
OLR Bill Analysis

sHB 5446

AN ACT CONCERNING FUNDING FOR COMMUNITY ACCESS TELEVISION, THE CONNECTICUT TELEVISION NETWORK AND LOW-INCOME INTERNET ACCESS AND TAXATION OF COMMUNICATIONS SERVICES PROVIDERS.

SUMMARY

This bill replaces the gross earnings tax on cable and satellite television companies with a broader gross earnings tax on communications providers. Under the bill, these are any business providing services to end users in the state through landline or wireless facilities or satellite transmission maintained by any combination of telephone companies, telecommunications providers, cable companies, or cellular mobile telephone carriers. The bill sets the tax at 5% of gross earnings, reduced by certain fees, including fees for community access programming (CAP) as established in the bill.

On October 1, 2024, it also repeals, the current 0.25% cable and satellite television companies gross earnings tax that funds the Public Educational and Governmental Programming and Educational Technology Investment Account (PEGPETIA) and, starting January 1, 2025, replaces it with a broader 0.25% gross earnings tax on communications providers to fund the account. (In doing so, it eliminates the tax for the last quarter of 2024.) The bill also narrows the entities and activities that may be supported by the account.

The bill eliminates a partial property tax exemption for tangible personal property used to provide cable or telecommunications services currently subject to the gross earnings tax (i.e., from cable and satellite television companies).

Under current law, CAP is primarily funded through a subscriber fee, set in statute at \$5 per subscriber per year, adjusted for inflation. The bill

instead sets the total amount of CAP funding for the state at the FY 15 level, adjusted for inflation, and requires the Public Utilities Regulatory Authority (PURA) to assess the fee based on cable franchise areas. The bill makes other changes related to CAPs, including on evaluation and reporting requirements and rights to record or transmit municipal meetings.

The bill also requires the Office of Consumer Counsel (OCC) to develop a plan for a Connecticut Internet for All program funded with revenue from the gross earnings tax on communications providers established under the bill.

Lastly, the bill makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2024, with gross earnings tax provisions applicable to quarterly periods starting on October 1, 2024, except that the Connecticut Internet for All program plan requirement is effective upon passage.

§§ 1 & 2 — GROSS EARNINGS TAX ON COMMUNICATIONS PROVIDERS

Communications Providers

The bill establishes a gross earnings tax on communications providers, which are businesses providing service to end users in the state over the following technologies:

1. landline facilities (i.e., lines, facilities, and equipment located in, under, or over public streets or highways or in other areas, used to transmit or deliver communications services);
2. wireless facilities (i.e., facilities used for satellite transmission or to transmit cellular mobile telephone or mobile telecommunications services); and
3. satellite transmission (under a PURA certificate or otherwise).

The tax applies to communications services delivered over landline or wireless facilities, or satellite transmission, built, operated, or maintained by any combination of the following companies:

1. telephone companies,
2. certified telecommunications providers that hold a certificate of public convenience and necessity (CPCN),
3. cable television companies, and
4. cellular mobile carriers.

For cable companies, the bill specifically applies to (1) community antenna television companies (CATV), operating under a CPCN; and (2) certified competitive video service providers, operating under a certificate of video franchise authority (CVFA), and providers of noncable services (generally, telecommunications services provided by a cable company, excluding cable services). (It is unclear whether any cable companies currently operate under a CPCN. In practice, cable companies issued a franchise under a CPCN before the industry was deregulated now operate under a certificate of cable franchise authority (CCFA) to provide services in a discrete geographic region (e.g., their franchise). Companies operating under CCFA's are not subject to the gross earnings tax under the bill. Although in practice, many of the same companies also hold CVFA's, a statewide certificate.)

The bill also exempts the Connecticut Education Network from having to pay the tax.

Tax Administration

Under the bill, the gross earnings tax for communications services providers is a quarterly tax on their gross earnings from services delivered by landline facilities, wireless facilities, or satellite transmission to people in the state. Like the current gross earnings tax, the bill's tax (1) does not allow for deductions for operations related to commissions, rebates, or other payments, unless they arise from errors or overcharges, and (2) requires taxpayers to file returns quarterly with the Department of Revenue Services to provide information on their business and gross earnings.

Gross Earnings Subject to the Tax

Under the bill, the following gross earnings are taxable:

1. gross receipts from communications service charges billed to a person in the state;
2. receipts from subscriber line charges or other charges or assessment required by the Federal Communications Commission, or any other governmental fees or assessments itemized on a customer's billing statement;
3. installation or maintenance charges for wiring on a customer's premises;
4. charges to purchase or rent equipment, modems, phones, or other devices that enable or facilitate communications services; and
5. any other service charges or fees assessed by the communications service provider.

