

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 2438

PRINTER NO. 4404

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

April 27, 2020

PRIME SPONSOR

Representative Owlett

DESCRIPTION

House Bill 2438 amends Title 68 (Real and Personal Property) by establishing a new Chapter 82 (Broadband Services) to allow for broadband services on existing easements.

The legislation allows an electric cooperative corporation (cooperative) or an affiliate to construct, operate and maintain broadband facilities (wires, cables, materials, etc.) through an existing easement owned, held or used by the cooperative. It provides that the attachment of broadband facilities shall not constitute a change to the physical use of the easement, interfere with or impair any vested rights subject to the existing easement, or place additional burdens on the property, except for the attachment of freestanding or ground-based structures.

The legislation allows a broadband service supplier (supplier) that is not a cooperative to access and attach broadband facilities within a cooperative's easement: (1) if a cooperative or its affiliates have attached broadband facilities to provide retail or wholesale services or if a cooperative, in its sole discretion, gives express written permission to a broadband service provider to use an existing easement; and (2) subject to the terms of applicable safety standards, the structural integrity of the electric infrastructure and the cooperative's rules and fees for attachments.

The legislation allows other suppliers to utilize an easement at terms and conditions no less favorable than offered to an affiliate of a cooperative. It requires a cooperative to provide written notice to a supplier with an existing attachment agreement within 90 days of the date when an affiliate begins offering retail broadband services unless the cooperative already provides services through an affiliate. It also specifies that nothing shall supersede an existing attachment agreement, except for a period of five years from the date of the required notice or the effective date, a supplier that has an existing agreement with a cooperative shall have the right to attach to the poles of that cooperative at rates not to exceed the then-effective rates and rate adjustments in the existing agreement.

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The legislation prohibits a cooperative from requiring a person to purchase broadband services from an affiliate as a condition of receiving electric energy from the cooperative or, disconnecting, or threatening to disconnect, electric service to a customer due the customer's failure to pay for broadband services.

The legislation requires a cooperative that supplies retail broadband services through an affiliate to ensure the rates charged for electric service do not include any of its affiliate's retail broadband service costs and prohibits a cooperative from using its electric service revenues to subsidize the provision of retail broadband services to the public by an affiliate.

The legislation provides that a cooperative may make capital investments in an affiliate, make loans for the benefit of an affiliate, enter into capital or operating leases with an affiliate and enter into guarantees or other security arrangements for an affiliate as determined by the cooperative's board of directors.

The legislation specifies that except as otherwise provided, nothing shall limit the rights of a broadband service supplier to secure its own easements for the construction or installation of broadband facilities or the provision of broadband services or to negotiate separate terms of agreements for attachments to electric infrastructure owned and controlled by a cooperative.

The legislation is scheduled to take effect in 60 days.

FISCAL IMPACT:

The enactment of Senate Bill 2438 will have no fiscal impact on Commonwealth funds. The expansion of broadband to underserved areas of the Commonwealth will likely improve business efficiency and expand job and educational opportunities in those regions resulting in economic growth that will contribute additional revenue to the Commonwealth's General Fund.