



House of Representatives

General Assembly

File No. 491

January Session, 2023

Substitute House Bill No. 6862

House of Representatives, April 11, 2023

The Committee on Labor and Public Employees reported through REP. SANCHEZ, E. of the 24th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BROADBAND CONSTRUCTION AND THE PREVAILING WAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-330c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2023*):

3 (a) On or before January 1, 2022, the Commissioner of Energy and
4 Environmental Protection shall establish and administer a grant
5 program, subject to the availability of state and federal funding, to
6 support the deployment of broadband Internet access service. The
7 commissioner shall establish criteria consistent with any requirement of
8 federal law for the grants, including, but not limited to, (1) application
9 requirements, (2) applicant eligibility, (3) addressing unserved areas in
10 distressed municipalities, (4) broadband Internet access service speed,
11 and (5) an applicant's commitment to pay at least twenty per cent of the
12 costs for any project entered into pursuant to this section with such
13 applicant's own funding, provided such funding does not derive from

14 government grants, loans or subsidies to [said] such applicant.

15 (b) In awarding such grants, the commissioner [may] shall give
16 priority to applicants (1) based on the percentage of [said] such
17 applicant's commitment to cost sharing, (2) that are able to demonstrate
18 that such applicant (A) provides robust training programs to its
19 workforce that will be performing the work under the contract,
20 provided such contract contains requirements that are tied to titles,
21 uniform wage scales and skill codes recognized in the industry, and (B)
22 requires occupational health and safety training for its workforce
23 performing the work under the contract, (3) that will use a directly
24 employed workforce to perform the work under the contract being
25 funded by the program, (4) that are able to demonstrate that such
26 applicant has programs to promote training and hiring pipelines for
27 underrepresented communities, and (5) that, (A) within the last five
28 years, have had robust records of compliance with the Connecticut
29 Labor Code, Occupational Safety and Health Act, Fair Labor Standards
30 Act, Title VII of the Civil Rights Act of 1964 and all other applicable labor
31 or employment laws, or (B) have mitigated violations with labor
32 compliance agreements and measures in order to ensure future labor
33 compliance. The commissioner may deny applications from broadband
34 Internet access service providers that do not provide information to the
35 Office of Policy and Management pursuant to subsection (c) of section
36 16-330b or to the Department of Energy and Environmental Protection
37 pursuant to subsection (b) of section 16-330d. The commissioner may
38 employ outside consultants in developing and implementing [said]
39 such grant program.

40 (c) Any disclosures made by an applicant as a result of the criteria
41 described in subdivisions (2) to (5), inclusive, of subsection (b) of this
42 section, shall be made available on the Office of Telecommunications
43 and Broadband's Internet web site.

44 (d) The commissioner shall award the grants based on a point system.
45 Each applicant shall be awarded a point total that ranges from zero to
46 one hundred points. For grants funded by the Broadband Equity, Access

47 and Development program, satisfaction of the criteria described in
48 subdivisions (2) to (5), inclusive, of subsection (b) of this section and the
49 "Fair Labor Practices" outlined in the National Telecommunications and
50 Information Notice of Funding Opportunity published on May 13, 2022,
51 together, shall be awarded at least twenty-five points. For grants not
52 funded by the Broadband Equity, Access and Development program,
53 satisfaction of the criteria described in subdivisions (2) to (5), inclusive,
54 of subsection (b) of this section shall be awarded a substantial point
55 allocation, constituting of at least fifteen points.

56 (e) All projects funded by grants awarded pursuant to this section
57 shall be subject to the prevailing wage requirements established in
58 section 31-53, as amended by this act.

59 [(b)] (f) On or before January 1, 2023, and every year thereafter for a
60 period of five years after receiving a grant pursuant to this section, the
61 recipient of such grant shall submit a report to the Commissioner of
62 Energy and Environmental Protection concerning the status of such
63 recipient's broadband Internet access service deployment and other
64 information deemed relevant by the commissioner.

