DEPARTMENT OF DEVELOPMENT

All Ohio Future Fund (PARTIALLY VETOED)

- Renames the Investing in Ohio Fund as the All Ohio Future Fund and expands the fund's economic development purposes.
- Expands the purposes for which money in the fund may be used (PARTIALLY VETOED).
- Requires rules to be adopted, in consultation with JobsOhio, that establish requirements and procedures to provide financial assistance from the fund (PARTIALLY VETOED).
- Would have required the Director of Development (DEV Director) to adopt those rules (VETOED).
- Would have required the Director, when awarding financial assistance from the fund, to give preference to sites that were publicly owned (VETOED).
- Requires Controlling Board approval to release moneys from the fund.
- Would have prohibited an entity that received financial assistance from the fund from:
  - Issuing riders or any other additional charges to their customers for the purposes of the project funded by that assistance;
  - Regarding a water company, using the financial assistance for a new or expanded water treatment facility or waste water treatment facility (VETOED).

Welcome Home Ohio (WHO) Program

- Creates the Welcome Home Ohio (WHO) Program, which:
  - Creates a grant program by which land banks may apply for funds to purchase residential property, for sale to income-eligible owner occupants, and appropriates $25 million in both FYs 2024 and 2025 to fund the grants.
  - Creates a grant program by which land banks may apply for funds to rehabilitate or construct residential property, up to $30,000, for income-restricted owner occupancy, and appropriates $25 million in both FYs 2024 and 2025 to fund the grants.
  - Authorizes up to $25 million in tax credits in each of FYs 2024 and 2025 for the rehabilitation or construction of income-restricted and owner-occupied residential property.

Brownfield and building revitalization programs

- Revises the Brownfield Remediation Program and the Building and Site Revitalization Program to require a lead entity to submit grant applications for each county to the DEV Director under the programs.
- Requires the lead entity to be either:

- Selected by the DEV Director from recommendations made by the board of county commissioners of the county, if either of the following apply:
  - The county has a population of less than 100,000; or
  - The county has a population of 100,000 or more and does not have a county land reutilization corporation (land bank);
- The land bank for the county if the county has a population of 100,000 or more and the county has a land bank.

- Requires a lead entity to include with a grant application any agreement executed between the board and other recipients that will receive grant money through the lead entity.
- Specifies that recipients may include local governments, nonprofit organizations, community development corporations, regional planning commissions, county land banks, and community action agencies.
- Authorizes a lead entity, after making an initial application for grant funding under the Brownfield Remediation Program, to later amend that application, and allows the DEV Director to approve the amended amount of requested grant funding up to the amount reserved for that county.

TourismOhio

- Expands the mission of TourismOhio to include promoting not just tourism, but also "living, learning, and working" in Ohio.

Microcredential assistance program

- Increases the maximum reimbursement amount for microcredential training providers participating in Department of Development's (DEV's) Individual Microcredential Assistance Program from $250,000 to $500,000 per fiscal year.

Rural Industrial Park Loan Program

- Allows a developer who previously received financial assistance under the Rural Industrial Park Loan Program and that, consequently, was previously ineligible to receive additional financial assistance, to apply for and receive additional assistance, provided the developer did not receive any previous assistance in the same fiscal biennium.
- Regarding the program eligibility criterion that prohibits a proposed industrial park from competing with an existing industrial park in the same county, states that the consent of the existing industrial park's owner demonstrates noncompetition.

Distress criteria

- Modifies and standardizes the criteria used to evaluate whether a county or municipality is a distressed area for the purpose of DEV's Urban and Rural Initiative Grant Program and Rural Industrial Park Loan Program.

- Requires DEV to update the counties and municipalities that qualify as distressed areas under each program every ten years, rather than annually.
- Makes the same changes to the distressed area characteristics for several obsolete DEV-administered grant and tax credit programs.

Ohio Residential Broadband Expansion Grant Program

Definition changes

- Adds the definition of "extremely high cost per location threshold area" as an area in which the cost to build high speed internet infrastructure exceeds the extremely high cost per location threshold established by the Broadband Expansion Program Authority.
- Removes wireless broadband from the definitions of "tier one broadband service" and "tier two broadband service" and increases the broadband speed requirements to be:
  - At least 25, but less than 100 megabits per second (Mbps) downstream and at least three, but less than 20 Mbps upstream for tier one service;
  - 100 Mbps or greater downstream and 20 Mbps or greater upstream for tier two service.
- Permits the inclusion of fixed wireless broadband service as tier two service, if located in an extremely high cost per location threshold area.
- Changes the definition of "unserved area" to no longer exclude an area where construction of tier one service is in progress and scheduled to be completed within two years.
- Creates the definition of "eligible addresses" to include residential addresses that are in an unserved area or tier one area and modifies the definitions of "eligible project" and "last mile" to replace references to "residences" with "eligible addresses."

Other terminology changes

- Changes the requirement for posting program grant application information on the DEV website to list "eligible addresses" instead of "residential addresses."
- Changes "residences" to "residential addresses" (1) in the notarized letter of intent information required for applications, (2) in the broadband speed verification complaint provision, and (3) in the information required for broadband provider annual progress reports and Authority annual reports.

Authority duties

- Includes among the Authority's duties the requirement to establish the extremely high cost per location threshold for the costs of building high speed internet infrastructure in any specific area, above which wireline broadband service has an extremely high cost in comparison to fixed wireless broadband service.

Program funding

- Requires gifts, grants, and contributions provided to the DEV Director for the Ohio Residential Broadband Expansion Grant (ORBEG) Program to be deposited in the Ohio Residential Broadband Expansion Grant Program Fund.
- Specifies that if the use of these deposits or the appropriation of nonstate funds is contingent upon meeting application, scoring, or other requirements that are different from program requirements, DEV must adopt the different requirements.
- Requires a description of any differences in program requirements adopted by DEV as described above to be made available with the program application on the DEV website at least 30 days before the beginning of the application submission period.

Program grant application challenges

- Modifies various requirements regarding challenges to program grant applications such as requirements for what evidence a challenge must include and how and to whom copies of a challenge, or copies of a broadband provider's revised application in response to a challenge, must be sent.
- Requires DEV to reject any challenge regarding a residential address where tier two service is planned if the challenging provider also submitted an application for the same residential address.
- Specifies that if an application is not challenged during an application submission period, the lack of a challenge does not do either of the following:
  - Create a presumption that residential addresses included in an application submitted in a subsequent submission period are eligible addresses under the program; or
  - Prohibit a challenging provider from filing a challenge to an application that is being refiled during a subsequent submission period.

Application scoring system changes

- Replaces the weighted scoring system used under previous law to prioritize and select grant applications with a specific scoring rubric for awarding a maximum of 1,000 points per application based on specific criteria for eight factors, including factors as, for example, broadband service speed, local support, and broadband providers' years of experience.
- Provides that applications for a grant under the ORBEG Program must be prioritized from the highest to the lowest point score according to the rubric.
- Provides for provisional scoring of applications to facilitate challenges, and requires DEV to publish the scoring on its website, but prohibits the Authority from voting on applications, or making awards based on, the provisional scoring.

Program reports

- Removes from the list of information that a broadband provider must include in its annual progress report, the number of commercial and nonresidential addresses that are not funded directly by the ORBEG Program but have access to tier two service as a result of the eligible project.

Broadband Pole Replacement and Undergrounding Program

- Creates the Ohio Broadband Pole Replacement and Undergrounding Program within DEV to reimburse providers of qualifying broadband service for utility pole replacements, mid-span pole installations, and undergrounding that accommodate facilities used to provide qualifying broadband service access.
- Defines "qualifying broadband service" as retail wireline broadband service capable of delivering symmetrical internet access at download and upload speeds of at least 100 megabits per second (Mbps) with a latency level sufficient to permit real-time interactive applications.
- Defines "unserved area" as an area in Ohio without current access to fixed terrestrial broadband service capable of delivering internet access at download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps.
- Considers as an "unserved area" an area for which a governmental entity has awarded a broadband grant after determining the area to be an eligible unserved area under that program and an area that has not been awarded any broadband grant funding, and the most recent federal mapping information indicates that the area is an unserved area.
- Requires DEV to administer the program and to establish the process to provide reimbursements, including adopting rules and establishing an application for reimbursement, and the Broadband Expansion Program Authority to review applications and award program reimbursements.

