

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Anderson, Guillen, King of Uvalde, Ashby,  
King of Hemphill, et al.

H.B. No. 3853

A BILL TO BE ENTITLED

1 AN ACT

2 relating to middle mile broadband service provided by an electric  
3 utility.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 43, Utilities Code, is amended to read as  
6 follows:

7 CHAPTER 43. PROVISION [USE] OF MIDDLE MILE [ELECTRIC DELIVERY  
8 SYSTEM FOR ACCESS TO] BROADBAND SERVICE BY ELECTRIC UTILITIES [AND  
9 OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS]

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature  
12 finds that access to quality, high-speed broadband Internet service  
13 is important to this state, is a necessary prerequisite for  
14 enabling economic development and improving education, health  
15 care, public safety, and government services in this state, and  
16 provides other benefits to its citizens [broadband over power  
17 lines, also known as BPL, is an emerging technology platform that  
18 offers a means of providing broadband services to reach homes and  
19 businesses. BPL services can also be used to enhance existing  
20 electric delivery systems, which can result in improved service and  
21 reliability for electric customers].

22 (b) ~~[The legislature finds that access to quality, high~~  
23 ~~speed broadband services is important to this state. BPL~~  
24 ~~deployment in Texas has the potential to extend broadband service~~

1 ~~to customers where broadband access is currently not available and~~  
2 ~~may provide an additional option for existing broadband consumers~~  
3 ~~in Texas, resulting in a more competitive market for broadband~~  
4 ~~services.]~~ The legislature [~~further~~] finds that broadband [BPL]  
5 development in unserved and underserved areas of Texas can be  
6 facilitated by [~~is fully dependent upon~~] the participation of  
7 electric utilities in this state that own and operate [~~power lines~~  
8 ~~and related~~] facilities that may be useful [~~are necessary~~] for the  
9 full deployment of broadband service by Internet service providers  
10 throughout this state [~~construction of BPL systems and the~~  
11 ~~provision of BPL services~~].

12 (c) The legislature finds that electric utilities have  
13 existing infrastructure in place throughout this state and that  
14 excess fiber capacity on that infrastructure could be used to  
15 provide middle mile broadband service in unserved and underserved  
16 areas.

17 (d) The [~~(c) Consistent with the goal of increasing options~~  
18 ~~for telecommunications in this state, the~~] legislature finds that  
19 it is in the public interest to encourage the deployment of  
20 broadband service in unserved and underserved areas [BPL] by  
21 permitting electric utilities to own or operate facilities  
22 providing middle mile broadband service to lease excess fiber  
23 capacity [~~affiliates of the electric utility, or permitting~~  
24 ~~unaffiliated entities, to own or operate all or a portion of such~~  
25 ~~BPL systems~~]. The purpose of this chapter is to provide the  
26 appropriate framework to facilitate the leasing of excess fiber  
27 capacity on electric utility facilities [~~support the deployment of~~

1 ~~BPL~~].

2       (e) [~~(d)~~] The legislature finds that an electric utility  
3 may choose to implement middle mile broadband service to lease  
4 excess fiber capacity to Internet service providers [~~BPL~~] under the  
5 procedures set forth in this chapter, but is not required to do so.  
6 The electric utility shall have the right to decide, in its sole  
7 discretion, whether to implement middle mile broadband service  
8 [~~BPL~~] and may not be penalized for deciding to implement or not to  
9 implement that service [~~BPL~~].

10       Sec. 43.002. APPLICABILITY. (a) This chapter applies to an  
11 electric utility whether or not the electric utility is offering  
12 customer choice under Chapter 39.

13       (b) If there is a conflict between the specific provisions  
14 of this chapter and any other provisions of this title, the  
15 provisions of this chapter control.

16       (c) Except as otherwise provided by this title, no [~~No~~]  
17 provision of this title imposes [~~shall impose~~] an obligation on an  
18 electric utility to construct or operate a middle mile system, to  
19 [~~implement BPL, to~~] provide middle mile broadband service  
20 [~~services~~], or to allow others to install [~~BPL~~] facilities or use  
21 the electric utility's facilities for the provision of broadband  
22 service [~~services~~].

23       Sec. 43.003. DEFINITIONS. In this chapter:

24       (1) "Broadband service" means retail Internet service  
25 provided by a commercial Internet service provider with the  
26 capability of providing a download speed of 25 megabits per second  
27 or faster and an upload speed of 3 megabits per second or faster

1 ~~["BPL," "broadband over power lines," and "BPL services" mean the~~  
2 ~~provision of broadband services over electric power lines and~~  
3 ~~related facilities, whether above ground or in underground~~  
4 ~~conduit].~~

5           (2) "Middle mile broadband service" means the  
6 provision of excess fiber capacity on an electric utility's  
7 electric delivery system to an Internet service provider to provide  
8 broadband service. The term does not include provision of Internet  
9 service to end-use customers on a retail basis ~~["BPL access" means~~  
10 ~~the ability to access broadband services via a BPL operator or BPL~~  
11 ~~Internet service provider].~~

12           (3) "Internet ~~["BPL operator" means an entity that~~  
13 ~~owns or operates a BPL system on the electric power lines and~~  
14 ~~related facilities of an electric utility.~~

15           ~~[(4) "BPL Internet] service provider" means a~~  
16 commercial ~~[and "BPL ISP" mean an]~~ entity that provides Internet  
17 services ~~[to others on a wholesale basis or]~~ to end-use customers on  
18 a retail basis.

19           (4) ~~[(5) "BPL system" means the materials, equipment,~~  
20 ~~and other facilities installed on electric utility property to~~  
21 ~~facilitate the provision of BPL services.~~

22           ~~[(6) "BPL electric utility applications" means~~  
23 ~~services and technologies that are used and useful and designed to~~  
24 ~~improve the operational performance and service reliability of an~~  
25 ~~electric utility including, but not limited to, automated meter~~  
26 ~~reading, real time system monitoring and meter control, remote~~  
27 ~~service control, outage detection and restoration, predictive~~

1 ~~maintenance and diagnostics, and monitoring and enhancement of~~  
2 ~~power quality.~~

3           ~~(7)~~ "Electric delivery system" means the power lines  
4 and related transmission and distribution facilities constructed  
5 ~~[used by an electric utility]~~ to deliver electric energy to the  
6 electric utility's customers.

7           (5) ~~(8)~~ "Electric utility" includes ~~[shall include]~~  
8 an electric utility and a transmission and distribution utility as  
9 defined in Section 31.002(6) or (19).

10 SUBCHAPTER B. DEVELOPMENT OF MIDDLE MILE BROADBAND ~~[BPL]~~ SYSTEMS

11           Sec. 43.051. AUTHORIZATION FOR MIDDLE MILE BROADBAND ~~[BPL]~~  
12 SYSTEM. (a) An ~~[affiliate of an]~~ electric utility ~~[or a person~~  
13 ~~unaffiliated with an electric utility]~~ may own, construct,  
14 maintain, and operate fiber optic cables and other facilities for  
15 providing middle mile broadband service ~~[a BPL system and provide~~  
16 ~~BPL services on an electric utility's electric delivery system]~~  
17 consistent with the requirements of this chapter. Nothing in this  
18 chapter prohibits ~~[shall prohibit]~~ an entity defined in Section  
19 11.003(9) from providing broadband ~~[BPL]~~ service to an Internet  
20 service provider or owning and operating a broadband ~~[BPL]~~ system  
21 as otherwise permitted by law.