65 [(c)] (g) On or before December 1, 2022, and every two years
66 thereafter, the Department of Energy and Environmental Protection, in
67 consultation with the Office of Policy and Management, the Office of
68 State Broadband, the Commission for Educational Technology and
69 other state agencies deemed appropriate by the Commissioner of
70 Energy and Environmental Protection, shall report to the Governor
71 concerning (1) the grants awarded pursuant to this section, (2) the status
72 and progress made toward a state-wide goal of attaining universal
73 access to (A) broadband Internet download speeds of one gigabit per
74 second; and (B) broadband Internet upload speeds of one hundred
75 megabits per second, and (3) broadband Internet access service
76 adoption rates, the price and nonprice barriers to broadband adoption
77 and digital equity. Such report shall include recommendations to
78 overcome any such barriers, including, but not limited to, addressing
79 issues of digital literacy and affordability.

80 Sec. 2. (NEW) (Effective July 1, 2023) (a) Applicants for a grant under
81 section 16-330c of the general statutes, as amended by this act, shall
82 provide the Commissioner of Energy and Environmental Protection the
83 following information with such applicant's application:

84 (1) Whether the workforce is directly employed by the applicant or
85 whether the proposed work will be performed by a subcontracted
86 workforce;

87 (2) The subcontractors with whom the applicant plans to subcontract
88 with, if any, in carrying out the proposed work; and

89 (3) For each job title necessary to carry out the proposed work, a
90 description of:

91 (A) The wages, benefits and applicable wage scales, including
92 overtime rates, and a description of how such wages are calculated;

93 (B) Any training programs provided by the applicant, including
94 whether the training program is tied to titles, uniform wage scales and
95 skill codes recognized in the industry;

96 (C) Any safety training, certification or licensure requirements,
97 including whether such applicant requires its employees to complete
98 occupational safety and health training or any other training required
99 by law; and

100 (D) The entity employing the workforce in each job title.

101 (b) If an applicant is awarded a grant under section 16-330c of the
102 general statutes, as amended by this act, such applicant shall submit a
103 monthly report to the commissioner with the information provided in
104 subsection (a) of this section. The provisions of this subsection shall
105 apply to any recipient that is a public agency.

106 (c) Any person or entity that fails to meet the requirements of this
107 section, or provides false information in their application or the monthly
108 report described in subsection (b) of this section, may be deemed

109 ineligible by the commissioner for future participation in grant
110 programs through the Office of Telecommunications and Broadband.

111 Sec. 3. Subsections (a) to (e), inclusive, of section 31-53 of the general
112 statutes, as amended by section 1 of public act 22-17, are repealed and
113 the following is substituted in lieu thereof (*Effective July 1, 2023*):

114 (a) Each contract for the construction, remodeling, refinishing,
115 refurbishing, rehabilitation, alteration or repair of any public works
116 project by the state or any of its agents, or by any political subdivision
117 of the state or any of its agents, or any broadband installation project
118 funded by a grant pursuant to section 16-330c, as amended by this act,
119 shall contain the following provision: "The wages paid on an hourly
120 basis to any person performing the work of any mechanic, laborer or
121 worker on the work herein contracted to be done and the amount of
122 payment or contribution paid or payable on behalf of each such person
123 to any employee welfare fund, as defined in subsection (i) of this section,
124 shall be at a rate equal to the rate customary or prevailing for the same
125 work in the same trade or occupation in the town in which such public
126 works project or broadband installation project is being constructed.
127 Any contractor who is not obligated by agreement to make payment or
128 contribution on behalf of such persons to any such employee welfare
129 fund shall pay to each mechanic, laborer or worker as part of such
130 person's wages the amount of payment or contribution for such person's
131 classification on each pay day.

132 (b) If the commissioner, upon inspection or investigation of a
133 complaint, believes that a contractor or subcontractor has knowingly or
134 wilfully employed any mechanic, laborer or worker in the construction,
135 remodeling, refinishing, refurbishing, rehabilitation, alteration or repair
136 of any public works project for or on behalf of the state or any of its
137 agents, or any political subdivision of the state or any of its agents, or
138 employs any mechanic, laborer or worker in a broadband installation
139 project funded by a grant pursuant to section 16-330c, as amended by
140 this act, at a rate of wage on an hourly basis that is less than the rate
141 customary or prevailing for the same work in the same trade or

