subsidies to the applicant.

Under the bill, an “unserved area” is an area (1) that is no larger than a U.S. census block, as determined in the most recent census, and (2) where no broadband provider offers broadband service with download speeds of at least 25 megabits per second and upload speeds of at least three megabits per second, as identified on OPM’s broadband map.

The bill allows the commissioner, when awarding the grants, to prioritize applicants based on the percentage of their commitment to cost sharing. It also allows her to deny applications from broadband providers that do not provide information to OPM and DEEP as required by the bill (see § 2 above and § 4 below).

Reports

Grant Recipients. Starting by January 1, 2023, and annually for five years after receiving a grant, the bill requires a grant recipient to submit a report to the commissioner on the status of its broadband service deployment and other information deemed relevant by the commissioner.

DEEP Annual Report to the Governor. The bill requires DEEP, starting by December 1, 2022, to biennially report to the governor on (1) the broadband deployment grants awarded; (2) the status and progress made towards a state-wide goal of attaining universal access to broadband download speeds of one gigabit per second and broadband upload speeds of 100 megabits per second; and (3) broadband service adoption rates, the price and non-price barriers to broadband adoption, and digital equity. The report must also include

recommendations to overcome those barriers and at least address issues of digital literacy and affordability.

DEEP must prepare the report in consultation with OPM, the Office of State Broadband, the Commission for Educational Technology, and other state agencies deemed appropriate by the DEEP commissioner.

Under the bill, “digital equity” is a condition in which all individuals and communities have the information technology capacity needed to participate in society, democracy, and the state’s economy. “Digital literacy” is the ability to use information and communication technologies to find, evaluate, create, and communicate information, requiring both cognitive and technical skills.

§ 4 — FEDERAL FUNDING OPPORTUNITIES

The bill requires DEEP to maintain on its website a public listing of federal funding opportunities to facilitate deploying broadband service in the state. Then, within 90 days after each opportunity is listed, each broadband provider must notify DEEP whether it applied or intends to apply for the opportunity. The notification must be in a form and manner DEEP prescribes and to the extent allowed under applicable federal law, rules, or guidelines.

If the provider intends to apply for the funding opportunity, the bill also requires it to notify DEEP, in a form and manner that DEEP prescribes, about the municipalities where broadband deployment would be facilitated. Each provider that applies for the funding must also provide DEEP with a copy of the application, to the extent allowed under federal law, rules, or guidelines. The bill deems these applications a trade secret and exempt from public disclosure under FOIA.

If the provider did not apply or does not intend to do so, it must notify DEEP about the reasons for its determination, to the extent allowed under applicable federal law, rules, or guidelines, in a form and manner that DEEP prescribes.

§ 5 — UNDERGROUND CONDUIT

The bill requires PURA, by January 1, 2022, to initiate an uncontested proceeding to develop a process for constructing facilities in the public highways, streets, or other public rights-of-way to ensure timely and nondiscriminatory procedures that accomplish conduit excavations for telecommunications service providers and broadband providers.

It requires PURA to impose certain requirements on broadband providers when they apply to build underground facilities that will contain conduit for telecommunications service providers or broadband providers (presumably, this must occur as part of the process PURA develops). PURA must condition its approval on meeting the following requirements:

1. the size of the conduit must be consistent with industry best practices and sufficient to accommodate potential demand;
2. handholes and manholes for fiber optic cable access and pulling, respectively, must be placed at intervals consistent with industry best practices;
3. the conduit must be installed with a pull tape and capable of supporting additional fiber optic cable;
4. the applicant must notify telecommunications service providers and broadband providers about the proposed excavation to reduce the potential for future street excavations in the same location;
5. a telecommunications service provider or broadband provider, upon request, must be able to access the conduit on a competitively neutral and nondiscriminatory basis, and for a charge that does not exceed a cost-based rate;
6. the applicant must report to PURA upon completion to verify that it has complied with the above requirements; and

7. any other condition PURA deems prudent and reasonable.

Excavations in State Highway Rights-of-Way

For excavations in the state highway rights-of-way, the bill requires the applicant to comply with the Department of Transportation's (DOT) encroachment permit process, including paying any applicable fees. Under the bill, an application for construction in the public highways, streets, or other public rights-of-way must require the applicant to install a conduit for DOT's benefit, as required by law.

