

2023 Regular Session

HOUSE BILL NO. 602

BY REPRESENTATIVE DESHOTEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UTILITIES: Provides relative to broadband

1 AN ACT

2 To amend and reenact R.S. 45:781 and to enact Chapter 16 of Title 45 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 45:1631 through 1636, relative to
4 broadband; to provide for the deployment of broadband infrastructure; to provide for
5 the use of state highway rights-of-way and electric servitudes; to provide for
6 definitions; to provide for notice requirements and recordation; to provide for
7 compensation; to provide for the obligations of the Department of Transportation and
8 Development and electric utilities; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 45:781 is hereby amended and reenacted and Chapter 16 of Title 45
11 of the Louisiana Revised Statutes of 1950, comprised of R.S. 45:1631 through 1636, is
12 hereby enacted to read as follows:

13 §781. Lines; right to use public property; railroad property; waters; roads and
14 streets; private property; expropriation; excluding lines of competitors;
15 franchising of cable television by parishes

16 A. ~~Corporations~~ Entities, domestic or foreign, formed for the purpose of
17 transmitting intelligence by telegraph or telephone or other system of transmitting
18 intelligence, may construct and maintain telegraph, telephone or other lines
19 necessary to transmit intelligence along all public roads or public works, and along
20 and parallel to any of the railroads in the state, and along and over the waters of the

1 state, if the ordinary use of the roads, works, railroads, and waters are not obstructed,
 2 and along the streets of any city, with the consent of the city council or trustees.
 3 Such ~~companies, shall be~~ entities are entitled to the right of way over all lands
 4 belonging to the state and over the lands, privileges and servitudes of other persons,
 5 and to the right to erect poles, piers, abutments, and other works necessary for
 6 constructing and maintaining lines and works, ~~upon~~ subject to fulfilling the
 7 requirements of Chapter 16 of this Title as applicable, and otherwise making just
 8 compensation therefor. If the ~~company~~ entity fails to secure such right by consent,
 9 contract or agreement upon just and reasonable terms, then the ~~company~~ entity has
 10 the right to proceed to expropriate as provided by law for railroads and other works
 11 of public utility or as provided in Chapter 16 of this Title, but shall not impede the
 12 full use of the highways, navigable waters, or the drainage or natural servitudes of
 13 the land over which the right of way may be exercised. No ~~company~~ entity,
 14 operating under the provisions of this Section, shall contract with the owners of land
 15 or with any other ~~corporation~~ person for the right to erect and maintain any
 16 telephone, telegraph or other line for transmission of intelligence over its lands,
 17 privileges or servitudes, to the exclusion of the lines of other ~~companies~~ entities
 18 operating under the provisions of this Section.

19 B. Nothing provided in ~~Section~~ Subsection A of this Section herein shall
 20 affect the right granted to parish governing authorities to grant franchises for the
 21 regulation of cable television outside municipalities.

22 * * *

23 CHAPTER 16. ACCELERATING BROADBAND DEPLOYMENT

24 §1631. Short title; findings and purpose

25 A. This Chapter shall be known and may be cited as the "Accelerating
 26 Broadband Deployment Act".

27 B. (1) It is hereby declared by the Louisiana Legislature that procedures for
 28 expediting and streamlining the process for deploying broadband infrastructure for
 29 broadband service within the state are a valid public purpose. The legislature finds

1 that access to broadband service is in the best interest of the state and its citizens;
2 that being able to use state highway rights-of-way and electric servitudes for such
3 broadband infrastructure will generally help make many broadband infrastructure
4 projects both more economic and quicker to deploy and thus should help encourage
5 deployment of broadband infrastructure throughout the state; and that any diminution
6 in value of the interests of interest holders in immovable property subject to a state
7 highway right-of-way or electric servitude from the installation of attached facilities
8 within the state highway right-of-way or electric servitude will generally but not
9 always be more than offset by the increase in value of such interests from having
10 greater access to broadband service and thus result in no diminution in the value of
11 interests of any interest holders. Nonetheless, the existing procedures for a
12 broadband service provider to obtain the rights to install and use attached facilities,
13 even by expropriation across state highway rights-of-way and electric servitudes, are
14 generally cumbersome and thus may generally result in time delays that adversely
15 effect the state and its citizens.