142 occupation in the town in which such public works project or
143 broadband installation project is being constructed, remodeled,
144 refinished, refurbished, rehabilitated, altered or repaired, or who has
145 failed to pay the amount of payment or contributions paid or payable
146 on behalf of each such person to any employee welfare fund, or in lieu
147 thereof to the person, as provided by subsection (a) of this section, such
148 contractor or subcontractor shall be issued a citation and may be fined
149 five thousand dollars for each offense. The commissioner shall maintain
150 a list of any contractor or subcontractor that, during the three preceding
151 calendar years, violates this section or enters into a settlement with the
152 commissioner to resolve any claim brought by the commissioner
153 pursuant to this section. For each contractor or subcontractor placed on
154 such list, the commissioner shall record the following information: (1)
155 The nature of the violation; (2) the total amount of wages and fringe
156 benefits making up the violation or agreed upon in any settlement with
157 the commissioner; and (3) the total amount of civil penalties and fines
158 agreed upon by the commissioner. The commissioner shall review the
159 list on the first day of May each year for the preceding rolling three-year
160 period and may refer for debarment any contractor or subcontractor that
161 committed a violation of this section during the rolling three-year
162 period. The commissioner shall refer for debarment any contractor or
163 subcontractor that entered into one or more settlement agreements with
164 the commissioner where the sum total of all settlements within such
165 period exceeds fifty thousand dollars in back wages or fringe benefits,
166 or entered into one or more settlement agreements with the
167 commissioner where the sum total of all settlements within such period
168 exceeds fifty thousand dollars in civil penalties or fines agreed upon by
169 the commissioner. Any contractor or subcontractor the commissioner
170 refers for debarment may request a hearing before the commissioner.
171 Such hearing shall be conducted in accordance with the provisions of
172 chapter 54. In addition, if it is found by the contracting officer
173 representing the state or political subdivision of the state that any
174 mechanic, laborer or worker employed by the contractor or any
175 subcontractor directly on the site for the work covered by the contract
176 has been or is being paid a rate of wages less than the rate of wages

177 required by the contract to be paid as required by this section, the state
178 or contracting political subdivision of the state may (A) by written or
179 electronic notice to the contractor, terminate such contractor's right to
180 proceed with the work or such part of the work as to which there has
181 been a failure to pay said required wages and to prosecute the work to
182 completion by contract or otherwise, and the contractor and the
183 contractor's sureties shall be liable to the state or the contracting political
184 subdivision for any excess costs occasioned the state or the contracting
185 political subdivision thereby, or (B) withhold payment of money to the
186 contractor or subcontractor. The contracting department of the state or
187 the political subdivision of the state shall, not later than two days after
188 taking such action, notify the Labor Commissioner, in writing or
189 electronically, of the name of the contractor or subcontractor, the project
190 involved, the location of the work, the violations involved, the date the
191 contract was terminated, and steps taken to collect the required wages.

192 (c) The Labor Commissioner may make complaint to the proper
193 prosecuting authorities for the violation of any provision of subsection
194 (b) of this section.

195 (d) For the purpose of predetermining the prevailing rate of wage on
196 an hourly basis and the amount of payment, contributions and member
197 benefits paid or payable on behalf of each person to any employee
198 welfare fund, as defined in subsection (i) of this section, in each town
199 where such contract is to be performed, the Labor Commissioner shall
200 adopt the rate of wages on an hourly basis in accordance with the
201 provisions of this section and section 31-76c and the amount of payment,
202 contributions and member benefits, including health, pension, annuity
203 and apprenticeship funds, as recognized by the United States
204 Department of Labor and the Labor Commissioner paid or payable on
205 behalf of each person to any employee welfare fund, as defined in
206 subsection (i) of this section, as established in the collective bargaining
207 agreements or understandings between employers or employer
208 associations and bona fide labor organizations for the same work in the
209 same trade or occupation in the town in which the applicable building,
210 heavy or highway works project is being constructed. For each trade or

211 occupation for which more than one collective bargaining agreement is
212 in effect for the town in which such project is being constructed, the
213 collective bargaining agreement of historical jurisdiction shall prevail.
214 For residential project rates and for each trade or occupation for which
215 there is no collective bargaining agreement in effect for the town in
216 which the building, heavy or highway works project is being
217 constructed, the Labor Commissioner shall adopt and use such
218 appropriate and applicable prevailing wage rate determinations as have
219 been made by the Secretary of Labor of the United States under the
220 provisions of the Davis-Bacon Act, as amended.