22           (b) The electric utility may determine on a  
23 nondiscriminatory basis which Internet service providers may have  
24 access to excess fiber capacity on the electric utility's electric  
25 delivery system and provide access points to allow connection  
26 between the electric utility's electric delivery system and the  
27 Internet service provider systems of those Internet service

1 providers. The electric utility may provide access to excess fiber  
2 capacity on the electric utility's middle mile broadband system  
3 only on reasonable and nondiscriminatory terms and conditions.  
4 ~~[Nothing in this chapter shall prohibit an electric utility from~~  
5 ~~providing construction or maintenance services to a BPL operator or~~  
6 ~~BPL ISP provided that the costs of these services are properly~~  
7 ~~accounted for between the electric utility and the BPL operator or~~  
8 ~~BPL ISP.]~~

9       Sec. 43.052. ~~[OWNERSHIP AND OPERATION OF BPL SYSTEM. (a)~~  
10 ~~An electric utility may elect to:~~

11             ~~[(1) allow an affiliate to own or operate a BPL system~~  
12 ~~on the utility's electric delivery system;~~

13             ~~[(2) allow an unaffiliated entity to own or operate a~~  
14 ~~BPL system on the electric utility's electric delivery system; or~~

15             ~~[(3) allow an affiliate or unaffiliated entity to~~  
16 ~~provide Internet service over a BPL system.~~

17             ~~[(b) The BPL operator and the electric utility shall~~  
18 ~~determine what BPL Internet service providers may have access to~~  
19 ~~broadband capacity on the BPL system.~~

20       ~~[Sec. 43.053. FEES AND] CHARGES. [(a)]~~ An electric utility  
21 that owns and operates a middle mile broadband system may lease  
22 excess fiber capacity on the electric utility's electric delivery  
23 system to an Internet service provider on a wholesale basis and  
24 ~~[allows an affiliate or an unaffiliated entity to own a BPL system~~  
25 ~~on the electric utility's electric delivery system]~~ shall charge  
26 the Internet service provider ~~[owner of the BPL system]~~ for the use  
27 of the electric utility's ~~[electric delivery]~~ system for all costs

1 associated with that use. The rates, terms, and conditions of a  
2 lease of excess fiber capacity on an electric utility's middle mile  
3 broadband system must be nondiscriminatory. An electric utility  
4 may not lease excess fiber capacity on the electric utility's  
5 middle mile broadband system to an affiliated Internet service  
6 provider.

7 ~~[(b) An electric utility may pay a BPL owner, a BPL~~  
8 ~~operator, or a BPL ISP for the use of the BPL system required to~~  
9 ~~operate BPL utility applications.]~~

10 ~~[(c) If all or part of a BPL system is installed on poles or~~  
11 ~~other structures of a telecommunications utility as that term is~~  
12 ~~defined in Section 51.002, the owner of the BPL system shall be~~  
13 ~~required to pay the telecommunications utility an annual fee~~  
14 ~~consistent with the usual and customary charges for access to the~~  
15 ~~space occupied by that portion of the BPL system so installed.]~~

16 ~~[(d) Notwithstanding Subsections (a)-(c):~~

17 ~~[(1) an electric utility may not charge an affiliate~~  
18 ~~under this section an amount less than the electric utility would~~  
19 ~~charge an unaffiliated entity for the same item or class of items,~~

20 ~~[(2) an electric utility may not pay an affiliate~~  
21 ~~under this section an amount more than the affiliate would charge an~~  
22 ~~unaffiliated entity for the same item or class of items, and~~

23 ~~[(3) an electric utility or an affiliate of an~~  
24 ~~electric utility may not discriminate against a retail electric~~  
25 ~~provider that is not affiliated with the utility in the terms or~~  
26 ~~availability of BPL services.]~~

27 Sec. 43.053 [43.054]. NO ADDITIONAL EASEMENTS OR

1 CONSIDERATION REQUIRED. (a) Because broadband [~~BPL~~] systems  
2 provide benefits to electric delivery systems, the installation of  
3 a middle mile broadband [~~BPL~~] system on an electric delivery system  
4 does [~~shall~~] not require the electric utility [~~or the owner of the~~  
5 ~~BPL system~~] or an entity defined in Section 11.003(9) to obtain,  
6 modify, or expand easements or other rights-of-way for the middle  
7 mile broadband [~~BPL~~] system or to give additional consideration as  
8 a result of the installation or the operation of a middle mile  
9 broadband [~~BPL~~] system on the electric delivery system of the  
10 electric utility or entity, unless the property owner protests the  
11 use as provided by this section.

12 (b) Not later than the 60th day before the date an electric  
13 utility begins construction in an easement or other property right  
14 of fiber optic cables and other facilities for providing middle  
15 mile broadband service, the electric utility shall provide written  
16 notice to the owners of the affected property of the electric  
17 utility's intent to use the easement or other property right for  
18 middle mile broadband service.

19 (c) Notice under this section must:

20 (1) be sent by first class mail to the last known  
21 address of each person in whose name the affected property is listed  
22 on the most recent tax roll of each county authorized to levy  
23 property taxes against the property; and

24 (2) state whether any new fiber optic cables used for  
25 middle mile broadband service will be located above or below ground  
26 in the easement or other property right.

27 (d) Not later than the 60th day after the date an electric

1 utility mails notice under this section, a property owner entitled  
2 to the notice may submit to the electric utility a written protest  
3 of the intended use of the easement or other property right for  
4 middle mile broadband service. An electric utility that receives a  
5 timely written protest may not use the easement or other property  
6 right for middle mile broadband service unless the protestor later  
7 agrees in writing to that use or that use is authorized by law. If a  
8 property owner fails to submit a timely written protest, an  
9 electric utility may proceed under Subsection (a) without modifying  
10 or expanding the easement for that property owner.

11 (e) An electric utility that receives a timely written  
12 protest under Subsection (d) regarding a proposed middle mile  
13 broadband project may cancel the project at any time.

14 (f) The requirements of this section do not apply to an  
15 existing easement that permits the installation of a third-party  
16 middle mile broadband system on an electric delivery system. [~~For~~  
17 purposes of this section, installation of a BPL system shall be  
18 deemed to be consistent with installation of an electric delivery  
19 system.]

