

REPORT ON BROADBAND EXPANSION INTO NEW DEVELOPMENT:
HB 445 & SB 446 STAKEHOLDER ADVISORY GROUP AND THE DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT

September 30th, 2022

Table of Contents:

Executive Summary 3

History of Broadband Expansion in Virginia 4

Legislative History and Group Directives 5

Advisory Group Research and Recommendations 6

Department Findings and Recommendations 7

Appendixes:

Appendix A: Summary of Research on Policies for Broadband Expansion into New Development 10

Appendix B: Survey Questions 11

Appendix C: Draft Recommendations Presented at July 22nd Meeting 12

Appendix D: Chapter 592, Acts of Assembly 2022 14

Executive Summary

Virginia is a national leader in its efforts to provide functionally universal broadband coverage to unserved homes, businesses, and community anchor institutions across the Commonwealth. However, while the Commonwealth has made great strides to expand broadband coverage to existing developments, a new gap may emerge if new residential and commercial development takes place without consideration of expanding broadband networks to those locations.

In 2022, the General Assembly passed Chapter 592, which directs the Department of Housing and Community Development ("The Department") to convene a group of stakeholders to identify recommendations to address this issue of deploying broadband internet into new residential and commercial development. The General Assembly further required the Department provide its own findings and recommendations to the Broadband Advisory Council on September 30th, 2022.

As directed by the legislation, the Department convened a Stakeholder Advisory Group ("Advisory Group") composed of representatives from the commercial and residential land development and construction industry, local government, high-speed broadband providers, and other stakeholders as determined necessary by the Department.

Chapter 592 required that Advisory Group identify any consensus recommendations of the advisory group related to expanding broadband into new development. Furthermore, it also required that the Department report its findings and recommendations on the same subject. Both the Advisory Group and the Department were to present their findings and recommendations to the Broadband Advisory Council by September 30th, 2022.

This report contains the recommendations for the General Assembly to consider for future expansion of broadband into new development. The Department's findings and recommendations are as follows:

Department Findings and Recommendations:

Findings:

- 1: Members of the Advisory Group varied greatly in their perceived urgency of the problem and the necessity of addressing it.
- 2: The authority of local governments to act independently with regards to broadband expansion and promotion is unclear.
- 3: Many member's primary concern was how to address potential funding gaps for broadband expansion into new development.

Recommendations:

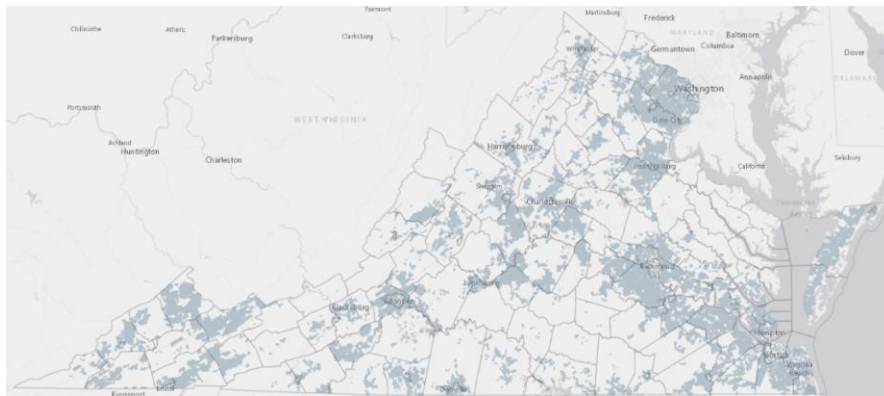
- 1: The General Assembly should consider clarifying in the Code of Virginia giving localities the express authority to expend local revenues on broadband deployment.
- 2: If the General Assembly considers granting localities additional authority to adopt an ordinance about deploying broadband funds for a new development, they should also consider potential cost sharing mechanisms, among all stakeholders, with the developer.

The report will further elaborate on the actions of the Advisory Group and the Department. This report will first provide a brief overview of Virginia's efforts to reach universal coverage. It will then present the work of the stakeholder group, including its research and discussions on facilitation network deployment to new developments. Finally, the report concludes by presenting the findings and recommendations of the Department.