221 (e) The Labor Commissioner shall determine the prevailing rate of
222 wages on an hourly basis and the amount of payment or contributions
223 paid or payable on behalf of such person to any employee welfare fund,
224 as defined in subsection (i) of this section, in each locality where any
225 such public work is to be constructed, and the agent empowered to let
226 such contract shall contact the Labor Commissioner, at least ten but not
227 more than twenty days prior to the date such contracts will be
228 advertised for bid, to ascertain the proper rate of wages and amount of
229 employee welfare fund payments or contributions and shall include
230 such rate of wage on an hourly basis and the amount of payment or
231 contributions paid or payable on behalf of each person to any employee
232 welfare fund, as defined in subsection (i) of this section, or in lieu thereof
233 the amount to be paid directly to each person for such payment or
234 contributions as provided in subsection (a) of this section for all
235 classifications of labor in the proposal for the contract. The rate of wage
236 on an hourly basis and the amount of payment or contributions to any
237 employee welfare fund, as defined in subsection (i) of this section, or
238 cash in lieu thereof, as provided in subsection (a) of this section, shall, at
239 all times, be considered as the minimum rate for the classification for
240 which it was established. Prior to the award of any contract, purchase
241 order, bid package or other designation subject to the provisions of this
242 section, such agent shall certify to the Labor Commissioner, either in
243 writing or electronically, the total dollar amount of work to be done in
244 connection with such public works project or broadband installation
245 project, regardless of whether such project consists of one or more

246 contracts. Upon the award of any contract subject to the provisions of
 247 this section, the contractor to whom such contract is awarded shall
 248 certify, under oath, to the Labor Commissioner the pay scale to be used
 249 by such contractor and any of the contractor's subcontractors for work
 250 to be performed under such contract.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2023	16-330c
Sec. 2	July 1, 2023	New section
Sec. 3	July 1, 2023	31-53(a) to (e)

Statement of Legislative Commissioners:

In Section 1(a) and (b), "said applicant" was changed to "[said] such applicant" for consistency with standard drafting conventions, Section 1(b)(2) and (3) were rewritten for clarity, in Section 2(a)(1) and (2), "contractor" was replaced with "applicant" for internal consistency, in Section 2(a)(3), "required" was replaced with "necessary" for accuracy, and "participant" was replaced with "applicant" for internal consistency, in Section 2(b), "section" was replaced with "subsection" for accuracy and "applicant" was replaced with "recipient" for accuracy, in Section 2(c), "described" was added before "in subsection" for accuracy and clarity and "by the commissioner" was added after "deemed ineligible" for accuracy and clarity.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 24 \$	FY 25 \$
Various Municipalities	STATE MANDATE ¹ - Cost	Potential	Potential

Explanation

The bill makes changes to the state's broadband grants program, which result in potential increased costs to municipalities beginning in FY 24.

The bill (1) makes broadband installation projects funded by certain state grants subject to the state's prevailing wage law; (2) prioritizes grants to applicants that meet certain criteria; and (3) makes other changes not anticipated to result in a fiscal impact. The prevailing wage provision may result in a potential cost to municipalities (for the municipal share of the project cost) as there will be increased contractual costs for these projects beginning in FY 24, to the extent that these projects currently fall below the existing prevailing wage threshold. There is also potential for increased costs to municipalities beginning in FY 24 associated with the applicant criteria.

¹ State mandate is defined in Sec. 2-32b(2) of the Connecticut General Statutes, "state mandate" means any state initiated constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6862*****AN ACT CONCERNING BROADBAND CONSTRUCTION AND THE PREVAILING WAGE.*****SUMMARY**

This bill requires the state's Broadband Internet Access Service Grant Program to prioritize giving grants to applicants who meet certain labor-related criteria (e.g., have certain training programs and use a directly employed, rather than contracted, workforce). It correspondingly requires applicants to the program to disclose certain related information when they apply.

The bill also brings broadband installation projects funded by grants from the program under the state's prevailing wage law (see BACKGROUND). In doing so, it (1) requires workers on the projects to be paid the applicable prevailing wage, (2) extends the law's enforcement provisions to the contractors or subcontractors on the projects, and (3) requires the contracting agent to certify to the labor commissioner the total cost of the work to be done for the project. (If the grant recipient is a private-sector entity, it is unclear who the contracting agent would be for these projects. In addition, the bill does not make a conforming change that would require the employers on these projects to submit certified payroll records to an agency or entity with oversight of them as required for other prevailing wage projects.)