20 Sec. 43.054 [~~43.055~~]. RELIABILITY OF ELECTRIC SYSTEMS  
21 MAINTAINED. An electric utility that installs [~~allows the~~  
22 ~~installation~~] and operates [~~operation of~~] a middle mile broadband  
23 [~~BPL~~] system [~~on its electric delivery system~~] shall employ all  
24 reasonable measures to ensure that the operation of the middle mile  
25 broadband [~~BPL~~] system does not interfere with or diminish the  
26 reliability of the utility's electric delivery system. If [~~Should~~]  
27 a disruption in the provision of electric service occurs [~~occur~~],

1 the electric utility is [~~shall be~~] governed by the terms and  
2 conditions of the retail electric delivery service tariff. The  
3 electric utility may take all necessary actions regarding its  
4 middle mile broadband system to address emergency circumstances  
5 that may pose health, safety, or reliability concerns. At all  
6 times, the provision of broadband service is [~~services shall be~~]  
7 secondary to the reliable provision of electric delivery services.  
8 An electric utility is not liable to any person, including an  
9 Internet service provider, for any direct, indirect, or  
10 consequential damages, including loss of business, loss of profits  
11 or revenue, or loss of production capacity caused by a fluctuation,  
12 disruption, or interruption of middle mile broadband service that  
13 is caused in whole or in part by:

- 14           (1) force majeure; or  
15           (2) the electric utility's provision of electric  
16 delivery services, including actions taken by the electric utility  
17 to ensure the reliability of the electric delivery system and  
18 actions taken in response to address emergency circumstances that  
19 may pose health, safety, or reliability concerns.

20 SUBCHAPTER C. IMPLEMENTATION OF MIDDLE MILE BROADBAND [~~BPL~~] SYSTEM  
21 BY ELECTRIC UTILITY

22           Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An  
23 electric utility [~~, through an affiliate or through an unaffiliated~~  
24 ~~entity,~~] may [~~elect to~~] install and operate a middle mile broadband  
25 [~~BPL~~] system on any part of its electric delivery system for  
26 Internet service providers but may not construct new electric  
27 delivery facilities for the purpose of the electric utility's

1 middle mile service [~~some or all of its electric delivery system in~~  
2 ~~any part or all of its certificated service area~~].

3 (b) The installation, operation, and use of a middle mile  
4 broadband [BPL] system and the provision of middle mile broadband  
5 service and the lease of excess fiber capacity by Internet service  
6 providers from an electric utility may [~~BPL services shall~~] not be  
7 regulated by any state agency, a municipality, or local government  
8 other than as provided by [~~for in~~] this chapter.

9 (c) An electric utility that owns and operates a middle mile  
10 broadband system:

11 (1) may lease excess fiber capacity on the electric  
12 utility's electric delivery system to an Internet service provider  
13 on a wholesale basis; and

14 (2) may not provide Internet service to end-use  
15 customers on a retail basis.

16 (d) [~~(c)~~] The commission or a state or local government or a  
17 regulatory or quasi-governmental or a quasi-regulatory authority  
18 may not:

19 (1) require an electric utility[~~, either through an~~  
20 ~~affiliate or an unaffiliated entity,~~] to install a middle mile  
21 broadband [BPL] system [~~on its power lines~~] or offer middle mile  
22 broadband service on the utility's electric delivery system [~~BPL~~  
23 ~~services in all or any part of the electric utility's certificated~~  
24 ~~service area~~];

25 (2) require an electric utility to allow others to  
26 install a middle mile broadband [BPL] system on the utility's  
27 electric delivery system [~~in any part or all of the electric~~

1 ~~utility's certificated service area]; or~~

2 (3) prohibit an electric utility from installing a  
3 middle mile broadband system or offering middle mile broadband  
4 service on the utility's electric delivery system [~~having an~~  
5 ~~affiliate or unaffiliated entity install a BPL system or offering~~  
6 ~~BPL services in any part or all of the electric utility's~~  
7 ~~certificated service area)].~~

8 (e) [~~(d)~~] If a municipality or local government is already  
9 collecting a charge or fee from the electric utility for the use of  
10 the public rights-of-way for the delivery of electricity to retail  
11 electric customers, the municipality or local government may not  
12 require [~~is prohibited from requiring~~] a franchise or an amendment  
13 to a franchise or require an additional [~~from requiring a~~] charge,  
14 fee, or tax from the electric utility [~~any entity~~] for use of the  
15 public rights-of-way for a middle mile broadband [~~BPL~~] system.

16 (f) [~~(e)~~] The state or a municipality may impose a charge on  
17 the provision of middle mile broadband service [~~BPL services~~], but  
18 the charge may not be greater than the lowest charge that the state  
19 or municipality imposes on other providers of broadband service  
20 [~~services~~] for use of the public rights-of-way in its respective  
21 jurisdiction.

22 Sec. 43.102. COMMISSION REVIEW OF UTILITY MIDDLE MILE PLAN.

23 (a) An electric utility that plans a project to deploy middle mile  
24 broadband shall submit to the commission a written plan that  
25 includes:

26 (1) the route of the middle mile broadband  
27 infrastructure proposed for the project;

1           (2) the number of fiber strands and any other  
2 facilities that would be used in connection with the project and  
3 dedicated to an Internet service provider;

4           (3) the location of the electric utility's  
5 infrastructure that will be used in connection with the project;

6           (4) the capacity or number of fiber strands and any  
7 other facilities of the middle mile that will be available to lease  
8 to Internet service providers and other third parties on completion  
9 of the project;

10           (5) the name of at least one Internet service provider  
11 that has committed to leasing access to the middle mile broadband  
12 assets constructed as part of the project;

13           (6) an estimate of potential broadband customers that  
14 would be served by the Internet service provider;

15           (7) the estimated cost of the project, including  
16 engineering costs, construction costs, permitting costs,  
17 right-of-way costs, and a reasonable allowance for funds used  
18 during construction;

19           (8) the proposed schedule of construction for the  
20 project;

21           (9) the method of attachment and connection of the  
22 middle mile broadband assets by the Internet service provider to  
23 the electric utility's electric delivery system;

24           (10) testimony, exhibits, or other evidence that  
25 demonstrates the project will allow for the provision and  
26 maintenance of adequate, efficient, safe, reliable, and reasonably  
27 priced middle mile broadband service; and

1           (11) any other information that the applicant  
2 considers relevant or that the commission requires.

3           (b) The commission, after notice and hearing if required by  
4 the commission, shall approve the plan if the commission finds that  
5 the plan will allow for reasonably priced middle mile broadband  
6 service.

7           (c) The commission must approve, modify, or reject a plan  
8 submitted to the commission under this section not later than the  
9 181st day after the date the plan is submitted under Subsection (a).

10           (d) An approved plan may be updated or amended subject to  
11 commission approval in accordance with this section.

12           Sec. 43.103 [~~43.102~~].   COST RECOVERY FOR DEPLOYMENT OF  
13 MIDDLE MILE BROADBAND FACILITIES [~~BPL AND UTILITY APPLICATIONS~~].