History of Broadband Expansion in Virginia

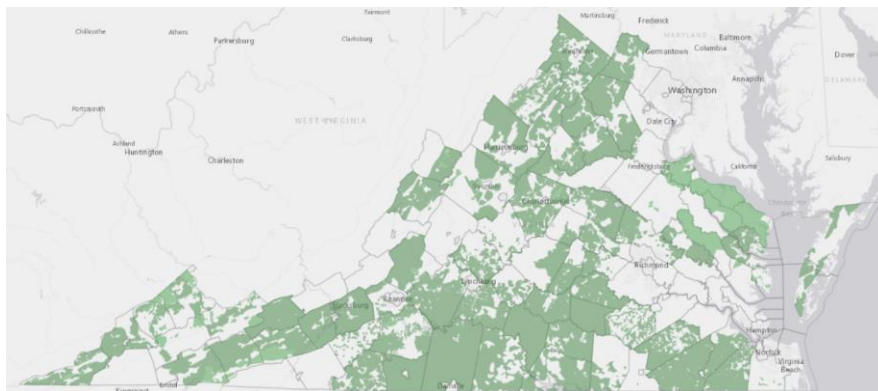
Access to broadband is unevenly dispersed, as highlighted by the COVID-19 pandemic. This digital divide still affects the economic prospects, social connectivity, and educational opportunities available to hundreds of thousands of Virginians.

Figure 1: Census Blocks in which 95% of Locations are Served by Broadband Infrastructure, December 2021



The Commonwealth has worked to close this digital divide around broadband access. Since 2017, Virginia's broadband expansion programs have invested approximately \$850 million in grant funding to provide broadband access to over 424,000 homes, businesses, and community anchor institutions. Figure 2, below, provides a map of awarded broadband expansion project areas through the Virginia Telecommunication Initiative (VATI) since January 2021.

Figure 2: Virginia Telecommunication Initiative Award Areas, FY21 and FY22 Award Rounds



While the broadband access and the digital divide continues to close, Virginia’s broadband expansion programs obligate funding to already constructed homes, businesses, and community anchor institutions. Therefore, although imminent development is often considered by local governments and broadband service providers when designing and deploying broadband networks, new gaps in broadband service could emerge if new residential and commercial development takes place without consideration for network deployment. Given the importance of new development in meeting other goals of the Commonwealth (including increasing housing affordability and providing vibrant communities for all Virginians), it is important to consider how to facilitate the extension of broadband networks to new constructed areas.

Legislative History and Group Directives

This report is the result of legislative action to facilitate expanding broadband networks to new residential and commercial development. Legislation was introduced in the 2022 General Assembly Session by Delegate Kathleen Murphy (HB 445) and Senator Jennifer Boyko (SB 446,) as companion bills. These bills unanimously passed both chambers of the General Assembly and were signed by Governor Glenn Youngkin into law on April 11th, 2022 (Chapter 592).

As passed, Chapter 592 directs the Department to convene a group of stakeholders to identify recommendations that address the issue of deploying broadband internet into new residential and commercial development. Specifically, the Advisory Group is directed to carry out three mandates which are:

1. Compile information related to existing local ordinances, development standards, and procedures related to the deployment or expansion of high-speed broadband services and associated infrastructure in new residential and commercial development;
2. Make a recommendation to the Department regarding any local ordinances, policies, or procedures that have been effective in expanding or deploying high-speed broadband service and associated infrastructure in new residential and commercial development; and,
3. Identify any consensus recommendations on changes to existing state law that would facilitate the deployment or expansion of broadband service and associated infrastructure in new residential and commercial development.

Chapter 592 further calls for the Department to report findings and recommendations to the Broadband Advisory Council.

Stakeholder Advisory Council Scope of Work

The Department convened stakeholders to form the Advisory Group on Broadband Service to New Development. As directed by legislation, the Advisory Group was composed of representatives from the commercial and residential land development and construction industry, local government, high-speed broadband providers, and other stakeholders as determined by the Department. The Department’s goal in composing the Group was to include individuals who would add additional insight into the development process from the developer, provider, and local government perspective.

Table 1: HB 445 & SB 446 Stakeholder Advisory Group Members

Member	Organization
Andrew Clark	Virginia Home Builders Association
Philip Abraham	Virginia Association for Commercial Real-Estate
Ray LaMura	Virginia Cable Broadband Association
Rob Taylor	Virginia Broadband Industry Association
Mike Lockaby	Local Government
Jason Inofuentes	Local Government
Steve Sandy	Local Government
David Walker	Dominion Energy
John Lee	Association of Electric Cooperatives
Amanda Cox	Appalachian Power
Jeff Brown	State Building Code Office (DHCD)
Eldon James	Association of Planners
Rosemary Mahan	Commission on Local Government

The Advisory Group’s initial meeting was held virtually on June 6, 2022, to introduce the issues presented by the stakeholders and establish the timeline for the Group's report to the Council. Prior to the initial meeting, Advisory Group members were requested to provide input on three questions as determined by staff in order to provide context to the challenges related to expanding broadband services into new development. A copy of the questions asked is included in Appendix B.