When reimbursements may not be awarded

- Prohibits the Authority from awarding reimbursements that are federally funded, if the reimbursements are inconsistent with federal requirements and if the applicant fails to commit to compliance with any federally required conditions in connection with the funds.
- Also prohibits the Authority from awarding reimbursements if (1) the broadband infrastructure deployed is used only for providing wholesale broadband service and is not used by the applicant to provide qualifying broadband service directly to residences and businesses and (2) a provider (not the applicant) is meeting the terms of a legal commitment to a governmental entity to deploy such service in the unserved area.

Who may apply for reimbursements

- Allows providers (entities, including pole owners or affiliates, that provide qualifying broadband service) to apply for a reimbursement under the program for eligible costs

associated with deployed pole replacements, mid-span pole installations, and undergrounding.

- Designates as ineligible for a reimbursement an applicant's costs of deploying qualifying broadband service for which the applicant is entitled to obtain full reimbursement from another governmental entity but allows the applicant to apply for and obtain reimbursement for the portion of costs that were not already reimbursed.
- Allows the Authority to require applicants to maintain accounting records demonstrating that other grant funds do not fully reimburse the same costs as those reimbursed under the program.
- Requires the Authority to review applications and approve reimbursements based on various requirements and limitations.

Information and documentation from pole owner

- Allows a pole owner to require a provider to reimburse the owner for the owner's actual and reasonable administrative expenses related to providing certain information and documentation for a program application, not to exceed 5% of the pole replacement or mid-span pole installation costs, and specifies that these costs are not reimbursable.

Application requirements

- Requires DEV, not later than 60 days after the Pole Replacement Fund (described below) receives funds for reimbursements, to develop and publish an application form and post it on the DEV website.
- Requires the application form to identify and describe any additional federal conditions required in connection with the use of the federal funds, if any federal funds are used for awards under the program.
- Requires applications to include certain information including, for example, the number, cost, and locations of pole replacements, mid-span pole installations, and undergrounding for which reimbursement is requested; the reimbursement amount requested; and information necessary to demonstrate the applicant's compliance with reimbursement conditions.
- Establishes additional requirements for an application regarding a pole attachment or a mid-span pole installation, if the applicant is the pole owner of affiliate of the pole owner.

Applicant duties prior to receiving a reimbursement

- Requires a provider applying for reimbursement to agree to do certain things such as (1) activating qualifying broadband service to end users utilizing the program-reimbursed broadband infrastructure not later than 90 days after receiving a reimbursement, (2) complying with any federal requirements associated with funds used for awards under the program, and (3) refunding all or any portion of reimbursements received, if the applicant materially violated any program requirements.

Reimbursement award timeline and formula

- Requires the Authority to award reimbursements to an applicant not later than 60 days after it receives an application forwarded by DEV.
- Allows the Authority to award reimbursements equal to the lesser of $7,500 or 75% of the total amount paid by the applicant for pole replacement or mid-span pole installation costs.
- Allows reimbursement awards for undergrounding costs to be calculated as described above, except that the amount may not exceed the reimbursement amount that would be available if the applicant had attached broadband infrastructure to utility poles instead of undergrounding that infrastructure.

Reimbursement refunds

- Requires applicants that are awarded reimbursements to refund, with interest, reimbursement amounts if the applicant materially violates any program requirement, and specifies that, at the direction of DEV, refunds are to be deposited into the Broadband Replacement Pole Fund.

Broadband Pole Replacement Fund

- Creates the Broadband Pole Replacement Fund and makes an appropriation in FY 2024 to provide funding for reimbursements awarded under the program and for DEV to administer the program.

Program information on DEV website

- Requires DEV to publish and regularly update certain information regarding the program on its website.

DEV report on deployments under program

- Whenever the fund is exhausted, requires the Authority, not later than one year after, to identify, examine, and report on broadband infrastructure deployment under the program and the technology facilitated by the reimbursements and requires the report to be published on DEV's website.

Program audit

- Requires the Auditor of State to audit the Broadband Pole Replacement Fund annually, beginning not later than one year after the first deposits are made to the credit of the fund.

Sunset

- Except as provided below, effectively sunsets the program by requiring payments under the Broadband Pole Replacement Fund to cease and the fund to no longer be in force or have further application on October 3, 2029 (six years after the act's 90-day effective date).

- For the period ending six months after October 3, 2029, requires DEV and the Authority to review any applications and award reimbursements (1) if the applications were submitted prior to that date and (2) if the applications were submitted not later than four months after that date for reimbursements of costs incurred prior to that date.
- Requires any Broadband Pole Replacement Fund balance remaining after final applications are processed (after the October 3, 2029, sunset date and as described above) to be returned to the original funding sources as determined by DEV.

Nuclear development in Ohio

Ohio Nuclear Development Authority (PARTIALLY VETOED)

- Establishes the Ohio Nuclear Development Authority within DEV consisting of nine members from certain stakeholder groups.
- Establishes the Authority for the following purposes:
  - To be an information resource for Ohio and certain federal agencies regarding advanced nuclear research reactors, isotopes, and isotope technologies.
  - To make Ohio a leader regarding new-type advanced nuclear research reactors, isotopes, and high-level nuclear waste reduction and storage.
- Grants the Authority, but for the partial veto, extensive power to fulfill its nuclear technology purposes specifically with respect to advanced nuclear reactor commercialization, isotope production, and nuclear waste reduction (PARTIALLY VETOED).
- Requires the Authority to submit an annual report of its activities and post the report on the Authority's website.
- Would have required the Authority to adopt rules for the Ohio State Nuclear Technology Research Program (VETOED).

Nominating council (VETOED)

- Would have established a seven-member Ohio Nuclear Development Authority Nominating Council to review, evaluate, and make recommendations to the Governor for potential Authority member appointees, from which the Governor must select (VETOED).

Nuclear agreements (PARTIALLY VETOED)

- Permits the Governor, to the same extent as may be done under continuing law with the U.S. Nuclear Regulatory Commission, to enter into agreements with the U.S. Department of Energy or branches of the U.S. military to permit the state to license and exercise regulatory authority regarding certain radioactive materials.
- Would have permitted the Authority to enter into the same agreements on behalf of the Governor (VETOED).

- Would have prohibited rules adopted by the Department of Health for radiation control from conflicting with or superseding rules adopted by the Authority (VETOED).

Legislative intent

- States the General Assembly's intent to encourage the use of these provisions promoting nuclear development in Ohio as a model for future legislation to further the pursuit of innovative research and development for any industry in Ohio.

All Ohio Future Fund (PARTIALLY VETOED)

(R.C. 126.62)

The act renames the Investing in Ohio Fund as the All Ohio Future Fund. It also requires the Controlling Board to release money appropriated from the fund before the money may be spent, and it specifies that investment earnings of the fund must be credited to the fund.

The act clarifies that the fund's purpose of promoting economic development throughout Ohio includes infrastructure projects. It retains the purpose of using the fund to promote economic development, including infrastructure improvements. However, the Governor vetoed provisions that would have expanded the fund's purposes for the following:

1. Providing financial assistance through loans, grants, or other incentives that promote economic development; and

2. Providing funding for gas infrastructure projects, electric infrastructure development projects approved by the Public Utilities Commission (see "**Electric infrastructure development**" under the "**PUBLIC UTILITIES COMMISSION**" chapter of this analysis), and electric infrastructure improvements made by electric cooperative and municipal electric utilities.

The act requires rules to be adopted, in accordance with the Administrative Procedure Act, that establish requirements and procedures to provide financial assistance from the fund. The Governor vetoed a provision that would have required the financial assistance to be specifically provided to eligible economic development projects. Additionally, the Governor vetoed a provision that explicitly required the Director of Development (DEV Director) to adopt the rules. Instead, the resulting law is unclear because it only requires an unspecified director to adopt the rules. According to the Governor's Office, the intent of the veto was for the Director of OBM to adopt the rules. Regardless of which director adopts the rules, in doing so, the director must consult with JobsOhio.