14 (a) Where an electric utility installs a middle mile broadband  
15 system [~~permits the installation of a BPL system on its electric~~  
16 ~~delivery system~~] under Section 43.051 [~~43.052(a)~~], the electric  
17 utility's investment in that middle mile broadband [~~BPL~~] system is  
18 [~~to directly support the BPL electric utility applications and~~  
19 ~~other BPL services consumed by the electric utility that are used~~  
20 ~~and useful in providing electric utility service shall be]~~ eligible  
21 for inclusion in the electric utility's invested capital, and any  
22 fees or operating expenses that are reasonable and necessary are  
23 [~~shall be~~] eligible for inclusion as operating expenses for  
24 purposes of any proceeding under Chapter 36. The commission may  
25 allow an electric utility to recover investment in a middle mile  
26 broadband system outside of a comprehensive base rate proceeding  
27 [~~The invested capital and expenses described in this section must~~

1 ~~be allocated to the customer classes directly receiving the~~  
2 ~~services].~~

3 (b) In a [any] proceeding under Chapter 36, revenue received  
4 by an electric utility from an Internet service provider for the use  
5 of a middle mile broadband system must be applied as a revenue  
6 credit to customers in proportion to the customers' funding of the  
7 underlying infrastructure [~~just and reasonable charges for the use~~  
8 ~~of the electric utility's electric delivery system by a BPL owner or~~  
9 ~~operator shall be limited to the usual and customary pole~~  
10 ~~attachment charges paid to the electric utility for comparable~~  
11 ~~space by cable television operators].~~

12 [~~(c) The revenues of an affiliated BPL operator or an~~  
13 ~~affiliated BPL ISP shall not be deemed the revenues of an electric~~  
14 ~~utility for purposes of setting rates under Chapter 36.]~~

15 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

16 Sec. 43.151. [~~AFFILIATES OF ELECTRIC UTILITY. (a) Subject~~  
17 ~~to the limitations of this chapter, an electric utility may have a~~  
18 ~~full or partial ownership interest in a BPL operator or a BPL~~  
19 ~~ISP. Whether a BPL operator or a BPL ISP is an affiliate of the~~  
20 ~~electric utility shall be determined under Section 11.003(2) or~~  
21 ~~Section 11.006.~~

22 [~~(b) Neither a BPL operator nor a BPL ISP shall be~~  
23 ~~considered a "competitive affiliate" of an electric utility as that~~  
24 ~~term is defined in Section 39.157.~~

25 [~~Sec. 43.152.] COMPLIANCE WITH FEDERAL LAW. An electric~~

26 utility that owns and operates a middle mile broadband system [~~BPL~~  
27 ~~operators]~~ shall comply with all applicable federal laws[~~7~~

1 ~~including those protecting licensed spectrum users from~~  
2 ~~interference by BPL systems. The operator of a radio frequency~~  
3 ~~device shall be required to cease operating the device upon~~  
4 ~~notification by a Federal Communications Commission or Public~~  
5 ~~Utilities Commission representative that the device is causing~~  
6 ~~harmful interference. Operation shall not resume until the~~  
7 ~~condition causing the harmful interference has been corrected].~~

8 SECTION 2. Section 33.001(b), Utilities Code, is repealed.

9 SECTION 3. The Public Utility Commission of Texas is  
10 required to implement a provision of this Act only if the  
11 legislature appropriates money specifically for that purpose. If  
12 the legislature does not appropriate money specifically for that  
13 purpose, the commission may, but is not required to, implement a  
14 provision of this Act using other appropriations that are available  
15 for that purpose.

16 SECTION 4. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2021.

**ADOPTED**

**MAY 22 2021**

*Latey Law*  
Secretary of the Senate

By: Anderson / Perry

H.B. No. 3853

Substitute the following for H.B. No. 3853:

By: [Signature]

C.S. H.B. No. 3853

A BILL TO BE ENTITLED

AN ACT

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1 ~~to customers where broadband access is currently not available and~~  
2 ~~may provide an additional option for existing broadband consumers~~  
3 ~~in Texas, resulting in a more competitive market for broadband~~  
4 ~~services.]~~ The legislature [~~further~~] finds that broadband [BPL]  
5 development in unserved and underserved areas of Texas can be  
6 facilitated by [~~is fully dependent upon~~] the participation of  
7 electric utilities in this state that own and operate [~~power lines~~  
8 ~~and related~~] facilities that may be useful [~~are necessary~~] for the  
9 full deployment of broadband service by Internet service providers  
10 throughout this state [~~construction of BPL systems and the~~  
11 ~~provision of BPL services~~].

12 (c) The legislature finds that electric utilities have  
13 existing infrastructure in place throughout this state and that  
14 excess fiber capacity on that infrastructure could be used to  
15 provide middle mile broadband service in unserved and underserved  
16 areas.

17 (d) The [~~(c) Consistent with the goal of increasing options~~  
18 ~~for telecommunications in this state, the~~] legislature finds that  
19 it is in the public interest to encourage the deployment of  
20 broadband service in unserved and underserved areas [BPL] by  
21 permitting electric utilities to own, construct, or operate fiber  
22 facilities for the support of electric service and to lease excess  
23 fiber capacity for the provision of middle mile broadband service  
24 [~~affiliates of the electric utility, or permitting unaffiliated~~  
25 ~~entities, to own or operate all or a portion of such BPL systems~~].  
26 The purpose of this chapter is to provide the appropriate framework  
27 to facilitate the leasing of excess fiber capacity on electric

1 utility facilities [~~support the deployment of BPL~~].

2 (e) [~~(d)~~] The legislature finds that an electric utility  
3 may choose to implement middle mile broadband service to lease  
4 excess fiber capacity to Internet service providers [BPL] under the  
5 procedures set forth in this chapter, but is not required to do so.  
6 The electric utility shall have the right to decide, in its sole  
7 discretion, whether to implement middle mile broadband service  
8 [BPL] and may not be penalized for deciding to implement or not to  
9 implement that service [BPL].

10 Sec. 43.002. APPLICABILITY. (a) This chapter applies to an  
11 electric utility whether or not the electric utility is offering  
12 customer choice under Chapter 39.

13 (b) If there is a conflict between the specific provisions  
14 of this chapter and any other provisions of this title, the  
15 provisions of this chapter control.

16 (c) Except as otherwise provided by this title, no [No]  
17 provision of this title imposes [~~shall impose~~] an obligation on an  
18 electric utility to construct or operate facilities to [~~implement~~  
19 ~~BPL, to~~] provide middle mile broadband service [~~services~~], or to  
20 allow others to install [BPL] facilities or use the electric  
21 utility's facilities for the provision of broadband service  
22 [~~services~~].

23 Sec. 43.003. DEFINITIONS. In this chapter:

24 (1) "Broadband service" means retail Internet service  
25 provided by a commercial Internet service provider with the  
26 capability of providing a download speed of at least 25 megabits per  
27 second and an upload speed of at least 3 megabits per second ["BPL,"

1 ~~"broadband over power lines," and "BPL services" mean the provision~~  
2 ~~of broadband services over electric power lines and related~~  
3 ~~facilities, whether above ground or in underground conduit].~~

4 (2) "Internet ~~["BPL access" means the ability to~~  
5 ~~access broadband services via a BPL operator or BPL Internet~~  
6 ~~service provider.~~

7 [~~(3) "BPL operator" means an entity that owns or~~  
8 ~~operates a BPL system on the electric power lines and related~~  
9 ~~facilities of an electric utility.~~

10 [~~(4) "BPL Internet] service provider" means a~~  
11 commercial ~~[and "BPL ISP" mean an]~~ entity that provides Internet  
12 services ~~[to others on a wholesale basis or]~~ to end-use customers on  
13 a retail basis.