Following the first meeting, staff composed draft recommendations for the Advisory Group to consider at their second meeting. These draft recommendations were circulated on July 15, and presented publicly at the second Advisory Group meeting on July 22.

Staff received additional comments from Advisory Group members following the second meeting, indicating what recommendations they supported. Using that feedback, staff drafted this report containing the work of the Advisory Group and the findings and recommendations of the Department. Staff presented the draft to the Advisory group in the final meeting on September 21st, and accepted comment from members. From that, staff finalized the report and presented it to the Council on September 30th.

Advisory Group Research and Recommendations

Advisory Group Research

As provided in the legislation, the Advisory Group was directed to compile information on existing local ordinances, development standards, and procedures related to the expansion of high-speed broadband services and associated infrastructure in new residential and commercial development. The purpose of this research was to find relevant examples of ordinances, practices, legislation, or procedures designed

to facilitate expansion of broadband service to new developments. This research can be found in the attached appendices under Appendix A.

Advisory Group Recommendations

Following the first meeting, Department staff crafted a series of potential recommendations informed by background research and Advisory Group discussions. Staff presented these potential recommendations at the second meeting, and then further narrowed the recommendations to possible consensus items based upon feedback received by the Advisory Group. Staff then presented these possible consensus recommendations at the final meeting of the Advisory Group. However, comments made from members of the group during and following the final meeting demonstrated that none of the recommendations presented could obtain consensus from the Advisory Group. Therefore, the Department could not identify any consensus recommendations for the Council.

Department Findings and Recommendations

Findings

Chapter 592 also directs the Department to identify and report its findings on the Stakeholder group. Based upon observations from the total of stakeholder group interactions, the Department has identified the findings below.

1) Members of the Advisory Group could not agree on the urgency of the problem and the necessity of addressing it.

Following meetings with stakeholder members, the Department found that there are significant differences between stakeholder groups as what challenges, if any, exist for broadband expansion into new development. The stakeholder groups disagree even further as to how to address these challenges.

Members of the group could not reach consensus as to the specific problems present in broadband expansion, nor on the responses needed to address them. Some stakeholders stated that the challenges were consistent with normal business costs and easily addressable, while others stated that they presented major barriers to broadband expansion. Furthermore, the group could not agree on other definitional elements, including what population the group should consider (unserved v. underserved), and what is defined as "new development," among other issues.

2) The authority of local governments to act independently with regards to broadband expansion and promotion is unclear.

The Department found that there was significant confusion between stakeholder groups regarding the ability of local governments to use their own resources to support broadband expansion into new development. Some members stated local governments had authority to use their resources to support broadband expansion, while others stated they did not.

The Department did not find any statutory language providing explicit authorization to local governments, and cannot determine the extent of local authority to expend local resources on broadband expansion. However, the Department notes that as a Dillon Rule state, the lack of authorization makes it unclear if localities have the authority to use local resources towards broadband expansion. Because of this ambiguity, many localities abstain from spending local resources on

broadband expansion and adoption efforts, limiting the available avenues to support broadband expansion into new development.

3) Methods to address potential funding gaps for broadband expansion into new development received the most discussion from the Advisory Group. .

Similarly to broadband expansion into current development, broadband expansion into new development can face financial challenges. This occurs when costs for new broadband infrastructure is not recoverable through the potential subscriptions in the newly developed area. This creates a funding gap which if unaddressed, can prevent the deployment of broadband networks into the area

The responsibility to address this funding gap was a primary concern for many stakeholder groups. Currently, existing state grant programs provide the additional financial assistance needed to deploy networks in otherwise unreachable areas. Given this, the preferred solution of the Advisory Group for this funding gap included modification of existing, or creation of new, state funding programs to expand broadband infrastructure into new developments. However, the members of the Advisory Group disagreed as to if, and how, these state grant programs should continue in order to address funding gaps.

Recommendations:

Based upon its research and findings, the Department makes the following recommendations below:

1) The General Assembly should consider clarifying in the Code of Virginia giving localities the express authority to expend local revenues on broadband deployment.

As stated in the Department's second Finding, localities face significant legal ambiguity if they choose to use their own resources to promote broadband expansion within their locality. As such, the Department recommends that the General Assembly consider clarifying the legal authority of localities to use their own local resources to promote broadband expansion into new development. Doing so would allow for local governments to play a more active role in promoting broadband coverage and therefore increase the economic competitiveness of Virginia as a "broadband ready" state.