The bill authorizes the DOT commissioner to lease space or enter into a contract or agreement to permit access to the space in any conduit installed by DOT in the public highways, streets, or other public rights-of-way. The lease or contract may be on the terms and conditions, and for any purpose, that the commissioner deems to be in the public interest. The bill specifies that it does not limit DOT's use of conduits on public highways, streets, or other public rights-of-way as otherwise permitted by law.

Provision Coverage & Penalties

Under the bill, all telecommunications service providers and broadband providers that PURA authorizes to install facilities in, under, or over the public highways, streets, or other public rights-of-way must obey, observe, and comply with these provisions on underground conduits and PURA's applicable orders about them. Failure to comply may result in a civil penalty levied by PURA as allowed under existing law. Under the bill, these fines cannot be recovered in any rate proceeding conducted by PURA.

§ 6 — ACCESS TO OCCUPIED BUILDINGS

The bill gives each broadband provider the same right of access to an "occupied building" as telecommunications service providers have under current law. Under the bill, an "occupied building" is a building or a part of a building that is rented, leased, hired out, arranged or designed to be occupied, or is occupied (1) as the home or residence of at least three families living independently of each other; (2) as the place of business of at least three businesses conducting business

independently of each other; or (3) by any combination of at least three independent families and businesses. It includes trailer parks, mobile manufactured home parks, nursing homes, hospitals, and condominium associations.

In effect this requires, among other things, an occupied building's owner to allow wiring to provide broadband service in the building if: (1) a tenant requests services from the broadband provider; (2) the entire cost of the wiring is assumed by the provider; and (3) the provider indemnifies and holds the owner harmless for any damages caused by the wiring.

§ 7 — STATE BUILDING CODE

The bill requires the state building inspector and the Codes and Standards Committee to revise the State Building Code so that it requires buildings that qualify as a new construction or a major alteration of a commercial or multi-family building to include a minimum infrastructure requirement to support broadband service. The inspector and committee must define these requirements in the revisions. (The bill does not establish a deadline for this revision.)

§ 8 — PUBLIC UTILITY CONTROL FUND

Under current law, the administrative costs of PURA, the Office of Consumer Counsel (OCC), and DEEP's Bureau of Energy and Technology are funded through assessments on public service companies, telephone companies, certified telecommunications providers, retail electric suppliers, and certified competitive video service providers that had more than \$100,000 in gross revenues in the state in the preceding calendar year. PURA annually assesses each company for its share of expenses for OCC, DEEP's energy bureau, and PURA.

The bill expands the assessment to also cover OPM's expenses related to the bill's provisions on broadband mapping and the broadband deployment grant program (see §§ 2 & 3).

BACKGROUND

Certified Competitive Video Service Provider

By law, a certified competitive video service provider is an entity providing video service under a PURA-issued certificate of video franchise authority (e.g., AT&T's U-Verse service) (CGS § 16-1(a)(41)). A certificate of video franchise authority grants the right to own, lease, maintain, operate, manage, or control facilities in, under or over any public highway to offer video service to any subscribers in the state (CGS § 16-1(a)(42)).

Certificate of Cable Franchise Authority

By law, a certificate of cable franchise authority is a PURA-issued authorization giving a cable-TV company the right to own, lease, maintain, operate, manage or control a cable-TV system in, under or over any public highway to (a) offer cable-TV service in its designated franchise area, or (b) use the public rights-of-way to offer video service in a designated franchise area (CGS § 16-1(a)(43)).

Certified Telecommunications Provider

By law, a certified telecommunications provider is an entity certified by PURA to provide intrastate telecommunications services (CGS § 16-1(a)(32)).

Distressed Municipalities

By law, the Department of Economic and Community Development commissioner must annually designate distressed municipalities based on a combination of economic, education, demographic, and housing criteria. In 2020, she designated the following 25 municipalities as distressed: Ansonia, Bridgeport, Bristol, Chaplin, Derby, East Hartford, East Haven, Griswold, Hartford, Meriden, Montville, New Britain, New Haven, New London, Norwich, Preston, Putnam, Sprague, Stratford, Torrington, Voluntown, Waterbury, West Haven, Winchester, and Windham.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable

Yea 19 Nay 7 (03/18/2021)

Appropriations Committee

Joint Favorable

Yea 30 Nay 18 (05/03/2021)