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## **OLR Bill Analysis**

### **sSB 846**

#### ***AN ACT CONCERNING THE MUNICIPAL GAIN, THE PREPARATION OF UTILITY POLES AND ENTERPRISE FUNDS FOR MUNICIPAL BROADBAND SERVICES.***

#### **SUMMARY**

This bill requires the Public Utilities Regulatory Authority (PURA) to adopt regulations establishing a process for public utility pole attachments, including fifth-generation telecommunications infrastructure (i.e., 5G) and fiber wires for high-speed broadband Internet infrastructure.

Existing law gives municipalities the right to occupy and use, at no cost, one gain (i.e., location to place a wire) on each utility pole for any purpose. In 2018, a PURA decision held that municipalities may not use this gain to provide broadband services, either directly or through a commercial arrangement with a third party (see BACKGROUND). The bill reverses, in part, PURA's decision by allowing municipalities to provide broadband Internet service, either directly or through commercial arrangements with third parties. However, under the bill, if a municipality sells its right to occupy and use the gain to a third party, private, for-profit company, the company must pay any public utility pole administration or attachment fees that would apply if the company were not using the municipal gain.

The bill also allows municipalities to establish and administer an "Enterprise Fund for Municipal Broadband Services" as a separate, nonlapsing enterprise fund to receive any revenues related to the use, operation, and management of municipal broadband services, among other things.

**EFFECTIVE DATE:** Upon passage, except that the enterprise fund provisions are effective October 1, 2019.

## **PURA REGULATIONS ON UTILITY POLE ATTACHMENTS**

The bill requires PURA to adopt pole attachment regulations by December 31, 2019, that include requirements on (1) one-touch make-ready processes, (2) expedited overlashing procedures, (3) a Connecticut Utility Pole Database, and (4) a deadline for proposed attachments.

### ***One-Touch Make-Ready***

Under the bill, make-ready is the modification or replacement of a utility pole, or of the lines or equipment on the pole, to accommodate additional facilities on the pole. The regulations must establish a requirement for one-touch make-ready processes, which is a process for make-ready in which the person attaching new equipment to a utility pole does all of the make-ready work. The bill requires the processes to (1) be consistent with any Federal Communications Commissions (FCC) standards and (2) reduce to one the number of entities that rearrange wires for make-ready in the communication gain on a public utility pole to make room for a new pole attachment.

### ***Overlashing Procedures***

The bill requires PURA's regulations to require expedited procedures for placing new attachments over existing pole attachments (i.e., overlashing), consistent with any related FCC standards. Under the bill, PURA's regulations must also allow overlashing without approval of the pole owner but require the pole owner to receive reasonable advance notice of the overlashing.

### ***Utility Pole Database***

The regulations must require the timely development and implementation of a Connecticut Utility Pole Database, approved by PURA, that includes information on the status of each public utility pole in the state, including any attachments present. (The bill does not specify who must develop and implement the database.)

### ***Attachment Deadline***

The regulations must require installation of proposed pole attachments on a nondiscriminatory basis within 90 days of filing an

application with the pole owner, unless there is a demonstrated safety issue on the pole that would be materially exacerbated by a new attachment. The regulations must also include provisions to enforce this requirement.

### **MUNICIPAL BROADBAND ENTERPRISE FUND**

Under the bill, if a municipality establishes and administers a municipal broadband enterprise fund, the following must be deposited into the fund:

1. all revenues the municipality receives related to use, operation, and management of municipal broadband services; and
2. any General Fund appropriations and other federal, state, municipal, or private funds the municipality receives to provide municipal broadband services.

The bill requires the fund's resources to be applied to the costs and expenses of providing municipal broadband services and authorizes municipalities to use the funds to pay such costs and expenses. The bill requires earnings on investments of amounts on deposit in the fund to be retained in the fund and used for its purposes.

### **BACKGROUND**

#### ***Related Bills***

HB 7152, favorably reported by the Energy and Technology Committee, establishes a Council on 5G Technology and requires the Office of Policy and Management, in consultation with PURA and the Siting Council, to establish a process for siting small wireless facilities on municipal property, and, when using utility or light poles is insufficient, private property with the property owner's permission.

#### ***PURA Decision and Related Lawsuit***

In its final decision, PURA found that providing municipalities free access to the communications gain to offer competitive telecommunications services (e.g., broadband) appears inconsistent with federal and state laws intended to foster non-discrimination and

robust competition in the telecommunications industry. PURA cited provisions in the federal Communications Act that, among other things, require (1) cable TV systems and telecommunications carriers to be provided with nondiscriminatory access to utility poles and (2) pole owners to charge just, reasonable, and nondiscriminatory rates for pole attachments (47 USC § 224).

PURA determined that the statute requiring the municipal gain (CGS § 16-233) must be interpreted to provide the right to occupy and use the gain only to the municipality for which the gain is reserved, for any purpose of its own, and not allow for (1) third parties to connect to a municipal broadband network erected in the municipal gain or (2) assignment to a third party of the right to locate its facilities in the municipal gain. PURA also found that CGS § 16-233 does not permit a municipality to use the gain to provide broadband services to its residents or businesses (Docket No. 17-09-37). PURA's decision is being appealed to the Superior Court in New Britain.

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable Substitute

Yea 18    Nay 7    (03/19/2019)