The Department notes that this authority should be via local option, with the localities being allow to decide if, and how, they would like to expend resources to broadband deployment. Doing so would enable each locality to determine the best local use of its funds.

2) If the General Assembly considers granting localities additional authority to adopt an ordinance about deploying broadband funds for a new development, they should also consider potential cost sharing mechanisms, among all stakeholders, with the developer.

As stated in the Department's first and third Findings, the area of discussion that received the most attention from the Advisory Group was how to address potential funding gaps that may emerge when expanding broadband into new development. Members of the group differed as to if and/or how to address this challenge.

These discussions of the Advisory Group demonstrated the complex factors at play when considering how best to facilitate broadband expansion into new development. This concern will remain relevant as

the Commonwealth grows closer to reaching universal coverage through the work of all stakeholder groups.

The General Assembly may choose to address issues of broadband deployment into new development through different methods. However, if the General Assembly is considering action that would address this challenge by granting localities additional authority to adopt an ordinance about deploying broadband funds for a new development, then they should also consider potential cost sharing mechanisms between localities and developers while involving all stakeholders. By integrating cost sharing discussions into this particular solution, the General Assembly can best address the root factors responsible for creating issues for broadband expansion and consider the unique challenges faced by all stakeholders.

Appendix A: Summary of Research on Policies for Broadband Expansion into New Development

The Department of Housing and Urban Development (HUD)

The United States' Department of Housing and Urban Development issued regulations in Federal Register 81 FR 31181 related to broadband expansion in new development. The regulation requires installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental units (5 or more individual units) funded via HUD programs (including the Choice Neighborhoods Implementation Grant program, Community Development Block Grant program, Continuum of Care, HOME Investment Partnerships program, and more).

The rule stems from the recommendations of the 2015 Broadband Opportunity Council Report and Recommendations.^{1 2} While the regulation requires for the installation of broadband infrastructure, it does not require the rule does not require recipients or owners to provide a regular subscription to broadband Internet service to residents.

Ohio

Ohio's Housing Finance Agency requires developers seeking housing tax credits to install broadband infrastructure for new developments, new construction, and rehabilitation.³

The agency's 2022-2023 Qualified Allocation Plan (against which housing tax credit applicants are scored) included a new requirement that all new developments, constructions, and rehabilitations seeking housing tax credits install broadband infrastructure according to Federal Register 81 FR 31181 (see above). Per that regulation, while the QAP requires the installation of broadband infrastructure, it does not require recipients or owners to provide a regular subscription to broadband Internet service to residents.

City of Boston

In addition to several other policies to facilitate broadband development generally, the City of Boston incorporated a broadband readiness component into their existing Article 80 design review for new construction.⁴

As part of a citywide effort to develop a broadband ecosystem across residents, businesses, and institutions, the City added a broadband infrastructure element to their design review process. The intent of this readiness element is to ensure that broadband-related infrastructure considerations are present in the design approval process for new construction and development in the city. It also allows the Boston Planning and Development Agency to centralize information related to broadband infrastructure in buildings and developments across the city.

¹ Housing and Urban Development Department, Final Rule: Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing, Federal Register 81 FR 31181 (Dec. 12, 2016), <https://www.federalregister.gov/d/2016-30708>.

² Broadband Opportunity Council, Broadband Opportunity Council Report and Recommendations (August 20, 2015), https://obamawhitehouse.archives.gov/sites/default/files/broadband_opportunity_council_report_final.pdf

³ Ohio Housing finance Agency, Broadband Access in New Construction (September 30th, 2021), <https://ohiohome.org/news/blog/september-2021/broadband.aspx>.

⁴ Boston Planning and Development Agency, Article 80 Design Review Broadband Ready Buildings Questionnaire, <http://www.bostonplans.org/projects/development-review/article-80-design-review-broadband-ready-buildings>

Appendix B: Survey Questions

The department surveyed members of the Stakeholder Group prior to the first meeting on June 6th, 2022. The questions asked are included below.

Instructions: Please briefly respond to these questions for the organization you represent. If your organization is not directly involved in construction, feel free to take the questions from a statewide perspective.

- 1) What are some of the challenges facing your organization (or the state as a whole) in building broadband in new residential or commercial development?
- 2) How do these challenges impact your organization (state) when it comes to building broadband? To what degree do they hinder broadband access?
- 3) To the extent possible, can you identify why these challenges exist?