The Governor also vetoed requirements that the rules include the following:

1. All forms and materials required to apply for financial assistance from the fund;

2. Requirements, procedures, and criteria that the Director would have had to use in selecting sites to receive financial assistance from the fund. The rules would have had to require the Director to consider sites that JobsOhio and local and regional economic development organizations identified for economic development. The criteria adopted in rules for site

selection would have had to include a means to identify and designate economic development projects into the following development tiers:

a. A tier one project, which would have been a megaproject (a large scale development meeting certain wage and investment or payroll thresholds).

b. A tier two project, which would have been a megaproject supplier (a supplier of tangible personal property to a megaproject with a substantial manufacturing, assembly, or processing facility in Ohio or meeting certain wage and investment or payroll thresholds).

c. A tier three project, which would have been a project in an industrial park or a site zoned for industrial usage.

3. Any other requirements or procedures necessary to administer the act's provisions governing the fund.

The Governor vetoed a requirement that the Director, when awarding financial assistance, do both of the following:

1. Unless the Controlling Board approved a higher amount, limit financial assistance amounts as follows:

a. For tier one projects, up to $200 million per project;

b. For tier two projects, up to $75 million per project;

c. For tier three projects, up to $25 million per project.

2. Give preference to publicly owned sites.

The Director would have been authorized to specifically provide grants and loans from the fund to port authorities, counties, community improvement corporations, joint economic development districts, and public-private partnerships to aid in the acquisition of land necessary for site development. Further, the Director would have been authorized to provide loans to a board of county commissioners to facilitate the transfer or relocation of assets under the control of the county for the purpose of site development. However, the Governor vetoed these provisions.

Finally, the Governor vetoed provisions that would have prohibited an entity receiving financial assistance from the fund from:

1. Issuing riders or any other additional charges to its customers for the purposes of a project that was funded by that assistance; and

2. Regarding a water company, using the financial assistance for a new or expanded water treatment facility or waste water treatment facility.

Welcome Home Ohio (WHO) Program

(R.C. 122.631 to 122.633, 5726.98, and 5747.98; Sections 259.10, 259.30, and 513.10)

The act creates the Welcome Home Ohio (WHO) Program in the Department of Development (DEV). The program has three components:

- Grants for land banks to purchase qualifying residential property;
- Grants for land banks to rehabilitate or construct qualifying residential property;
- Tax credits for land banks and nonprofit developers that rehabilitate or construct qualifying residential property.

"Qualifying residential property" is single-family residential property, including a single unit in a multi-unit property as long as it has ten units or less, with at least 1,000 square feet of habitable space.

Qualifying residential property that benefits from any of the incentives offered by the program must be sold, for $180,000 or less, to an individual, or individuals, with annual income that is no more than 80% of the median income for the county where the property is located. Buyers must also agree, in the purchase agreement, to maintain ownership of the property as a primary residence, not to sell or rent the property at all for five years, and not to sell the property to anyone who does not meet the income requirements for twenty years. Land banks and developers are required to include deed restrictions with these requirements when selling property that benefits from the WHO Program, and the act grants DEV the authority and standing to sue to enforce those requirements. The buyer must annually certify to DEV, during the five-year period following their purchase of the property, that the buyer still owns and occupies the property and has not rented it to another individual for use as a residence.

Key features of the grant and tax credit programs are discussed below.

Grants for foreclosure sale purchases

The WHO Program authorizes grants for land banks to pay or offset the cost to purchase qualifying residential property. The act appropriates $25 million for the grants in both FY 2024 and FY 2025, and DEV may award grants to land banks as long as funds are available. Grant amounts are not capped.

Grants for construction or rehabilitation

The WHO Program allows land banks to apply to DEV for a grant to pay or offset the cost to rehabilitate or construct qualifying residential property held by the land bank. The act appropriates $25 million for the grants in both FY 2024 and FY 2025, and DEV may award grants to land banks as long as funds are available. WHO construction and rehabilitation grants are capped at $30,000 per qualified residential property.

WHO Program tax credits

The WHO Program allows DEV to award nonrefundable tax credits against the income tax and financial institutions tax (FIT) to land banks and eligible developers for the rehabilitation or construction of qualifying residential property. An "eligible developer" is one of several enumerated nonprofit entities, provided a primary activity of the entity is the development and preservation of affordable housing or a community improvement corporation or community urban redevelopment corporation.

Credits equal $90,000 per qualified residential property or one-third of the cost of construction or rehabilitation, whichever is less. Up to $25 million in total credits may be awarded

by DEV in both FY 2024 and FY 2025, but no credits may be issued after FY 2025. Land banks and developers can apply for tax credits after the construction or rehabilitation is completed and the property is sold.

Eligible applicants will be awarded a tax credit certificate. Because land banks and nonprofit developers likely do not have income tax or FIT liability, they will be unlikely to claim the credits themselves. The act authorizes the certificates to be transferred, with written notice to TAX. This allows a land bank or developer to sell the right to claim the credits, and purchasers may claim the credits for the taxable year or tax year that the certificate is issued and claim any unused amount in the five ensuing taxable or tax years.

Grant and credit combinations

The act authorizes a land bank that receives a grant to purchase qualified residential property to also apply for and receive either a WHO construction or rehabilitation grant or a WHO tax credit for the same qualified residential property. However, it prohibits a land bank that receives a grant to construct or rehabilitate qualified residential property from applying for a WHO tax credit for the same property.

Penalties

Land banks and developers that receive WHO grant funds and do not use them for their program purposes, do not sell the qualified residential property on which those funds are spent to an eligible buyer, sell to an eligible buyer who does not agree to the program's sale restrictions, or sell without the required deed restriction must repay the grant funds.

A purchaser of qualified residential property that benefits from a WHO grant or tax credit is also subject to penalty for not abiding by the program's five-year sale or rental restriction. If the qualified residential property benefits from one of the grant programs and the purchaser sells or rents the property as a residence before owning the property for five years, the purchaser is subject to a $90,000 penalty, less $18,000 for every full year of ownership. If the property benefited from the WHO tax credit and the purchaser sells or rents before five years, the purchase is subject to a penalty equal to the amount of the tax credit, reduced by 20% for every full year the purchaser owned the property.

For qualified residential property that benefits from either both grant programs or a grant program and the tax credit, purchasers are only subject to one penalty for violation of the five-year sale restriction. If the property benefited from both grant programs, the penalties are the same, but will only be charged once. If the property benefited from both the grant program and the tax credit, whichever penalty is greater applies.

Financial literacy counseling

Land banks and nonprofit developers that benefit from WHO Program grants or tax credits must agree to provide at least one year of financial literacy counseling to each purchaser of qualified residential property that benefits from program grants or credits. Each purchaser must also agree to participate in that counseling.

Reporting

Each land bank and nonprofit developer that participates in the WHO Program must report to DEV the sale of each home that was awarded a grant or credit. DEV must maintain a list of homes that are still subject to the 20-year affordability deed restriction required as a grant or credit condition. That list is not a public record.

Rules

The act authorizes DEV to adopt rules as necessary to administer each aspect of the WHO Program. The rules may include any of the following:

- Application forms, deadlines, and procedures;
- Criteria for evaluating and prioritizing applications,
- Guidelines for promoting an even geographic distribution of awards throughout the state.

Brownfield and building revitalization programs

(R.C. 122.6511 and 122.6512)

Continuing law establishes the Brownfield Remediation Fund (brownfield fund), and the Building Demolition and Site Revitalization Fund (building fund). The brownfield fund is used to fund a grant program for the remediation of brownfield sites. The building fund is used to fund a grant program for the demolition of commercial and residential properties and revitalization of surrounding properties that are not brownfields.

From appropriations made to each fund, the DEV Director must reserve money for each of the 88 Ohio counties. For the brownfield fund, the amount reserved is $1 million per county, or a proportionate amount if the appropriations are less than $88 million. For the building fund, the amount reserved is $500,000 per county, or a proportionate amount if the appropriations are less than $44 million. The Director must make appropriated money that exceeds the amount to be reserved for each county available for grants for projects located anywhere in Ohio on a first-come, first-served basis.

The act revises the brownfield fund to clarify that only a "lead entity" may submit grant applications to the Director. The lead entity must be either of the following:

- Selected by the DEV Director from recommendations made by the board of county commissioners of the county if either of the following apply:
  - The county has a population of less than 100,000; or
  - The county has a population of 100,000 or more and the county does not have a county land reutilization corporation (land bank);
- The land bank for the county if the county has a population of 100,000 or more and the county has a land bank.