Tax Calculation

The bill sets the gross earnings tax rate at 5% of gross earnings. Communications service providers may subtract the following from their tax liability:

1. any assessment PURA makes on companies to pay for expenses related to PURA's, OCC's, and the Department of Energy and Environmental Protection's (DEEP) Bureau of Energy and Technology operations, as well as certain Office of Policy and Management (OPM) broadband internet activities; and
2. any fee for community access operations funding assessed by PURA (see § 5 below) if the company did not charge a community access fee on a subscriber's or other end-user's bill.

(Presumably, this refers to an itemized charge on the bill. Because most communications services providers are not rate-regulated, it is not possible to determine whether a specific expense was passed through to a customer unless the company chooses to itemize the charge.)

Apportioning Revenues in the State

As is the case in current law, for companies that operate in multiple states, the bill's tax applies to the portion of company's gross earnings apportioned to Connecticut. Generally, companies apportion their earnings by multiplying their total gross earnings by a percentage representing the portion of their total business that is attributable to Connecticut.

Under the bill, for cable companies operating under a CVFA and for companies providing service through satellite or wireless facilities, the apportionment percentage is the ratio of the company's subscribers in Connecticut to its overall subscribers (in Connecticut and elsewhere). For companies providing services through landline facilities, the apportionment percentage is the ratio of total miles of lines the company operates in Connecticut to the total miles of lines it operates inside and outside Connecticut.

§§ 3, 4 & 9 — PROPERTY TAX EXEMPTION

Current law provides a property tax exemption for tangible personal property for companies subject to the gross earnings tax (i.e., cable and satellite television companies). The exemption applies to the part of the tangible personal property used to render telecommunications and cable services that are subject to the gross earnings tax. The bill eliminates this exemption and makes conforming changes.

§ 5 — COMMUNITY ACCESS PROGRAMMING

Existing law requires cable companies to provide facilities, equipment, and technical and managerial support to produce meaningful community access programming. A community-based nonprofit organization may petition PURA to assume these responsibilities, and PURA must assign the responsibilities to the nonprofit organization or to the cable company based on certain criteria.

Funding

Under current law, community access programming is primarily funded through a subscriber fee, set in statute at \$5 per subscriber per year, and adjusted for inflation based on the consumer price index (CPI).

The fee applies to subscribers of cable and telecommunications companies that offer video services under a CCFA or CVFA. PURA may increase or decrease this amount by up to 40% based on the following criteria:

1. recommendations from the advisory council and the municipalities in the franchise area;
2. a review of the CAP provider's performance and its experience providing community access programming;
3. the CAP provider's operating plan and proposed budget;
4. the programming quality and quantity;
5. the CAP provider's procedures to ensure compliance with state and federal law;
6. the level of public interest in community access operations in the franchise area;
7. the level of community need for educational access programming;
8. the level and breadth of participation in community access operations;
9. the adequacy of existing facilities, equipment, and training programs to meet the franchise area's current and future needs; and
10. any other criteria PURA deems relevant.

Under current law, this amount is assessed once per year for each end user premises connected to the cable company's system. In practice, the subscriber fee is collected as a surcharge on the subscriber's monthly bill.

The bill instead sets a total amount of funding for community access operations statewide, beginning January 1, 2025. This amount is equal to the total amount of funding that all CAP organizations and

companies received from subscriber fees in FY 15, adjusted annually based on the changes in the CPI in the years following FY 15. The bill specifies that the CPI information is as published by the U.S. Department of Labor's Bureau of Labor Statistics. The bill maintains PURA's authority to increase or decrease the funding, but applies it to the total statewide amount, rather than amounts for each franchise. It requires PURA to consider the same criteria described above. (It is unclear how PURA would apply this criteria to a statewide amount because the criteria is based on individual franchises and local conditions.)

The bill requires PURA to assess a fee to each cable company providing services in a franchise area that existed on October 1, 2007, and requires the total annual fees PURA assesses to equal the amount described above (FY 15 total after adjustments). If more than one cable company provides service in the same franchise area, PURA must divide the fee proportionately based on the company's subscribers on January 1 of that calendar year. For nonprofit CAP providers, PURA must require the cable company to pay the fee in installments of at least 25% directly to the CAP provider after the last day of each calendar quarter.

Under the bill, each household unit in a multiunit residential building or other facility connected to a cable company's system that subscribes to cable programming is an individual subscriber for purposes of apportioning the fee, regardless of any existing joint or bulk billing arrangement. The bill (1) requires PURA to ensure the accuracy of past and ongoing subscriber counting and (2) allows PURA to issue orders retroactively and prospectively correcting the subscriber count.