16 (2) The legislature also finds that it is in the best interest of the state and its
17 citizens to have a procedure that helps accelerate the ability of broadband service
18 providers to deploy attached facilities across state highway rights-of-way and electric
19 utilities, including through expropriation before a determination of any just
20 compensation thereof, together with a procedure for an interest holder to pursue after
21 deployment of a claim for just compensation in those instances where the rights to
22 the broadband service provided for a specific attached facility diminish value of the
23 interest of such interest holder in the immovable property across which the attached
24 facility is installed.

25 §1632. Definitions

26 As used in this Chapter, the following terms have the following meanings
27 ascribed to them:

28 (1) "Attached facility" means any broadband infrastructure that is located
29 substantially in either of the following manners:

1 (a) Aboveground and attached to an electric utility's electric service
2 infrastructure.

3 (b) Underground in an electric servitude or a state highway right-of-way.

4 (2) "Broadband affiliate" means any entity that meets all of the following
5 criteria:

6 (a) Is wholly or partially owned by a cooperative or by an entity that directly
7 or indirectly owns or controls a cooperative.

8 (b) Is formed, in whole or in part, to own or operate a broadband system or
9 provide broadband high-speed internet services.

10 (3) "Broadband infrastructure" means any broadband infrastructure as that
11 term is defined in 47 U.S.C. §1704(a)(1).

12 (4)(a) "Broadband service" means any service, using any equipment or
13 technology, including wireline or fixed wireless broadband internet service, that
14 consists of or includes the provision of or connectivity to a high-speed, high-capacity
15 transmission medium meeting the Federal Communications Commission's
16 benchmark of at least twenty-five megabits per second download and three megabits
17 per second upload, or any subsequent benchmark determined by the Federal
18 Communications Commission, that can carry signals from or to multiple sources and
19 that is either of the following:

20 (i) Used to provide access to the internet.

21 (ii) Used to provide computer processing, information storage, information
22 content, or protocol conversion, including any service applications or information
23 service provided over such high-speed access service.

24 (b) The term "broadband services" also includes video services, voice over
25 internet protocol services, wireless services, and internet protocol-enabled services.

26 (5) "Broadband service provider" means an entity that provides broadband
27 services to another, whether on a wholesale basis, retail basis, or otherwise.

28 (6) "Department" means the Department of Transportation and
29 Development.

1 (7) "Electric servitude" means a servitude, right-of-way, easement, or similar
2 right held by an electric utility in or to immovable property for the siting of electric
3 service infrastructure or for the purpose of delivering electric service, regardless of
4 any of the following:

5 (a) How the servitude, right-of-way, easement, or other right was acquired,
6 including but not limited to by recorded or unrecorded conventional agreement,
7 acquisitive prescription, succession, expropriation, or otherwise.

8 (b) Whether the servitude, right-of-way, easement, or other right is
9 exclusively for the provision of electric service or for use in connection with
10 broadband service, telecommunication service, or another purpose.

11 (c) Whether the electric utility or a broadband service provider uses the
12 servitude or other right to provide broadband service.

13 (8) "Electric utility" means an "electric public utility" as defined in R.S.
14 45:121 and in addition means any person furnishing electric service within the city
15 of New Orleans.

16 (9) "Interest holder" means an interest holder whom the public records of the
17 office of the parish assessor identify as owning an interest in the immovable property
18 at issue.

19 (10) "State highway right-of-way" means a right-of-way, and all roads and
20 other improvements thereof, for highway purposes held by the state, whether in full
21 ownership or by servitude, right-of-way, easement, or similar right and whether
22 acquired by recorded or unrecorded conventional agreement, acquisitive prescription,
23 succession, expropriation, or otherwise.