14 (3) [~~(5) "BPL system" means the materials, equipment,~~  
15 ~~and other facilities installed on electric utility property to~~  
16 ~~facilitate the provision of BPL services.~~

17 [~~(6) "BPL electric utility applications" means~~  
18 ~~services and technologies that are used and useful and designed to~~  
19 ~~improve the operational performance and service reliability of an~~  
20 ~~electric utility including, but not limited to, automated meter~~  
21 ~~reading, real time system monitoring and meter control, remote~~  
22 ~~service control, outage detection and restoration, predictive~~  
23 ~~maintenance and diagnostics, and monitoring and enhancement of~~  
24 ~~power quality.~~

25 [~~(7)] "Electric delivery system" means the power lines~~  
26 and related transmission and distribution facilities constructed  
27 ~~[used by an electric utility] to deliver electric energy to the~~



1 delivery system or other facilities and provide access points to  
2 allow connection between the electric utility's electric delivery  
3 system or other facilities and the systems of those Internet  
4 service providers. The electric utility shall provide access to  
5 excess fiber capacity only on reasonable and nondiscriminatory  
6 terms and conditions that assure the electric utility the  
7 unimpaired ability to comply with and enforce all applicable  
8 federal and state requirements regarding the safety, reliability,  
9 and security of the electric delivery system. [Nothing in this  
10 chapter shall prohibit an electric utility from providing  
11 construction or maintenance services to a BPL operator or BPL ISP  
12 provided that the costs of these services are properly accounted  
13 for between the electric utility and the BPL operator or BPL ISP.]

14       Sec. 43.052. [~~OWNERSHIP AND OPERATION OF BPL SYSTEM. (a)~~  
15 ~~An electric utility may elect to:~~

16               ~~[(1) allow an affiliate to own or operate a BPL system~~  
17 ~~on the utility's electric delivery system;~~

18               ~~[(2) allow an unaffiliated entity to own or operate a~~  
19 ~~BPL system on the electric utility's electric delivery system; or~~

20               ~~[(3) allow an affiliate or unaffiliated entity to~~  
21 ~~provide Internet service over a BPL system.~~

22               ~~[(b) The BPL operator and the electric utility shall~~  
23 ~~determine what BPL Internet service providers may have access to~~  
24 ~~broadband capacity on the BPL system.~~

25       ~~[Sec. 43.053. FEES AND] CHARGES. [(a)] An electric utility~~  
26 ~~that owns and operates facilities to provide middle mile broadband~~  
27 ~~service may lease excess fiber capacity on the electric utility's~~

1 electric delivery system or other facilities to an Internet service  
2 provider on a wholesale basis and [~~allows an affiliate or an~~  
3 ~~unaffiliated entity to own a BPL system on the electric utility's~~  
4 ~~electric delivery system~~] shall charge the Internet service  
5 provider [~~owner of the BPL system~~] for the use of the electric  
6 utility's [~~electric delivery~~] system for all costs associated with  
7 that use. The rates, terms, and conditions of a lease of excess  
8 fiber capacity described by this section must be nondiscriminatory.  
9 An electric utility may not lease excess fiber capacity to provide  
10 middle mile broadband service to an affiliated Internet service  
11 provider.

12 [~~(b) An electric utility may pay a BPL owner, a BPL~~  
13 ~~operator, or a BPL ISP for the use of the BPL system required to~~  
14 ~~operate BPL utility applications.~~

15 [~~(c) If all or part of a BPL system is installed on poles or~~  
16 ~~other structures of a telecommunications utility as that term is~~  
17 ~~defined in Section 51.002, the owner of the BPL system shall be~~  
18 ~~required to pay the telecommunications utility an annual fee~~  
19 ~~consistent with the usual and customary charges for access to the~~  
20 ~~space occupied by that portion of the BPL system so installed.~~

21 [~~(d) Notwithstanding Subsections (a)-(c):~~

22 [~~(1) an electric utility may not charge an affiliate~~  
23 ~~under this section an amount less than the electric utility would~~  
24 ~~charge an unaffiliated entity for the same item or class of items;~~

25 [~~(2) an electric utility may not pay an affiliate~~  
26 ~~under this section an amount more than the affiliate would charge an~~  
27 ~~unaffiliated entity for the same item or class of items; and~~

1           ~~[(3) an electric utility or an affiliate of an~~  
2 ~~electric utility may not discriminate against a retail electric~~  
3 ~~provider that is not affiliated with the utility in the terms or~~  
4 ~~availability of BPL services.]~~

5           Sec. 43.053 ~~[43.054]~~.           NO    ADDITIONAL    EASEMENTS    OR  
6 CONSIDERATION REQUIRED.    (a)    Because broadband ~~[BPL]~~ systems  
7 provide benefits to electric delivery systems, the installation of  
8 facilities to provide middle mile broadband service ~~[a BPL system]~~  
9 on an electric delivery system or other facilities does ~~[shall]~~ not  
10 require the electric utility ~~[or the owner of the BPL system]~~ or an  
11 entity defined in Section 11.003(9) to obtain, modify, or expand  
12 easements or other rights-of-way for the middle mile broadband  
13 service ~~[BPL system]~~ or to give additional consideration as a  
14 result of the installation or the operation of middle mile  
15 broadband service on the electric delivery system or other  
16 facilities of the electric utility or entity, unless the property  
17 owner protests the use as provided by this section ~~[a BPL system]~~.

18           (b) Not later than the 60th day before the date an electric  
19 utility begins construction in an easement or other property right  
20 of fiber optic cables and other facilities for providing middle  
21 mile broadband service, the electric utility shall provide written  
22 notice to the owners of the affected property of the electric  
23 utility's intent to use the easement or other property right for  
24 middle mile broadband service.

25           (c) Notice under this section must:

26                   (1) be sent by first class mail to the last known  
27 address of each person in whose name the affected property is listed

1 on the most recent tax roll of each county authorized to levy  
2 property taxes against the property; and

3 (2) state whether any new fiber optic cables used for  
4 middle mile broadband service will be located above or below ground  
5 in the easement or other property right.

6 (d) Not later than the 60th day after the date an electric  
7 utility mails notice under this section, a property owner entitled  
8 to the notice may submit to the electric utility a written protest  
9 of the intended use of the easement or other property right for  
10 middle mile broadband service. An electric utility that receives a  
11 timely written protest may not use the easement or other property  
12 right for middle mile broadband service unless the protestor later  
13 agrees in writing to that use or that use is authorized by law. If a  
14 property owner fails to submit a timely written protest, an  
15 electric utility may proceed under Subsection (a) without modifying  
16 or expanding the easement for that property owner.