Appendix C: Draft Recommendations (Presented at the second Stakeholder Advisory Group Meeting, July 22nd 2022)

Legislative Action, Adopt Dig Once Policy under the Optional Subdivision Ordinance

- Enact legislation requiring ISPs, developers, electric providers, utilities, or localities to provide public notice of easement requests and/or trenching when installing utility or broadband infrastructure in the public right of way, and invite proposals from other interested stakeholders to share the cost with the initial trencher.
 - Initial trencher required to post notice on state platform, maintained by VDOT

Legislative Action, Adopt Coordination Policies

- Require local governments to notify internet service providers and developers that trenches are open, or will be open, when public utilities are installed to new development
 - Alternatively, *authorize* local governments to notify internet service providers and developers that trenches are open, or will be open, when public utilities are installed to new development
- Authorize local governments to install conduit when installing public utilities infrastructure and give or lease that conduit to last mile internet service providers

Legislative Action, Facilitating/Expediting Broadband development via Local Governments

- Authorize local governments to use local resources (monetary, infrastructure, etc.) to promote the extension of broadband networks to new development
- Suggest or require localities to consider how broadband service would be deployed to new development in conjunction with utility services in their comprehensive plans.
 - Suggest or require localities to analyze and report on the availability of broadband service in areas of the city/counties during the comprehensive planning process.
 - Authorize local governments to require or suggest developers to complete a questionnaire regarding broadband readiness of the development before permitting.

Budget Items Action, Funding Programs to Expand Service to New Developments

- Create a program which works directly with internet service providers to expand service coverage into new developments and pockets of unserved locations, filling existing or new gaps in service coverage -
- Create an "infrastructure buildout" fund to support the expansion of infrastructure (water, sewer, broadband) into new development; potentially prioritize programs to historically divested areas. Two potential programmatic pathways:
 - For low to moderate income housing, establish a program to extend water, sewer, and broadband infrastructure to new low-income housing development.
 - For residential development only, establish a program to extend water, sewer, and broadband infrastructure to new development.
 - Could be established as a revolving loan fund or grant program
- Authorize local governments to issue 'broadband ready' areas for local development

- Change budget language of broadband availability map data to permit usage of data for this designation
- Establish a “broadband-ready” county/city program where DHCD would "award" a county/city broadband ready designation upon completion of universal broadband access build outs
 - Change budget language of broadband availability map data to permit usage of service territory data for this designation

Non-Legislative, Rule Making Solutions

- VML/VACO + VCTA/VTIA + Developers enter into cooperative agreement to identify new development as they are being planned and built and work to extend broadband networks to these areas
- Recommend that Virginia Housing require broadband infrastructure installation in their next LIHTC qualified allocation plan for new developments and rehabilitations.

Administrative Action, State Agency/Program Changes

- Recommend that Virginia Housing's QAP scoring guidelines be changed to award more points to LIHTC applicants with explicit plans for broadband infrastructure in developments and significant rehabilitations.

Appendix D: Chapter 592, Acts of Assembly 2022

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION CHAPTER 592

An Act to create a stakeholder advisory group on expanding high-speed broadband service in new residential and commercial development. [H 445] Approved April 11, 2022

Be it enacted by the General Assembly of Virginia: 1.

§ 1. The Department of Housing and Community Development (the Department) shall convene a stakeholder advisory group for the purpose of evaluating local and state policies, procedures, or ordinances to facilitate the expansion of high-speed broadband service and associated infrastructure in new residential and commercial development.

With assistance from the Department, the Broadband Advisory Council, and the Commission on Local Government, the stakeholder advisory group shall, to the extent possible, compile information related to existing local ordinances, development standards, and procedures related to the deployment or expansion of high-speed broadband services and associated infrastructure in new residential and commercial development. Furthermore, the stakeholder advisory group shall make a recommendation to the Department regarding any local ordinances, policies, or procedures that have been effective in expanding or deploying high-speed broadband service and associated infrastructure in new residential and commercial development.

The stakeholder advisory group shall also identify any consensus recommendations on changes to existing state law that would facilitate the deployment or expansion of broadband service and associated infrastructure in new residential and commercial development.

The stakeholder advisory group shall be composed of representatives from the commercial and residential land development and construction industry, local government, high-speed broadband providers, and other stakeholders as determined by the Department. The Department shall receive technical assistance from the Broadband Advisory Council and the Commission on Local Government.

The Department shall report its findings and recommendations to the Broadband Advisory Council no later than September 30, 2022.

The stakeholder advisory group established pursuant to this act shall not be a public body as defined in § 2.2-3701 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), but its meetings shall be open to the public with notice provided by the Department as provided in subsection C of § 2.2-3707 of the Code of Virginia.