24 §1633. Broadband service; state highway rights-of-way; electric servitudes

25 A.(1) If the department has granted to a broadband service provider a permit,
26 agreement, or other right to install, maintain, operate, or own attached facilities in
27 a state highway right-of-way and such broadband service provider complies with the
28 notice filing requirements set forth in R.S. 45:1634, such broadband service provider
29 may, and without the consent of any interest holder in the immovable property

1 subject to the state highway right-of-way, install, maintain, operate, improve, repair,
2 replace, remove, and own attached facilities in the state highway right-of-way and
3 provide broadband service on any such attached facilities. For purposes of this
4 Subsection, there shall be a legal presumption that the department lawfully holds
5 such state highway right-of-way.

6 (2) If an electric utility holding an electric servitude has granted to a
7 broadband service provider a permit, agreement, or right to install, maintain, operate,
8 or own attached facilities in the electric servitude or electric utility, or a broadband
9 affiliate has granted to the broadband service provider a lease, agreement, or other
10 right to use any excess capacity of an attached facility and the broadband service
11 provider complies with the notice and recordation requirements set forth in R.S.
12 45:1634, the broadband service provider may, and without the consent of any interest
13 holder in the immovable property subject to the electric servitude, take any of the
14 following actions:

15 (a) Install, maintain, operate, improve, repair, replace, remove, and own
16 attached facilities in the electric servitude.

17 (b) Lease or otherwise obtain from the electric utility or a broadband
18 affiliate, any excess capacity of attached facilities for purposes of providing
19 broadband service.

20 (c) Provide broadband service on any such attached facilities.

21 B. The rights of a broadband service provider provided for in this Section are
22 binding on the successors and assigns of each interest holder as to the immovable
23 property at issue and are assignable by the broadband service provider.

24 §1634. Requirements of notice; recordation

25 A. At least fifteen days before first exercising its rights pursuant to R.S.
26 45:1633, a broadband service provider shall send written notice in accordance with
27 Subsection C of this Section and record a notice pursuant to Subsection D of this
28 Section.

29 B. A notice provided for in this Section shall contain all of the following:

1 (1) The name of the broadband service provider.

2 (2) The name, address, and telephone number of the point of contact for the
3 broadband service provider.

4 (3) A description, which need not be legal, of the approximate location of the
5 state highway right-of-way or electric servitude, as applicable, or a portion thereof,
6 to contain the attached facility at issue, property address, land title survey, plat, or
7 other designation of the exact boundaries of the state highway right-of-way or
8 electric servitude, as applicable, or portion thereof.

9 (4) A copy of the text of this Chapter.

10 (5) Indication of whether the broadband service provider is exercising rights
11 in accordance with R.S. 45:1633(A)(1) or (2), and if the broadband service provider
12 is exercising rights pursuant to R.S. 45:1633(A)(2), the name of the electric utility
13 holding the electric servitude.

14 (6) An estimated time for the start of installation or construction that will
15 occur in connection with the exercise of rights provided for in R.S. 45:1633(A).

16 C.(1) A notice provided for in Subsection A of this Section shall be sent by
17 certified or registered mail, return receipt requested, or other form of dependable
18 delivery and notification method to each interest holder of record for the immovable
19 property at issue at the address listed, either in the website database or paper records
20 maintained by the office of the parish assessor, for such interest holder. Notice shall
21 be deemed delivered on the date postmarked or otherwise time stamped. There shall
22 be a legal presumption that notice delivered in accordance with this Subsection is
23 sufficient notice.

24 D. At least fifteen days before first exercising its rights provided for in R.S.
25 45:1633, a broadband service provider shall also record in the conveyance records
26 of the parish in which the immovable property is situated a notice that complies with
27 Subsection B of this Section. Any notice recorded pursuant to this Subsection may
28 affect one or more parcels of immovable property.

1 E. Nothing in this Section precludes a broadband service provider from
2 providing notice to any interest owner by any other method.

3 §1635. Compensation; limitations on compensation

4 A. If an interest holder brings a trespass claim, inverse condemnation claim,
5 or any other claim or cause of action against a broadband service provider for its
6 exercise of rights as authorized pursuant to R.S. 45:1633(A), then the measure of
7 compensation for all claims or causes of action to which this Section applies, taken
8 together, is the diminution, if any, in the fair market value of the interest holder's
9 interest in the immovable property by reason of actions the broadband service
10 provider has taken, or rights granted to it, from the fair market value immediately
11 before the broadband service provider has exercised any rights pursuant to R.S.
12 45:1633.