When applying for a grant, the act requires the lead entity to include with a grant application any agreement executed between the lead entity and other recipients that will receive grant money through the lead entity. Recipients may include local governments,

nonprofit organizations, community development corporations, regional planning commissions, county land banks, and community action agencies. Prior law did not specify the entities that may receive project funding.

The act makes these same changes regarding the building fund. However, these requirements were already generally being implemented with respect to the building fund under rules adopted by the Director prior to the act.

Finally, regarding the brownfield fund, the act authorizes a lead entity, after making an initial application for grant funding from the amount reserved for each county, to later amend that application. Accordingly, the act allows the Director to approve the amended amount of requested grant funding up to the amount reserved for that county.

TourismOhio

(R.C. 122.07 and 122.072)

The act expands the mission of TourismOhio, which is the office within DEV responsible for promoting Ohio tourism. Under the act, the office will be charged with promoting not just tourism, but also "living, learning, and working" in Ohio.

Microcredential assistance program

(R.C. 122.1710)

The act increases the maximum reimbursement amount for a training provider from the Individual Microcredential Assistance Program (IMAP) from $250,000 to $500,000 per fiscal year.

Under the program, approved training providers may seek reimbursement for the cost to provide training that allows an individual to receive a microcredential, i.e., an industry-recognized credential or certificate, approved by the Chancellor of Higher Education, that a person can complete in one year or less.[49] Continuing law limits a training provider's IMAP reimbursement to $3,000 per training credential that an individual receives.

Rural Industrial Park Loan Program

(R.C. 122.23 and 122.27)

The act alters two eligibility criteria for assistance from the Rural Industrial Park Loan Program. First, it allows a developer that previously received financial assistance under the program to receive additional financial assistance. However, the developer is still not eligible if the previous financial assistance was received in the same fiscal biennium. Formerly, a program applicant that previously received any financial assistance via the program was ineligible for further assistance.

Second, the act allows a proposed industrial park that would compete with an existing industrial park in the same county to receive assistance, provided the existing industrial park's

[49] R.C. 122.178, not in the act.

owner consents. Under prior law, if there was competition with an existing industrial park, a proposed industrial park was ineligible for assistance.

The Rural Industrial Park Loan Program makes loans and loan guarantees for the development and improvement of industrial parks. To be eligible, the proposed location of the park must be in an economically distressed area, an area with a labor surplus, or a rural area as designated by the DEV Director. The Director must use the Rural Industrial Park Loan Fund to support the program.

Distress criteria for DEV incentives

(R.C. 122.16, 122.173, 122.19, 122.21, 122.23, and 122.25; Section 701.140)

Under continuing law, DEV administers two grant programs to develop urban and rural sites and parks − the Urban and Rural Initiative Grant Program (URI grants) and the Rural Industrial Park Loan Program (RIP loans). These programs award funding to counties and, in the case of the URI grants, municipalities, that meet criteria indicative of economic distress, i.e., an above-average unemployment rate, low per capita income, or certain other poverty markers. These areas are referred to in statute as "distressed areas." The act modifies and standardizes these criteria, as follows:

- Requires that the five-year average unemployment rate of the county or municipal corporation be based on local area unemployment statistics published by the U.S. Bureau of Labor Statistics (BLS);
- Requires that, to qualify based on per capita personal income, the per capita personal income of the county or municipal corporation must be equal to or less than 80% of the per capita personal income of the United States, as opposed to 80% of the median county per capita income under prior law;
- Requires that county per capita income statistics be determined based on data published by the federal Bureau of Economic Analysis (BEA) and that municipal per capita income statistics be determined based on the five-year estimates published by the U.S. Census Bureau in the American Community Survey (ACS);
- Requires that the ratio of transfer receipts to total personal income of a county be determined based on data published by the BEA;
- Requires that the percentage of municipal residents with incomes below the poverty line be determined based on the ACS.

The act also allows DEV to designate alternative sources of the distressed area statistics if the federal government ceases to publish those statistics.

Under prior law, DEV was required to update which counties and municipalities qualify as distressed areas every year. The act only requires this update every ten years, within three months after publication of the decennial census. Accordingly, the statistical source described above that DEV will use to make these updates is the most recent version as of the date that census is published.

The act makes similar changes to the distressed area characteristics for several obsolete grant and tax credit programs administered by DEV, including an income tax credit for the economic redevelopment of a distressed brownfield, which expired in 1999, an income tax credit for purchases before 1999 of new manufacturing machinery or equipment, and a grant program that funded the improvement of industrial sites.[50]

Ohio Residential Broadband Expansion Grant Program

(R.C. 122.40, 122.407, 122.4017, 122.4019, 122.4020, 122.4030, 122.4031, 122.4032, 122.4034, 122.4037, 122.4040, 122.4041, 122.4045, 122.4071 and 122.4076)

The Ohio Residential Broadband Expansion Grant (ORBEG) Program awards grants to broadband providers for projects to provide "tier two broadband service" to areas of the state that are "tier one areas" or "unserved areas." DEV administers the program and works in conjunction with the Broadband Expansion Program Authority, the entity that awards the grants according to a scoring system developed by DEV in consultation with the Authority.[51]

Program definition changes

The act makes changes to certain definitions that apply to the ORBEG Program. First, it removes retail wireless broadband service from the definitions of "tier one broadband service" and "tier two broadband service"; however, it permits fixed wireless broadband service to be included as tier two service in an extremely high cost per location threshold area (see description of such an area below).

The act also increases the broadband speed requirements for each tier. Under the act, tier one service is at least 25, but less than 100 megabits per second (Mbps) downstream, and at least 3, but less than 20 Mbps upstream, and tier two service is 100 Mbps or greater downstream and 20 Mbps or greater upstream. Under former law, tier one service was retail wireline or wireless broadband service of at least 10, but less than 25 Mbps downstream and at least 1, but less than 3 Mbps upstream, and tier two service was retail wireline or wireless broadband service of at least 25 Mbps downstream and at least 3 Mbps upstream.

Second, the act defines "extremely high cost per location threshold area" as an area in which the cost to build high speed internet infrastructure exceeds the extremely high cost per location threshold established by the Authority.

Third, under the act, an "unserved area" no longer excludes an area where construction of a network to provide tier one service is in progress or scheduled to be completed within a two-year period. But, it retains the exclusion of the construction of a network to provide tier two service that is in progress or scheduled to be completed within a two-year period. An "unserved area" is an area without access to either tier one service or tier two service.

[50] R.C. 122.95, not in the act.

[51] R.C. 122.40 to 122.4077, all but the sections listed above, not in the act.

Fourth, the act adds the definition of "eligible addresses," which are residential addresses in an unserved area or tier one area.

Other terminology changes

To reflect the new definition of "eligible addresses" and also to replace the term "residences," the act:

- Modifies the definitions of "eligible project" and "last mile" by specifying that (1) an "eligible project" is a project to provide tier two service access to eligible addresses (instead of to "residences") in an unserved or tier one area of a municipal corporation or township that is eligible for funding under the ORBEG Program and (2) the definition of "last mile" includes, in part, other network infrastructure in the last portion of the network that is needed to provide tier two service to "eligible addresses" (instead of to "residences") as part of an eligible project;
- Requires DEV to publish on its website, for each completed grant application, the list of "eligible addresses" (instead of "residential addresses") included with the application;
- Requires the notarized letter of intent required for an application to state that none of the funds provided by the program grant will be used to extend or deploy to any "residential addresses" (instead of "residences") other than to those in the unserved or tier one areas of the application's project;
- Changes the reference to "residence" to be "residential address" in the provision regarding broadband speed verification tests following a complaint concerning a "residence" that is part of the eligible project;
- For the report each broadband provider receiving a program grant must submit, changes the requirement that the report include the number of "residences" that have access to tier two service as a result of the eligible project to include the number of "residential addresses" instead;
- For the Authority's required annual report, changes the requirement to list the number of "residences" receiving, for the reporting year, tier two service for the first time under the ORBEG Program to the number of "residential addresses" instead.

Authority duties

To the list of the Authority's duties, the act adds that the Authority must establish the extremely high cost per location threshold for the costs of building high speed internet infrastructure in any specific area, above which wireline broadband service has an extremely high cost in comparison to fixed wireless broadband service.