17 (e) An electric utility that receives a timely written  
18 protest under Subsection (d) regarding proposed middle mile  
19 broadband service may cancel the project at any time.

20 (f) The requirements of this section do not apply to an  
21 existing easement that permits the provision of third-party middle  
22 mile broadband service on an electric delivery system. [~~For~~  
23 purposes of this section, installation of a BPL system shall be  
24 deemed to be consistent with installation of an electric delivery  
25 system.]

26 Sec. 43.054 [~~43.055~~]. RELIABILITY OF ELECTRIC SYSTEMS  
27 MAINTAINED. An electric utility that installs [~~allows the~~

1 ~~installation]~~ and operates facilities to provide middle mile  
2 broadband service [~~operation of a BPL system on its electric~~  
3 ~~delivery system]~~ shall employ all reasonable measures to ensure  
4 that the operation of the middle mile broadband service [~~BPL~~  
5 ~~system]~~ does not interfere with or diminish the reliability of the  
6 utility's electric delivery system. If [~~Should~~] a disruption in  
7 the provision of electric service occurs [~~occur~~], the electric  
8 utility is [~~shall be~~] governed by the terms and conditions of the  
9 retail electric delivery service tariff. The electric utility may  
10 take all necessary actions regarding its middle mile broadband  
11 service and the facilities required in the provision of that  
12 service to address circumstances that may pose health, safety,  
13 security, or reliability concerns. At all times, the provision of  
14 broadband service is [~~services shall be~~] secondary to the reliable  
15 provision of electric delivery services. Except as provided by  
16 contract or tariff, an electric utility is not liable to any person,  
17 including an Internet service provider, for any damages, including  
18 direct, indirect, physical, economic, exemplary, or consequential  
19 damages, including loss of business, loss of profits or revenue, or  
20 loss of production capacity caused by a fluctuation, disruption, or  
21 interruption of middle mile broadband service that is caused in  
22 whole or in part by:

- 23 (1) force majeure; or
- 24 (2) the electric utility's provision of electric  
25 delivery services, including actions taken by the electric utility  
26 to ensure the reliability and security of the electric delivery  
27 system and actions taken in response to address all circumstances

1 that may pose health, safety, security, or reliability concerns.

2 SUBCHAPTER C. IMPLEMENTATION OF MIDDLE MILE BROADBAND SERVICE [~~BPL~~  
3 ~~SYSTEM~~] BY ELECTRIC UTILITY

4 Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An  
5 electric utility[~~, through an affiliate or through an unaffiliated~~  
6 ~~entity,~~] may [~~elect to~~] install and operate facilities to provide  
7 middle mile broadband service [~~a BPL system~~] on any part of its  
8 electric delivery system or other facilities for Internet service  
9 providers but may not construct new electric delivery facilities  
10 for the purpose of expanding the electric utility's middle mile  
11 broadband service [~~some or all of its electric delivery system in~~  
12 ~~any part or all of its certificated service area~~].

13 (b) The installation, operation, and use of middle mile  
14 broadband service and the lease of excess fiber capacity by  
15 Internet service providers from an electric utility may [~~a BPL~~  
16 ~~system and the provision of BPL services shall~~] not be regulated by  
17 any state agency, a municipality, or local government other than as  
18 provided by [~~for in~~] this chapter.

19 (c) An electric utility that owns and operates middle mile  
20 broadband service:

21 (1) may lease excess fiber capacity on the electric  
22 utility's electric delivery system or other facilities to an  
23 Internet service provider on a wholesale basis; and

24 (2) may not provide Internet service to end-use  
25 customers on a retail basis.

26 (d) [~~(e)~~] The commission or a state or local government or a  
27 regulatory or quasi-governmental or a quasi-regulatory authority

1 may not:

2 (1) require an electric utility~~[, either through an~~  
3 ~~affiliate or an unaffiliated entity,~~] to install ~~[a BPL system on~~  
4 ~~its power lines]~~ or offer middle mile broadband service on the  
5 utility's electric delivery system or other facilities ~~[BPL~~  
6 ~~services in all or any part of the electric utility's certificated~~  
7 ~~service area];~~

8 (2) require an electric utility to allow others to  
9 install middle mile broadband service ~~[a BPL system]~~ on the  
10 utility's electric delivery system or other facilities ~~[in any part~~  
11 ~~or all of the electric utility's certificated service area];~~ or

12 (3) prohibit an electric utility from installing or  
13 offering middle mile broadband service on the utility's electric  
14 delivery system or other facilities ~~[having an affiliate or~~  
15 ~~unaffiliated entity install a BPL system or offering BPL services~~  
16 ~~in any part or all of the electric utility's certificated service~~  
17 ~~area].~~

18 (e) ~~[(d)]~~ If a municipality or local government is already  
19 collecting a charge or fee from the electric utility for the use of  
20 the public rights-of-way for the delivery of electricity to retail  
21 electric customers, the municipality or local government may not  
22 require ~~[is prohibited from requiring]~~ a franchise or an amendment  
23 to a franchise or require an additional ~~[from requiring a]~~ charge,  
24 fee, or tax from the electric utility ~~[any entity]~~ for use of the  
25 public rights-of-way for middle mile broadband service ~~[a BPL~~  
26 ~~system].~~

27 (f) If the state or a municipality or local government is

1 not already collecting a charge or fee from the electric utility for  
2 the use of the public rights-of-way, the [(e) The] state or a  
3 municipality or local government may impose a charge on the  
4 provision of middle mile broadband service [~~BPL services~~], but the  
5 charge may not be greater than the lowest charge that the state or  
6 municipality imposes on other providers of broadband service  
7 [~~services~~] for use of the public rights-of-way in its respective  
8 jurisdiction.

9 Sec. 43.102. COMMISSION REVIEW OF UTILITY MIDDLE MILE PLAN.

10 (a) An electric utility that plans a project to deploy middle mile  
11 broadband service shall submit to the commission a written plan  
12 that includes:

13 (1) the route of the middle mile broadband service  
14 infrastructure proposed for the project;

15 (2) the location of the electric utility's  
16 infrastructure that will be used in connection with the project;

17 (3) an estimate of potential broadband customers that  
18 would be served by the Internet service provider;

19 (4) the estimated cost of the project, including  
20 engineering costs, construction costs, permitting costs,  
21 right-of-way costs, and a reasonable allowance for funds used  
22 during construction;

23 (5) the proposed schedule of construction for the  
24 project;

25 (6) testimony, exhibits, or other evidence that  
26 demonstrates the project will allow for the provision and  
27 maintenance of middle mile broadband service; and

1           (7) any other information that the applicant considers  
2 relevant or that the commission requires.

3           (b) The commission, after notice and hearing if required by  
4 the commission, shall approve the plan if the commission finds that  
5 the plan includes all the items required by Subsection (a) and by  
6 commission rule.