13 (2) In determining the fair market value or any diminution thereof, neither
14 of the following shall be used and is not admissible as evidence in any proceeding:

15 (a) Profits, fees, or revenue derived from any attached facility.

16 (b) The rental value of the immovable property interest or the state highway
17 right-of-way or electric servitude, including the rental value of any attached facility
18 or an assembled broadband corridor.

19 (3) In determining any diminution in the fair market value of the interest
20 holder's interest in the immovable property, offsetting consideration shall be given
21 to any increase in value to the immovable property interest resulting from the
22 availability of broadband service to the immovable property that arises from the
23 installation or use, including as to excess capacity, of any attached facility.

24 (4) The interest holder shall make reasonable accommodations for the
25 broadband service provider to perform an appraisal or inspection of the immovable
26 property within ninety days following any written request for an appraisal or
27 inspection. If an interest holder fails to make such accommodations, the broadband
28 service provider has no further liability to the interest holder. The broadband service

1 provider shall promptly provide to the interest holder a copy of any appraisal
2 performed pursuant this Subparagraph.

3 (5) Any compensation for any claims or causes of action to which
4 Subsection A of this Section applies shall comply with both of the following:

5 (a) Be fixed as of the date that the broadband service provider first exercised
6 the rights or performed the actions.

7 (b) Not be deemed to continue, accrue, or accumulate.

8 (6) All of the following provisions apply with regard to a claim or cause of
9 action in accordance with Subsection A of this Section:

10 (a) Except for a broadband service provider's willful misconduct or failure
11 to comply with R.S. 45:1633, an interest holder is not entitled to recovery or
12 reimbursement from a broadband service provider for the cost of any appraisal.

13 (b) For purposes of this Paragraph, any action or failure to act by a
14 broadband service provider in furtherance of its exercise of rights set forth in R.S.
15 45:1633(A) shall not be deemed wilful misconduct.

16 (c) No such claim or cause of action shall be pursued as a class action or
17 mass action.

18 B. Payment of compensation in accordance with this Section shall vest in the
19 broadband service provider all property rights necessary to install, maintain, operate,
20 improve, repair, replace, remove, and own attached facilities within the state
21 highway right-of-way or electric servitude, as applicable, and the state highway
22 right-of-way or electric servitude, as applicable shall be thereafter permanently
23 expanded to include the right to install, maintain, operate, improve, repair, replace,
24 remove, and own attached facilities.

25 §1636. Department and electric utility obligations

26 A.(1) Nothing in this Section requires the department to offer or grant a right
27 to access or use a state highway right-of-way in a manner that would, in the
28 department's reasonable discretion, materially interfere with the maintenance or use
29 of the roadway for the state highway right-of-way.

1 (2) Nothing in this Section requires an electric utility to offer or grant a right
2 to access or use an electric servitude or to use attached facilities or electric service
3 infrastructure owned or controlled by the electric utility in a manner that would, in
4 the electric utility's reasonable discretion, materially interfere with the electric
5 utility's construction, maintenance, or use of any electric utility infrastructure for the
6 provision of electric service.

7 B.(1) The department shall not unreasonably withhold authorization or delay
8 its decision whether to provide authorization to a broadband service provider to
9 install, maintain, own, operate, or use the broadband service provider's attached
10 facilities under a state highway right-of-way.

11 (2) An electric utility shall not unreasonably withhold authorization or delay
12 its decision whether to provide authorization to a broadband service provider to
13 install, maintain, own, operate, or use the broadband service provider's attached
14 facilities on electric service infrastructure owned or controlled by the electric utility.

15 (3) The department or an electric utility may withhold authorization pursuant
16 to this Subsection only if the reason for withholding authorization is either of the
17 following reasons:

18 (a) There is insufficient capacity for the attached facilities, as determined in
19 accordance with applicable law, including the make-ready and other pole attachment
20 rules of the Public Service Commission.

21 (b) There is a concern for safety, reliability, or generally applicable
22 engineering purposes that weigh against granting the authorization.