Program funding

Ongoing law requires the Authority to award grants under the ORBEG Program using funds from the Ohio Residential Broadband Expansion Grant Program Fund. The act specifies that any gift, grant, and contribution received by the DEV Director for the Program must be deposited in the fund. (Ongoing law also expressly requires payments from certain broadband providers to

be deposited in the fund if the providers fail to provide tier two service as described in a challenge upheld by the Authority.[52])

Under the act, if an appropriation for the ORBEG Program includes funds that are not state funds, or if the Director receives funds that are in the form of a gift, grant, or contribution to the fund, the Authority must award grants from those funds. However, if those funds are contingent on meeting application, scoring, or other requirements that are different from ORBEG Program requirements, the following must occur:

- DEV must adopt the different requirements and publish a description of them with the program application on the DEV website.
- A description of any differences in application, scoring, or other program requirements must be available with the application on the DEV website at least 30 days before the beginning of the application submission period.

Program grant application challenges

The act makes changes to the process that allows a "challenging provider" to challenge all or part of a completed application for a program grant after the application is published on the DEV website. Under ongoing law, a "challenging provider" is a broadband provider that provides tier two service within or directly adjacent to an eligible project or a municipal electric utility that provides tier two service to an area within the eligible project that is within the geographic area served by the utility.

Deadline for challenging an application

Under the act, a challenge must be made in writing not later than 65 days after the provisional application scoring has been published on the DEV website (see "**Provisional scoring**" below). Prior law required the challenge to be made in writing not later than 65 days after the close of the application submission period or an application extension period, if an extension is granted by DEV.

Method for providing copies of a challenge

The act requires a challenging provider to provide its complete challenge to DEV, and within ten business days of receipt of the challenge, DEV must provide a complete copy of the challenge to the applicant whose application is subject to the challenge. Both the challenge provided by the challenging provider and the copies sent to the applicant by DEV must be sent by electronic means or such other means as DEV may establish. This differs from the prior law process which required the challenging provider to provide, by certified mail, a written copy of the challenge to DEV and to the broadband provider that submitted the application being challenged.

[52] R.C. 122.4036, not in the act.

Information in a challenge that is proprietary or a trade secret

The act removes the provision that expressly allowed the copy of a challenge provided to DEV to include any information that the challenging provider considers to be proprietary or a trade secret. However, the act does not prohibit including such information.

Also removed by the act is the provision that permitted redaction of the proprietary information or trade secrets from the copy provided to the broadband provider whose application is being challenged. This provision is no longer necessary because the act removes the requirement that the challenging provider provide the copy to the broadband provider that submitted the application.

Information provided by challenging providers

Ongoing law lists the minimum information that must be included for a challenge, which to be successful must provide sufficient evidence to DEV that all or part of a project is ineligible for a program grant. The act modifies the provision that requires evidence disputing the application's notarized letter of intent to specify that the eligible project contains "eligible addresses." Prior law required evidence to be provided that the project contained "unserved or tier one areas."

The act also adds the requirement that the signed, notarized statement submitted by a challenging provider must identify the aggregate number of eligible addresses to which the challenging provider offers tier two service and the part of the eligible project to which it will offer tier two service. Under ongoing law, the statement must identify the part of the eligible project to which the challenging provider offers or will offer "broadband service." Prior to the act's changes, the law did not specify whether that service was tier two service or a different level of broadband service.

The act also requires, rather than permits, a challenging provider to present shapefile data and residential addresses to demonstrate that all or part of an application's project is ineligible for a program grant. It adds the requirement that this information must identify each challenging residential address and the basis for such challenge. But, it removes the provision allowing a challenging provider to present maps or similar geographic details.

When DEV must reject a challenge

The act adds a provision that requires DEV to reject any challenge regarding a residential address where the provision of tier two service is planned to be provided if the challenging provider has also submitted an application for funding for the same residential address.

Effect when there is no challenge

In the event that an application filed during an application submission period is not challenged under the ORBEG Program's challenge process, the act specifies that the lack of a challenge does not create a presumption that residential addresses included in an application submitted in a subsequent submission period are eligible addresses under the program. The act also specifies that the lack of a challenge does not prohibit a challenging provider from filing a challenge to an application that is being refiled during a subsequent submission period.

Under ongoing law, the Authority may establish no more than two submission periods each fiscal year during which time DEV accepts applications. Submission periods must be at least 60 but not more than 90 days.

Suspension of an application

The Authority, under law unchanged by the act, may suspend an application, approve the application, or reject an application after receiving a challenge. If it suspends an application, the broadband provider that submitted the application may revise and resubmit the application not later than 14 days after receiving a suspension notification from the Authority.[53] The act removes the requirement that the broadband provider must provide a copy of its revised application to the challenging provider. Instead, it adds the requirement that DEV must provide the revised application to the challenging provider by electronic mail or by such other means as DEV establishes. In addition, it retains the requirement that the broadband provider must send a copy of the revised application to the Authority, but removes certified mail as one of the specified options for sending it.

Application scoring system changes

Under the act, the Authority must establish a scoring system that includes a detailed scoring rubric for eight specific factors. Under ongoing law, the scoring system must be published on the DEV website at least 30 days before the beginning of the application submission period. The scoring system replaces the prior weighted scoring system for the ORBEG Program that used at least 12 factors to prioritize applications. The scoring system the act replaces did not assign a specific score for the factors used to prioritize applications, but did list the factors by highest to lowest weight.

Scoring rubric

The act requires applications to be prioritized from the highest to the lowest point score according to the rubric for those factors. Under the scoring rubric, the maximum score for an application is 1,000 points. The table below lists the factors and scoring rubric for them.

Scoring factor	Scoring criteria	Maximum allowable score
Eligible projects for unserved and underserved areas	The sum of (1) the point value determined by multiplying 300 times the percentage of "passes" in unserved areas of the application and (2) ½ of the point value determined by multiplying 300 times the percentage of "passes" in underserved areas of the application. "Passes" are defined as the residential addresses in close proximity to a broadband provider's broadband infrastructure network to which residents at those addresses may opt to connect.	300

[53] R.C. 122.4033, not in the act.

Scoring factor	Scoring criteria	Maximum allowable score
Broadband service speed based on a graduated scale	**25 points**: ≥ 100 Mbps downstream and ≥ 20 Mbps upstream but < 250 Mbps downstream and 50 Mbps upstream **50 points**: ≥ 250 Mbps downstream and ≥ 50 Mbps upstream but < 500 Mbps downstream and 100 Mbps upstream **100 points**: ≥ 500 Mbps downstream and ≥ 100 Mbps upstream but < 750 Mbps downstream and 250 Mbps upstream **125 points**: ≥ 750 Mbps downstream and ≥ 250 Mbps upstream but < 1 gigabit per second (Gbps) downstream and 500 Mbps upstream **150 points**: ≥ 1 Gbps downstream and ≥ 500 Mbps upstream but < 1 Gbps upstream **200 points**: ≥ 1 Gbps downstream and ≥ 1 Gbps upstream	200
Rating broadband service cost	The sum of the following: (1) Of a possible maximum of 75 points, the number of points equal to the application's grant cost percentile multiplied by 75; (2) Of a possible maximum of 75 points, the number of points equal to ½ of the application's percentage of eligible project funding from all sources other than the ORBEG Program. Additional requirements for this factor are described below under "***Broadband service cost factor***."	150
Tier two service coverage or greater to eligible addresses in an eligible project	**10 points:** for coverage to ≥ 500, but < 1,000 eligible addresses **20 points:** for coverage to ≥ 1000, but < 1,500 eligible addresses **30 points:** for coverage to ≥ 1,500, but < 2,000 eligible addresses **40 points:** for coverage to ≥ 2,000, but < 2,500 eligible addresses **50 points:** for coverage to ≥ 2,500, but < 3,000 eligible addresses **60 points:** for coverage to ≥ 3,000, but < 3,500 eligible addresses **70 points:** for coverage to ≥ 3,500, but < 4,000 eligible addresses **80 points:** for coverage to ≥ 4,000, but < 4,500 eligible addresses **90 points:** for coverage to ≥ 4,500, but < 5,000 eligible addresses **100 points:** for coverage to ≥ 5,000 eligible addresses	100