By law, the Department of Energy and Environmental Protection (DEEP) commissioner must establish and administer the broadband grant program to support the deployment of broadband Internet access service. Current law requires her to do this subject to the availability of federal funding, but the bill makes this subject to the availability of both state and federal funding.

EFFECTIVE DATE: July 1, 2023

LABOR-RELATED CRITERIA FOR BROADBAND GRANTS

The law, unchanged by the bill, requires the DEEP commissioner to make the broadband program's grant criteria consistent with any federal law for the grants, including application requirements, applicant eligibility, addressing unserved areas in distressed municipalities, and the applicant's commitment to pay at least 20% of a project's costs with its own funding, among other things.

Current law allows the commissioner, when awarding grants, to prioritize applicants based on the percentage of the applicant's commitment to cost sharing. The bill requires the commissioner to prioritize applicants that do so and that:

1. have robust training programs for their workforce that will be performing the contract, including requirements tied to titles, uniform wage scales, and industry-recognized skill codes;
2. require occupational health and safety training for their workforce performing the contract;
3. will perform the contract using a directly employed workforce;
4. can show that they have programs to promote training and hiring pipelines for underrepresented communities; and
5. have either (a) robust compliance records over the past five years with the state's labor code, the (presumably, federal) Occupation Safety and Health Act (OSHA), the federal Fair Labor Standards Act (FLSA), Title VII of the federal Civil Rights Act, and all other applicable labor or employment laws or (b) mitigated violations with labor compliance agreements and measures to ensure future labor compliance (the bill does not specify what constitutes a "robust compliance record").

(Because existing law also requires the commissioner to set eligibility criteria consistent with any federal requirement for the grants, if the bill's criteria conflict with federal requirements, it is unclear which provision would prevail or how it would impact the state's eligibility

for federal funds.) As under existing law, the commissioner can deny applicants that do not submit certain required information.

The bill requires that any disclosure made by an applicant about the above criteria be publicly available on the Office of Telecommunications and Broadband's website.

The bill requires the commissioner to award grants based on a point system, with each applicant given 0 to 100 points. For grants funded by the federal Broadband Equity, Access, and Development (presumably, "Deployment") program, applicants that satisfy the five criteria above and the "Fair Labor Practices" outlined in the National Telecommunications and Information (Administration) Funding Opportunity published on May 13, 2022, must be awarded at least 25 points. (The "fair labor practices" generally require a demonstrated record of compliance with federal labor and employment laws.)

For grants from other funding sources, the bill requires applicants that satisfy the five criteria above be awarded a substantial point allocation of at least 15 points. (The bill does not specify how the remaining points in either point system must be evaluated or allocated.)

The bill requires all projects funded by grants from the Broadband Internet Access Service Grant Program to be subject to the state's prevailing wage requirements.

APPLICATION DISCLOSURES

The bill requires applicants who apply for a grant from the program to give the DEEP commissioner the following information with their applications:

1. whether the workforce is directly employed by the contractor or whether the proposed work will be performed by a subcontracted workforce;
2. the subcontractors, if any, who the contractor plans to subcontract with to perform the proposed work; and

3. for each job title required for the proposed work, a description of (a) the wages, benefits, and applicable wage scales, including overtime rates, and a description of how the wages are calculated; (b) the applicant's training programs and whether they are tied to titles, uniform wage scales, and industry-recognized skill codes; (c) safety training, and certification or licensure requirements, including whether the participant requires its employees to complete occupational safety and health training or any other training required by law; and (d) the entity employing the workforce in each job title.

Under the bill, any applicant awarded a grant must also submit this information monthly to the commissioner. Any person or entity that fails to meet these disclosure requirements may be deemed ineligible to participate in future grant programs through the Office of Telecommunications and Broadband.

The bill specifies that these disclosure requirements apply to any applicant that is a public agency (it is unclear if they only apply to public agencies or what constitutes a "public agency" for these purposes).

BACKGROUND

Prevailing Wage Law

The state's prevailing wage law requires employers on certain public works projects to pay their construction workers wages and benefits equal to those that are customary or prevailing for the same work, in the same trade or occupation, in the same town. The requirement applies to new construction projects of \$1 million or more and renovation projects of \$100,000 or more.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 3 (03/23/2023)