7           (c) The commission must approve, modify, or reject a plan  
8 submitted to the commission under this section not later than the  
9 181st day after the date the plan is submitted under Subsection (a).  
10 Notwithstanding any other provision of this title, if the  
11 commission approves a plan under this section, the commission shall  
12 issue a finding on the approved middle mile broadband service that:

13           (1) the service is used and useful to the electric  
14 utility;

15           (2) the costs associated with the service are  
16 reasonable; and

17           (3) the service is prudent and may be included in the  
18 electric utility's rate base.

19           (d) An approved plan may be updated or amended subject to  
20 commission approval in accordance with this section.

21           Sec. 43.103 [~~43.102~~].   COST RECOVERY FOR DEPLOYMENT OF  
22 MIDDLE MILE BROADBAND FACILITIES [~~BPL AND UTILITY APPLICATIONS~~].

23 (a) Where an electric utility installs facilities used to provide  
24 middle mile broadband service [~~permits the installation of a BPL~~  
25 ~~system on its electric delivery system~~] under Section 43.051  
26 [~~43.052(a)~~], the electric utility's investment in those facilities  
27 is [~~that BPL system to directly support the BPL electric utility~~

1 ~~applications and other BPL services consumed by the electric~~  
2 ~~utility that are used and useful in providing electric utility~~  
3 ~~service shall be] eligible for inclusion in the electric utility's~~  
4 ~~invested capital, and any fees or operating expenses that are~~  
5 ~~reasonable and necessary are [shall be] eligible for inclusion as~~  
6 ~~operating expenses for purposes of any proceeding under Chapter 36.~~  
7 The commission may allow an electric utility to recover investment  
8 and associated costs in middle mile broadband service if the plan  
9 for the service has been submitted and approved under Section  
10 43.102 [The invested capital and expenses described in this section  
11 must be allocated to the customer classes directly receiving the  
12 services].

13 (b) In a [any] proceeding under Chapter 36, revenue received  
14 by an electric utility from an Internet service provider for the use  
15 of middle mile broadband service must be applied as a revenue credit  
16 to customers in proportion to the customers' funding of the  
17 underlying infrastructure [just and reasonable charges for the use  
18 of the electric utility's electric delivery system by a BPL owner or  
19 operator shall be limited to the usual and customary pole  
20 attachment charges paid to the electric utility for comparable  
21 space by cable television operators].

22 [~~(c) The revenues of an affiliated BPL operator or an~~  
23 ~~affiliated BPL ISP shall not be deemed the revenues of an electric~~  
24 ~~utility for purposes of setting rates under Chapter 36.]~~

#### 25 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

26 Sec. 43.151. [~~AFFILIATES OF ELECTRIC UTILITY. (a) Subject~~  
27 ~~to the limitations of this chapter, an electric utility may have a~~

1 ~~full or partial ownership interest in a BPL operator or a BPL~~  
2 ~~ISP. Whether a BPL operator or a BPL ISP is an affiliate of the~~  
3 ~~electric utility shall be determined under Section 11.003(2) or~~  
4 ~~Section 11.006.~~

5 ~~[(b) Neither a BPL operator nor a BPL ISP shall be~~  
6 ~~considered a "competitive affiliate" of an electric utility as that~~  
7 ~~term is defined in Section 39.157.~~

8 ~~[Sec. 43.152.] COMPLIANCE WITH FEDERAL AND STATE LAW. An~~  
9 ~~electric utility that owns and operates facilities for the~~  
10 ~~provision of middle mile broadband service [BPL operators] shall~~  
11 ~~comply with all applicable federal and state laws[, including those~~  
12 ~~protecting licensed spectrum users from interference by BPL~~  
13 ~~systems. The operator of a radio frequency device shall be~~  
14 ~~required to cease operating the device upon notification by a~~  
15 ~~Federal Communications Commission or Public Utilities Commission~~  
16 ~~representative that the device is causing harmful~~  
17 ~~interference. Operation shall not resume until the condition~~  
18 ~~causing the harmful interference has been corrected].~~

19 SECTION 2. Section 33.001(b), Utilities Code, is repealed.

20 SECTION 3. Not later than the 270th day after the effective  
21 date of this Act, the Public Utility Commission of Texas shall adopt  
22 any rules necessary to implement Chapter 43, Utilities Code, as  
23 amended by this Act.

24 SECTION 4. The Public Utility Commission of Texas is  
25 required to implement a provision of this Act only if the  
26 legislature appropriates money specifically for that purpose. If  
27 the legislature does not appropriate money specifically for that

1 purpose, the commission may, but is not required to, implement a  
2 provision of this Act using other appropriations that are available  
3 for that purpose.

4         SECTION 5. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2021.

FLOOR AMENDMENT NO. 1

**ADOPTED**

MAY 22 2021

BY: *Lacey Spai*  
Secretary of the Senate

*Chris Farn*

1 Amend H.B. No. 3853 (senate committee report) in SECTION 1 of  
2 the bill as follows:

3 (1) In added Section 43.102 Utilities Code (page 6, between  
4 lines 22 and 23) add the following new subsection (a)(4) and  
5 renumber existing subsections accordingly:

6 (4) the capacity, number of fiber strands, and any other  
7 facilities of the middle mile broadband service that will be  
8 available to lease to Internet service providers;

9 (2) Strike page 6, line 38, through page 6, line 49, and  
10 substitute the following:

11 (c) The commission must approve, modify, or reject a plan  
12 submitted to the commission under this section not later than the  
13 181st day after the date the plan is submitted under Subsection  
14 (a).

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 24, 2021**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3853** by Anderson (Relating to middle mile broadband service provided by an electric utility.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3853, As Passed 2nd House : a negative impact of (\$214,432) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$107,216)
2023	(\$107,216)
2024	(\$107,216)
2025	(\$107,216)
2026	(\$107,216)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Change in Number of State Employees from FY 2021</b>
2022	(\$107,216)	1.0
2023	(\$107,216)	1.0
2024	(\$107,216)	1.0
2025	(\$107,216)	1.0
2026	(\$107,216)	1.0

**Fiscal Analysis**

The bill would allow an electric utility to provide broadband facilities for Internet Service Providers to use and provide broadband services to end-use customers. This process would require an electric utility that plans to deploy middle mile broadband to submit a detailed written plan to the Public Utility Commission (PUC). The PUC would be required to approve, modify, or reject a plan no later than 181 days from the date the plan is submitted.

This bill would require the Office of Public Utility Counsel (OPUC) to participate in providing broadband on behalf of the state's residential and small commercial consumers.

**Methodology**

The PUC anticipates that this bill would have no significant fiscal impact and the provisions of the bill could be implemented using existing resources.