Scoring factor	Scoring criteria	Maximum allowable score
Local support	**25 points**: if the application includes a resolution of support from the board of county commissioners in the county where the eligible project is located; **15 points**: if the application includes a letter of support from a board of township trustees, village, or municipal corporation; **10 points**: for letters of support from a local economic development agency or a chamber of commerce that advocates for an area of the eligible project with the majority of eligible addresses in the application. Additional requirements for this factor are described below under "***Local support factor***."	50
Broadband provider general experience and technical and financial ability	Point score to be based on the Authority's judgment. The Authority may award partial points for scores awarded for this factor.	75
Broadband provider experience based on years provider has been providing tier two service	**10 points**: 4 years, but < 5 years of experience **20 points**: 5 years, but < 6 years of experience **30 points**: 6 years but < 7 years of experience **40 points**: 7 years but < 8 years of experience **50 points**: 8 years but < 9 years of experience **60 points**: 9 years but < 10 years of experience **75 points**: > ten or more years of experience	75
County median income based on the median county per capita income of the U.S. as determined by the most recently available data from the U.S. Census Bureau	**0 points**: for county median income ≥ 160% **10 points**: for county median income ≥ 140% but < 160% **20 points**: for county median income ≥ 120% but < 140% **30 points**: for county median income ≥ 100% but < 120% **40 points**: for county median income ≥ 80% but < 100% **50 points**: for county median income < 80% Additional requirements for this factor are described below under "***County median income factor***."	50

Additional scoring rubric requirements for certain factors

Broadband service cost factor

For the broadband service cost factor, the act requires the Authority to determine the "grant cost percentile" for each application submitted during that period. The Authority must determine this percentile by doing the following:

- Determining, for each individual application in Ohio, the total grant cost per eligible address in the application by calculating the quotient of the amount of program grant funds requested for the application divided by the number of eligible addresses in the application;
- Ranking, from lowest to highest cost, all individual applications by total grant cost per eligible address;
- Assigning each individual application a percentile based on the application's total grant cost per eligible address relative to all other applications' total grant cost per eligible address.

Under the act, the Authority must assign the percentiles so that the highest percentile is assigned to the application with the lowest total grant cost per eligible address. Percentiles for all other applications must be assigned based on each application's relative grant cost per eligible address.

Local support factor

For the local support factor, the act scores an application differently if the application's eligible project spans multiple counties. In this case, of a possible maximum score of 25 points for county support resolutions adopted by boards of county commissioners, the number of points will be awarded on a pro rata basis based on the percentage of eligible addresses for the eligible project in each affected county for which the board of county commissioners adopted a resolution of support. Similarly, the act scores an application differently if the application's eligible project spans multiple townships, villages, and municipal corporations. In this case, of a possible maximum score of 15 points for letters of support from boards of township trustees, villages, and municipal corporations, the number of points will be awarded on a pro rata basis according to the percentage of eligible addresses for the project in each affected village, municipal corporation or unincorporated area of a township for which a board of township trustees, village, or municipal corporation submitted a letter of support.

County median income factor

For determining the appropriate scoring range for the county median income factor, the act scores an application differently if the application's eligible project spans multiple counties. For this type of application, the scoring range will be based on the percentage of eligible addresses for the eligible project in each affected county.

Provisional scoring

Under the act, to facilitate the challenge process and after DEV publishes all grant applications, DEV must publish on its website a provisional scoring for applications based on the

scoring criteria for the ORBEG Program described above. The provisional scoring must be published on the DEV website not later than 15 business days after all applications have been accepted as complete.

The act prohibits the Authority from voting on, or making awards based on the provisional scoring.

Program reports

The act removes, from the list of information that a broadband provider must include in its annual progress report, the number of commercial and nonresidential entities that are not funded directly by the ORBEG Program but have access to tier two service as a result of the eligible project.

Under continuing law, each broadband provider that receives a program grant must submit to DEV an annual progress report on the status of the deployment of the broadband network described in the eligible project for which the program grant was awarded.[54]

Broadband Pole Replacement and Undergrounding Program

(R.C. 191.01 to 191.45)

The act creates the Ohio Broadband Pole Replacement and Undergrounding Program within DEV to advance the provision of qualifying broadband service access to residences and businesses in an unserved area. To accomplish this, the program reimburses certain costs of pole replacements, mid-span pole installations, and undergrounding incurred by providers.

Under the act, DEV must administer and provide staff assistance for the program. It also is responsible for (1) receiving and reviewing program applications, (2) sending completed applications to the Broadband Expansion Program Authority for final review and the award of program reimbursements (reimbursements), and (3) establishing an administrative process for reimbursements. The Authority must award the reimbursements after reviewing applications and determining whether they meet the requirements for reimbursement.

DEV must adopt rules necessary for the successful and efficient administration of the program by January 1, 2024.

Definitions

Program terms defined in the act include the following:

Term	Definition
Affiliate	A person or entity under common ownership or control with, or a participant in a joint venture, partnership, consortium, or similar business arrangement with, another person or entity pertaining to the provision of broadband service.

[54] R.C. 122.4070, not in the act.

Term	Definition
Broadband infrastructure	Facilities that are used, in whole or in part, to provide qualifying broadband service access to residences and businesses.
Mid-span pole installation	The installation of, and attachment of broadband infrastructure to, a new utility pole that is installed between or adjacent to one or more existing utility poles or replaced utility poles to which poles broadband infrastructure is attached.
Pole owner	Any person or entity that owns or controls a utility pole.
Pole replacement	The removal of an existing utility pole and replacement of that pole with a new utility pole to which a provider attaches broadband infrastructure.
Provider	An entity, including a pole owner or affiliate, that provides qualifying broadband service.
Qualifying broadband service	A retail wireline broadband service that is capable of delivering symmetrical internet access at download and upload speeds of at least 100 megabits per second (Mbps) with a latency level sufficient to permit real-time, interactive applications.
Undergrounding	The placement of broadband infrastructure underground, including by directly burying the infrastructure or through the underground placement of new ducts or conduits and installation of the infrastructure in them.
Unserved area	An area of Ohio that is without access to fixed, terrestrial broadband service capable of delivering internet access at download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps.
Utility pole	Any pole used, in whole or in part, for any wired communications or electric distribution, irrespective of who owns or operates the pole.

Areas considered "unserved areas"

The act further specifies that areas of Ohio are to be considered to be an "unserved area" under the program if one of the following applies:

- Under a program to deploy broadband service to unserved areas (which may include programs other than the Ohio Broadband Pole Replacement and Undergrounding Program), a governmental entity has awarded a broadband grant for the area after determining it to be an eligible unserved area under that program.
- The area has not been awarded any broadband grant funding, and the most recent mapping information published by the Federal Communications Commission (FCC) indicates that the area is an unserved area. (The searchable FCC National Broadband Map is available on the Broadband Data Collection page of the FCC website: fcc.gov/BroadbandData.)

When reimbursements may not be awarded

The Authority is not permitted to award reimbursements that are federally funded if the reimbursements are inconsistent with federal requirements and is not permitted to award reimbursements under certain other circumstances specified in the act. Those other circumstances are:

- The broadband infrastructure deployed is used only for the provision of wholesale broadband service and is not used by the program applicant to provide qualifying broadband service directly to residences and businesses.
- A provider, other than the applicant, is meeting the terms of a legally binding commitment to a governmental entity to deploy qualifying broadband service in the unserved area.
- For reimbursements that are funded by federal funds deposited in the Pole Replacement Fund (see "**Broadband pole replacement fund,**" below), the applicant fails to commit to compliance with any conditions in connection with the funds that the federal government requires.

Who may apply for reimbursements

A provider may submit an application on a form prescribed by DEV for a reimbursement under the program if the provider has deployed "qualifying broadband infrastructure" in an unserved area and has paid any costs specified in the act that are in connection with its deployment.

The act does not define "qualifying broadband infrastructure," which must be deployed before submitting a program application. But, it does define "broadband infrastructure" as "facilities that are used, in whole or in part, to provide qualifying broadband service access to residences and businesses" and defines "qualifying broadband service" as "retail wireline broadband service that is capable of delivering symmetrical internet access at download and upload speeds of at least 100 [Mbps] with a latency level sufficient to permit real-time, interactive applications." This use of a similar, but undefined, term in the act may create some confusion about how "qualifying broadband infrastructure" differs from "broadband infrastructure." See also "**DEV report on deployments under program**."