The bill requires PURA to include the amount the CAP provider must receive in any final decision on a cable company's certificate transfer, merger, acquisition, or other change in control.

Outreach

By law, CAP providers must conduct outreach programs and promote their services. Current law authorizes them to do so through

several means, including broadcasting cross-channel video announcements and distributing information throughout their franchise area. The bill instead requires them to do so in a way that best serves one or more relevant communities as PURA determines.

Right to Record Municipal Events

The bill grants each CAP provider the right to record in person and transmit live any municipality's or council of government's public meeting or official event. The bill authorizes PURA to investigate any dispute or complaint.

CAP Reviews, Evaluations, and Audits

Current law allows PURA to review and evaluate the CAP provider's provision of community access programming, but only during a franchise proceeding and according to a certain schedule. Due to subsequent changes in the law and the industry, this provision is largely obsolete (see BACKGROUND). The bill instead allows PURA to do this review and evaluation on its own initiative or if OCC or any interested party petitions PURA for it.

Under current law, PURA must require nonprofit organizations responsible for community access programming to undergo an independent audit at the organization's expense if the OCC or advisory council requests it and shows good cause. The bill extends this requirement to cable companies responsible for community access programming. Under current law, "good cause" may include an organization's failure or refusal to perform certain functions (e.g., maintain facilities and equipment in proper repair). Under the bill, "good cause" may also include failure or refusal to try to facilitate the local programming production and ensure that the programming is carried on a cable company's basic service package.

Information and Reporting Requirements

Existing law requires nonprofits and cable companies responsible for community access programming to report annually to PURA by February 15. The bill authorizes PURA to request additional information if needed for PURA to carry out its duties under the bill and

existing law.

The bill requires PURA to report every five years, starting July 1, 2030, to the Energy and Technology Committee on the funding status for community access operations during the previous five years and the quantity of community access programming produced locally over the same period, as reported by each community access organization or cable company.

§ 6 — CONNECTICUT TELEVISION NETWORK (CT-N)

Current law requires the comptroller to segregate \$3.2 million annually from proceeds of the current gross earnings tax on cable and satellite companies to fund CT-N. The bill instead sets this same requirement for the gross earnings tax on communications providers.

§ 7 — PEGPETIA

Under current law, PEGPETIA is funded by a 0.25% gross earnings tax on cable and satellite television companies. The bill repeals this tax and instead applies a 0.25% tax on communications providers starting January 1, 2025. (Because the bill's repeal of the current tax takes effect on October 1, 2024, but the new tax does not start until January 1, 2025, under the bill, there is no tax for the last quarter of 2024.) Companies determine their gross earnings in the same way as for the gross earnings tax described above. The bill retains current law's provisions on penalties and interest.

The bill also narrows the types of entities that may apply for funding from the account. Under current law, 50% of PEGPETIA funds must be available to local and statewide cable advisory councils and public, educational, and governmental (PEG) programmers and studio operators. Under the bill, these funds are only available to PEG studio operators. By law, operators must use these funds to subsidize capital and equipment costs related to producing and procuring PEG programming.

Under current law, the other 50% of PEGPETIA funds must be available to boards of education and other education entities for

education technology initiatives. The bill narrows the types of other education entities that may apply for this funding to primary or secondary education entities. It also specifies that these funds must be grants and the funded initiatives must promote:

1. digital equity, which is a condition in which all people and communities have the information technology capacity needed to participate in society, democracy, and the state’s economy, and
2. digital literacy, which is the ability to use information and communication technology to find, evaluate, create, and communicate information, using both cognitive and technical skills.

The bill requires PURA to consult with the Commission for Educational Technology, at the commission’s request, on any PEGPETIA grant application for an education technology initiative.

§ 8 — CONNECTICUT INTERNET FOR ALL PROGRAM PLAN

The bill requires OCC to develop a plan for a Connecticut Internet for All program to provide financial assistance to low-income households for broadband internet subscriptions. The bill requires the office to consult with the Department of Administrative Services, DEEP, and the Department of Social Services and allows these agencies to consult with other state agencies and broadband providers to develop the plan. The plan must base the program’s funding on revenue from the gross earnings tax on communications providers established under the bill.

The bill requires OCC to submit the plan and its recommendations by November 15, 2024, to the governor, the OPM secretary, and the Energy and Technology and Finance, Revenue and Bonding committees.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable

Yea 12 Nay 8 (03/21/2024)