OPUC anticipates having to hire 1 FTE, for an expense of \$107,216 annually, in order to ensure that it can represent residential and small commercial consumers in this process.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

**LBB Staff:** JMc, CMA, AAL, MB, RRE

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 19, 2021**

**TO:** Honorable Robert Nichols, Chair, Senate Committee on Transportation

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3853** by Anderson (relating to middle mile broadband service provided by an electric utility.),  
**Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3853, Committee Report 2nd House, Substituted : a negative impact of (\$214,432) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$107,216)
2023	(\$107,216)
2024	(\$107,216)
2025	(\$107,216)
2026	(\$107,216)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<i>Change in Number of State Employees from FY 2021</i>
2022	(\$107,216)	1.0
2023	(\$107,216)	1.0
2024	(\$107,216)	1.0
2025	(\$107,216)	1.0
2026	(\$107,216)	1.0

**Fiscal Analysis**

This bill seeks to update the language in Chapter 43 to allow the utility to provide broadband facilities for Internet Service Providers to use and provide broadband services to end-use customers. This process would require an electric utility that plans to deploy middle mile broadband to submit a detailed written plan to the Public Utility Commission. The Commission would be required to approve, modify, or reject a plan no later than 181 days from the date the plan is submitted.

This bill would require the Office of Public Utility Counsel to participate in providing broadband on behalf of the state's residential and small commercial consumers.

**Methodology**

The PUC anticipates that this bill would have no significant fiscal impact and the provisions of the bill could be implemented using existing resources.

OPUC anticipates having to hire 1 FTE, for an expense of \$107,216 annually, in order to ensure that it can represent residential and small commercial consumers in this process.

**Technology**

No technological impact is anticipated.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

**LBB Staff:** JMc, AAL, MB, RRE

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 18, 2021**

**TO:** Honorable Robert Nichols, Chair, Senate Committee on Transportation

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3853** by Anderson (Relating to middle mile broadband service provided by an electric utility.), As Engrossed

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3853, As Engrossed : a negative impact of (\$214,432) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$107,216)
2023	(\$107,216)
2024	(\$107,216)
2025	(\$107,216)
2026	(\$107,216)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Change in Number of State Employees from FY 2021</b>
2022	(\$107,216)	1.0
2023	(\$107,216)	1.0
2024	(\$107,216)	1.0
2025	(\$107,216)	1.0
2026	(\$107,216)	1.0

**Fiscal Analysis**

This bill seeks to update the language in Chapter 43 to allow the utility to provide broadband facilities for Internet Service Providers to use to provide broadband services to end-use customers. This process would require an electric utility that plans to deploy middle mile broadband to submit a detailed written plan to the Public Utility Commission. The Commission would be required to approve, modify, or reject a plan no later than 181 days from the date the plan is submitted.

This bill would require the Office of Public Utility Counsel to participate in providing broadband on behalf of the state's residential and small commercial consumers.

**Methodology**

The PUC anticipates that this bill would have no significant fiscal impact and the provisions of the bill could be implemented using existing resources.

OPUC anticipates having to hire 1 FTE, for an expense of \$107,216 annually, in order to ensure that it can represent residential and small commercial consumers in this process.

**Technology**

No technological impact is anticipated.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

**LBB Staff:** JMc, AAL, MB, RRE

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 8, 2021**

**TO:** Honorable Chris Paddie, Chair, House Committee on State Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3853** by Anderson (relating to middle mile broadband service provided by an electric utility.),  
**Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3853, Committee Report 1st House, Substituted : a negative impact of (\$2,354,184) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to middle mile broadband service provided by an electric utility.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$1,177,092)
2023	(\$1,177,092)
2024	(\$1,177,092)
2025	(\$1,177,092)
2026	(\$1,177,092)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable (Cost) from General Revenue Fund 1</b>	<b>Change in Number of State Employees from FY 2021</b>
2022	(\$1,177,092)	9.0
2023	(\$1,177,092)	9.0
2024	(\$1,177,092)	9.0
2025	(\$1,177,092)	9.0
2026	(\$1,177,092)	9.0

**Fiscal Analysis**

This bill would allow utilities to provide broadband facilities for Internet Service Providers to use to provide broadband services to end-use customers. The bill would require the Public Utility Commission (PUC) to develop oversight over the deployment of broadband services. The PUC would be required to approve plans for middle mile broadband installation and implementation.

**Methodology**

The PUC notes that currently, they do not have any oversight or involvement in the deployment of broadband services. In order to implement the provisions of the bill, the PUC anticipates it would need to hire additional engineering, legal, and accounting staff to review utility broadband plans for approval, conduct and participate in hearings, brief commissioners, and conduct rate cases. The PUC estimates that 2 engineers, 3 attorneys (2 in the Legal Division and 1 in the Office of Policy and Docket Management), 1 administrative law judge, and 2 financial examiners, would be needed to fulfill the requirements of the bill. Total annual costs of salaries for these eight full-time equivalents would be \$778,000, and other operating, equipment, retirement, and benefits costs would be \$291,876.

The Office of Public Utility Counsel (OPUC) anticipates to having to hire 1 FTE (Attorney III) to ensure that they can represent small and residential consumers adequately. This would cost \$107,216 annually.

### **Technology**

The PUC notes that it cannot absorb the technology costs associated with hiring 8 additional FTEs. Each employee would require a laptop computer, which would add \$1,900 per employee to the PUC lease, creating a total annual cost for technology of \$15,200.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

**LBB Staff:** JMc, SMAT, MB, RRE, AAL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 1, 2021**

**TO:** Honorable Chris Paddie, Chair, House Committee on State Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB3853** by Anderson (Relating to middle mile broadband service provided by an electric utility.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3853, As Introduced : a negative impact of (\$2,139,752) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to middle mile broadband service provided by an electric utility.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$1,069,876)
2023	(\$1,069,876)
2024	(\$1,069,876)
2025	(\$1,069,876)
2026	(\$1,069,876)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable (Cost) from General Revenue Fund 1</b>	<i>Change in Number of State Employees from FY 2021</i>
2022	(\$1,069,876)	8.0
2023	(\$1,069,876)	8.0
2024	(\$1,069,876)	8.0
2025	(\$1,069,876)	8.0
2026	(\$1,069,876)	8.0

**Fiscal Analysis**

The bill would require the Public Utility Commission (PUC) to develop oversight over the deployment of broadband services. The PUC would be required to approve plans for middle mile broadband installation and implementation.

**Methodology**

The PUC notes that currently, they do not have any oversight or involvement in the deployment of broadband services. In order to implement the provisions of the bill, the PUC anticipates it would need to hire additional engineering, legal, and accounting staff to review utility broadband plans for approval, conduct and participate in hearings, brief commissioners, and conduct rate cases. The PUC estimates that 2 engineers, 3 attorneys (2 in the Legal Division and 1 in the Office of Policy and Docket Management), 1 administrative law judge, and 2 financial examiners, would be needed to fulfill the requirements of the bill. Total annual costs of salaries for these eight full-time equivalents would be \$778,000, and other operating, equipment, retirement, and benefits costs would be \$291,876.

### **Technology**

The PUC notes that it cannot absorb the technology costs associated with hiring 8 additional FTEs. Each employee would require a laptop computer, which would add \$1,900 per employee to the PUC lease, creating a total annual cost for technology of \$15,200.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 473 Public Utility Commission of Texas, 475 Office of Public Utility Counsel

**LBB Staff:** JMc, SMAT, MB, RRE