Costs eligible for reimbursement

As described in the act, costs eligible for reimbursement under the program include (1) pole replacement costs, (2) mid-span pole installations, and (3) undergrounding costs. Specifically, reimbursements may be made for actual and reasonable costs to perform a pole replacement or mid-span pole installation, including the amount of any expenditures to remove and dispose of an existing utility pole, purchase and install a replacement utility pole, and transfer any existing facilities to the new pole. Also reimbursable are actual and reasonable undergrounding costs, including the costs to dig a trench, perform directional boring, install conduit, and seal the trench, but only if undergrounding is required by law, regulation, or local ordinance or if it is more economical than the cost of performing a pole replacement.

Costs not eligible for reimbursement

If an applicant's costs of deploying broadband infrastructure are eligible for full reimbursement from another governmental entity, those costs generally are ineligible for reimbursements under the act. However, if the costs are reimbursed in part by a governmental entity, the applicant may apply for and obtain a reimbursement for the portion of the eligible costs not reimbursed by the other governmental entity.

Reimbursement accounting records

The act allows the Authority to require applicants that obtain broadband grant funding from sources other than reimbursements under the program to maintain accounting records sufficient to demonstrate that the other grant funds do not fully reimburse the same costs as those reimbursed under the program. Since the act's reference to broadband grant funding in the provision does not specify funding from another governmental entity, the accounting record that the Authority may require might also apply to broadband grants from the private sector.

Information and documentation from pole owner

If a pole owner provides information and documentation to a provider that enables the provider to submit an application, the act allows a pole owner to require the provider to reimburse the owner for the owner's actual and reasonable administrative expenses. The amount a pole owner may charge for those expenses may not exceed 5% of the pole replacement or mid-span pole installation costs. The act specifies that these costs are not reimbursable under the program.

Application requirements

Not later than 60 days after the Broadband Pole Replacement Fund (described below) receives funds for reimbursements, DEV must develop and publish an application form and post it on the DEV website. The application form must identify and describe any additional federal conditions required in connection with the use of the federal funds, if any federal funds are used for awards under the program. Applications must include the following information:

- The number, cost, and locations of pole replacements, mid-span pole installations, and undergrounding for which reimbursement is requested;
- Documentation sufficient to establish that the pole replacements, mid-span pole installations, and undergrounding described in the application have been completed;
- Documentation sufficient to establish how the costs for which reimbursement is requested comport with the reimbursement requirements under the program;
- The reimbursement amount requested under the program;
- Documentation of any broadband grant funding awarded or received for the area described in the application and accounting information sufficient to demonstrate the reimbursement costs requested are eligible because they have not been fully reimbursed by another governmental entity or by a broadband grant (see "**Costs not eligible for reimbursement**," above);

- A notarized statement, from an officer or agent of the applicant, that the contents of the application are true and accurate and that the applicant accepts the requirements of the program as a condition of receiving a reimbursement;
- Any information necessary to demonstrate the applicant's compliance, and agreement to comply, with any conditions associated with the reimbursement awarded to the applicant;
- Any other information DEV considers necessary for final review and for the award and payment of reimbursements.

Applicant duties prior to receiving reimbursement

Applicants for the program must agree to do certain things before receiving a reimbursement. Specifically, all applicants must agree to:

- Not later than 90 days after receipt of a reimbursement, activate qualifying broadband service to end users utilizing the broadband infrastructure for which the applicant has received the reimbursement for deployment costs for pole replacement, mid-span pole installation, or undergrounding;
- Certify the applicant's compliance with program requirements;
- Comply with any federal requirements associated with the funding used by the Authority in connection with the award;
- Refund all or any portion of reimbursements received under the program if the applicant is found to have materially violated any of the program requirements.

The act requires that applications regarding a pole replacement or a mid-span pole installation, must meet the requirements described above, if the applicant is the pole owner or affiliate of the pole owner. In addition, these applicants must do the following:

- Commit that the pole owner will comply with all applicable state and federal pole attachment regulations and requirements;
- Commit that the pole owner will exclude from its costs (specifically the costs used to calculate its rates or charges for access to its utility poles) the reimbursements received:
  - From the program or any other broadband grant program; or
  - By a provider, for make-ready charges.
- Commit that the pole owner will maintain and make available, upon reasonable request, to DEV, or to a party subject to the rates and charges, accounting documentation sufficient to demonstrate compliance with the requirement that rates and charges were excluded as required.

Under the act, the rates and charges documentation requirement does not apply to an electric distribution utility, unless the electric distribution utility is the applicant.

Reimbursement award timeline and formula

The act requires the Authority to award reimbursements to an applicant not later than 60 days after it receives an application forwarded by DEV.

Reimbursements must equal the lesser of $7,500 or 75% of the total amount the applicant paid for each pole replacement or mid-span pole installation. For undergrounding costs, the Authority must approve reimbursements according to the same calculation, except that reimbursements may not exceed the reimbursement amount that would be available if the applicant had attached broadband infrastructure to utility poles instead of undergrounding that infrastructure.

At the Authority's direction, DEV must issue reimbursements for approved applications using the money available for them in the Broadband Pole Replacement Fund (described below). The Authority must award, and DEV must fund, reimbursements under the program until funds are no longer available. If there are any pending applications at the point when funds have been exhausted, those applications must be denied. However, applications that have been denied may be resubmitted to DEV and reimbursements awarded according to the application and award process, if sufficient money is later deposited into the fund.

Reimbursement refunds

If DEV finds that an applicant that received a reimbursement materially violated any program requirements, DEV must direct the applicant to refund, with interest, all or any portion of the reimbursements the applicant received. As required by the act, DEV must direct the refund to be made if it finds substantial evidence of the violation and after providing the applicant notice and the opportunity to respond. At DEV's direction, refunds must be deposited to the credit of the Broadband Pole Replacement Fund (described below). Interest on refunds must be at the applicable federal funds rate as determined in ongoing commercial transactions law.[55]

Broadband Pole Replacement Fund

The act creates the Broadband Pole Replacement Fund in the state treasury. The fund is to be used by DEV to provide reimbursements awarded under the program and by the DEV Director to administer the program. The fund consists of money credited or transferred to it, money appropriated by the General Assembly, including from available federal funds, or money that the Controlling Board authorizes for expenditure from available federal funds, and grants, gifts, and contributions made directly to the fund. The act makes an appropriation in FY 2024 to the Broadband Pole Replacement Fund.

Program information on DEV website

The act requires DEV to publish and regularly update its website with program information not later than 60 days after money is first deposited into the Broadband Pole Replacement Fund. The information that must be published includes the following:

[55] R.C. 1304.84, not in the act.

- The number of program applications received, processed, and rejected by the Authority;
- The number, reimbursement amount, and status of reimbursements awarded;
- The number of providers receiving reimbursements;
- The balance remaining in the fund at the time of the latest program update on the website.

DEV report on deployments under program

Whenever the money in the Broadband Pole Replacement Fund is exhausted, the Authority, not later than one year after, must identify, examine, and report on the deployment of qualifying broadband infrastructure under the program and the technology facilitated by the reimbursements. The report must be published on the DEV website.

As described in more detail above, the act does not define "qualifying broadband infrastructure." But, the act does define "broadband infrastructure" and "qualifying broadband service." The use of a similar but undefined term in the act may create some confusion about what DEV must report and how "qualifying broadband infrastructure" differs from "broadband infrastructure."

Program audit

The act also requires the Auditor of State to audit the Broadband Pole Replacement Fund and its administration by the Authority and DEV for compliance with the program's requirements. The first audit must begin not later than one year after money is first deposited into the fund with subsequent audits to take place annually.

Sunset

The act effectively sunsets the program by requiring payments from the Broadband Pole Replacement Fund to cease, and the fund to no longer be in force or have further application, on October 3, 2029, which is six years after the act's 90-day effective date.