23 (4) If the department or an electric utility withholds authorization pursuant
24 to this Subsection, it shall promptly notify the broadband service provider in writing
25 of the reasons for withholding authorization.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 602 Original

2023 Regular Session

Deshotel

Abstract: Creates the Accelerating Broadband Deployment Act and provides for broadband deployment.

Present law authorizes domestic or foreign corporations whose purpose is to transmit intelligence by telegraph, telephone, or other systems, to construct lines needed to transmit that intelligence along public roads or public works, railroads in the state, along and over waters of the state, if these paths are not obstructed and along city streets with the consent of the city council or trustees.

Proposed law changes present law by allowing entities to have the same authorization afforded in present law.

Proposed law creates the Accelerating Broadband Deployment Act and provides findings and the purpose for proposed law.

Proposed law defines terms applicable to proposed law.

Proposed law authorizes a broadband service provider to install, maintain, operate, improve, repair, replace, remove, and own attached facilities in the state highway right-of-way if the service provider has been granted a permit, agreement, or other right by the Department of Transportation and Development (DOTD).

Proposed law requires a broadband service provider, at least 15 days before first exercising its rights, to send written notice to an interest holder and record such notice in the conveyance records of the parish in which the immovable property is situated.

Proposed law provides that the notice shall contain all of the following:

- (1) The name of the broadband service provider.
- (2) The name, address, and telephone number of the point of contact for the broadband service provider.
- (3) A description, which need not be legal, of the approximate location of the state highway right-of-way or electric servitude.
- (4) A copy of proposed law.
- (5) An indication of whether the broadband service provider is exercising rights in accordance with proposed law and the name of the electric utility holding the electric servitude.
- (6) An estimated time for the start of installation or construction that will occur in connection with the broadband service provider's rights.

Proposed law requires the aforementioned notice by the broadband provider to be sent by certified or registered mail, return receipt requested, or any other form of a dependable delivery and notification method.

Proposed law provides a formula for calculating compensation for claims or causes of actions that arise as a result of an interest holder bringing such claims or cause of actions against a broadband service provider for exercising its rights in a state highway right-of-way.

Proposed law requires the interest holder to make reasonable accommodations for the broadband service provider in order to allow the provider to perform an appraisal or inspection of the immovable property.

Proposed law provides that such appraisal or inspection shall occur within 90 days following any written request for an appraisal or inspection. Proposed law requires the broadband service provider to, promptly provide, a copy of any appraisal performed to the interest holder.

Proposed law provides that if the interest holder fails to make reasonable accommodations for the broadband service provider, then the provider has no further liability to the interest holder.

Proposed law provides that DOTD is not required to offer or grant a right to access or use a state highway right-of-way, if DOTD discerns that it would materially interfere with the maintenance or use of the roadway for the state highway right-of-way.

Proposed law provides that an electric utility is not required to offer or grant a right to access or use an electric servitude or to use attached facilities or electric service infrastructure the utility owns or controls, if the electric utility discerns that it would materially interfere with the construction, maintenance, or use of infrastructure for the provision of electric service.

Proposed law prohibits DOTD from unreasonably withholding authorization or delaying its decision as to whether to provide authorization to a broadband service provider to install, maintain, own, operate or use the provider's attached facilities under a state highway right-of-way.

Proposed law prohibits an electric utility from unreasonably withholding authorization or delaying its decision as to whether to provide authorization to a broadband service provider to install, maintain, own, operate or use the provider's attached facilities on the utility's electric service infrastructure.

Proposed law allows DOTD or an electric utility to withhold authorization only if the reason for withholding authorization is either of the following reasons:

- (1) There is insufficient capacity for the attached facilities, as determined by applicable law, including the make-ready and other pole attachment rules of the Public Service Commission.
- (2) There is a concern for safety, reliability, or generally applicable engineering purposes that weigh against granting the authorization.

Proposed law requires DOTD or an electric utility, if authorization is withheld, to promptly notify the broadband service provider in writing the reasons for withholding.

(Amends R.S. 45:781; Adds R.S. 45:1631-1636)