However, the act makes two exceptions to the sunset provision. For the period ending April 3, 2030 (six months after the sunset date), DEV, in coordination with the Authority, must (1) complete the review of any applications that were submitted prior to the sunset date and pay reimbursements of the approved applications, and (2) complete the review of any applications submitted not later than February 3, 2030 (four months after the sunset date) and pay reimbursements for the approved applications, if the reimbursements are for costs incurred prior to October 3, 2029.

After the reimbursements are paid as described in the exceptions above, if there is an outstanding balance in the fund, the remaining balance must be returned to the original funding sources as determined by DEV.

Nuclear development in Ohio

Ohio Nuclear Development Authority

(R.C. 4164.01, 4164.04 to 4164.08, and 4164.10 to 4164.20)

The act creates the Ohio Nuclear Development Authority within DEV.

Membership and appointment

Composition

The Authority consists of nine members appointed by the Governor and representing three stakeholder groups (Safety, Industry, and Engineering Research and Development) within the nuclear-engineering-and-manufacturing industry.

Qualifications

A member appointed from the Safety group must hold at least a bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and at least one of the following must apply to the member:

- Be a recognized professional in nuclear-reactor safety or developing ISO 9000 standards;
- Been employed by, or has worked closely with, the U.S. Department of Energy (USDOE) or the U.S. Nuclear Regulatory Commission (USNRC), and the member has a professional background in nuclear-energy-technology development or advanced-nuclear-reactor concepts;
- Been employed by a contractor that has built concept reactors and also worked with hazardous substances, either nuclear or chemical, during that employment.

A member appointed from the Industry group must have at least five years of experience in one or more of the following:

- Nuclear-power-plant operation;
- Processing and extracting isotopes;
- Managing a facility that deals with hazardous substances, either nuclear or chemical;
- Handling and storing nuclear waste.

A member appointed from the Engineering Research and Development group must hold at least a bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and that member must also be a recognized professional in at least one of the following areas of study:

- Advanced-nuclear reactors;
- Materials science involving the study of alloys and metallurgy, ceramics, or composites;
- Molten-salt chemistry;
- Solid-state chemistry;
- Chemical physics;

- Actinide chemistry;
- Instrumentation and sensors;
- Control systems.

Additionally, each member of the Authority must be citizen of the U.S. and a resident of Ohio.

Appointment requirements (PARTIALLY VETOED)

The act provides that all members of the Authority are to be appointed by the Governor, subject to the advice and consent of the Senate. Members begin performing their duties immediately after appointment, and serve five-year terms.

The Governor vetoed provisions that would have required the Governor to appoint members and fill vacancies of the Authority from lists of nominees recommended by the Ohio Nuclear Development Authority Nominating Council (see "**Nominating council (VETOED)**" below). The Governor would have possessed discretion to reject the Council's nominations and reconvene the Council to recommend additional nominees, with the Governor then required to choose from the Council's first or second nominee list.

The Governor also vetoed a deadline to appoint members by January 31, 2024.

Other employment not forfeited

The act provides that, notwithstanding any law to the contrary, no officer or employee of the state of Ohio can be deemed to have forfeited, or actually have forfeited, the officer's or employee's office or employment due to acceptance of membership on the Authority or by providing service to the Authority.

Vacancies (PARTIALLY VETOED)

The Governor is required to fill vacancies in the membership of the Authority. Any appointment to fill a vacancy on the Authority must be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.

The Governor vetoed a provision that would have mandated the Governor to fill a vacancy in the Authority not later than 30 days after receiving the Nominating Council's recommendations.

Open meetings

The act requires Authority meetings to be held in accordance with Ohio's Open Meetings Law.[56]

[56] R.C. 121.22, not in the act.

Use of DEV staff and experts

The act allows the Authority to use DEV staff and experts for the purpose of carrying out the Authority's duties. This use is to occur in the manner provided by mutual arrangement between the Authority and DEV.

Authority purposes

The act establishes the Authority for the following purposes:

- To be an information resource on advanced-nuclear-research reactors, isotopes, and isotope technologies for Ohio, USNRC, all branches of the U.S. military, and the USDOE;
- To make Ohio a leader in the development and construction of new-type advanced-nuclear-research reactors, a national and global leader in the commercial production of isotopes and research, and a leader in the research and development of high-level-nuclear-waste reduction and storage technology.

Authority powers

Necessary and convenient powers (PARTIALLY VETOED)

The act grants the Authority all necessary and convenient powers to carry out its purposes, including the following:

- To adopt bylaws for the management and regulation of its affairs;
- To develop and adopt a strategic plan for carrying the Authority's purposes;
- To foster innovative partnerships and relationships in Ohio and among Ohio's public institutions of higher education, private companies, federal laboratories, and nonprofit organizations to accomplish the Authority's purposes;
- To identify and support, in cooperation with the public and private sectors, the development of education programs related to Ohio's isotope industry.

The Governor vetoed provisions that would have also given the Authority the following powers:

- To assume, with the advice and consent of the Senate, any regulatory powers delegated from USNRC, USDOE, any U.S. military branch, or similar federal agencies, departments, or programs, governing the construction and operation of noncommercial power-producing nuclear reactors and the handling of radioactive materials;
- To act in place of the Governor in approving agreements with USNRC and joint-development agreements with USDOE or an equivalent regulatory agency in the event that the Authority requests any of the following:
  - USNRC to delegate rules for a state-based nuclear research-and-development program;
  - To jointly develop advanced-nuclear-research-reactor technology with USDOE under USDOE's authority;

- To jointly develop advanced-nuclear-research-reactor technology with the U.S. Department of Defense (USDOD) or another U.S. military agency under the authority of the department or agency.

Advanced-nuclear-reactor-component commercialization (PARTIALLY VETOED)

The act requires the Authority to work with industrial and academic institutions and USDOE or U.S. military branches for the commercialization of advanced-nuclear-reactor components. These components may include: neutronics analysis and experimentation; reactor safety and plant safety; fuels and materials; steam-supply systems and associated components and equipment; engineered-safety features and associated components; building; instrumentation, control, and application of computer science; quality practices and nondestructive-inspection practices; plant design and construction, debug, test-run, operation, maintenance, and decommissioning technology; economic methodology and evaluation technology; treatment, storage, recycling, and disposal technology for advanced-nuclear-reactor and system-spent fuel; and treatment, storage, and disposal technology for advanced-nuclear-reactor and system radioactive waste.

The Governor vetoed provisions that would have: (1) specified that the Authority must work with the entities described above specifically to approve designs for the commercialization of advanced-nuclear-reactors components, and (2) included other areas that the parties or their executive agents agree upon in writing as advanced-nuclear-reactor components.

Nuclear waste and isotope production

The act requires the Authority to give priority to projects that reduce nuclear waste and produce isotopes.

Essential governmental function

The act labels the Authority's exercise of its powers as a performance of an essential governmental function that addresses matters of public necessity for which public moneys may be spent.

Annual report

The act requires that on or before July 4 each year, the Authority must submit a report of its activities to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate committees that oversee energy-related issues. This report must also be posted to the Authority's website.

Agreements not superseded (PARTIALLY VETOED)

The act states that the Nuclear Development Authority provisions are not to be construed as superseding any agreement between the Ohio Department of Health and the USNRC (see "**Nuclear agreements**," below). The Governor, however, vetoed language that limited the provision discussed above to regulating activities not within the scope of the Authority's activities.

Rules (VETOED)

The Governor vetoed a provision that would have required the Authority to adopt rules, under the Ohio Administrative Procedure Act (R.C. Chapter 119), provided for by USNRC, USDOE, USDOD, or another U.S. military agency, or a comparable federal agency for an Ohio State Nuclear Technology Research Program for the purposes of developing and studying advanced-nuclear-research reactors to produce isotopes and to reduce Ohio's high-level nuclear waste. The rules were to reasonably ensure Ohioans of their safety with respect to nuclear-technology research and development and radioactive materials, and were exempted from the regulatory restriction limitation in current law.

Nominating Council (VETOED)

(R.C. 4164.09 to 4164.0918; Section 741.10)

The act would have created the Ohio Nuclear Development Authority Nominating Council. The Council would have consisted of seven members with the primary duty to make recommendations to the Governor for appointment to the Authority. A detailed description of the vetoed provisions is available on pages 121 to 123 of LSC's analysis of H.B. 33, As Passed by the House (PDF), which is available on the General Assembly's website, legislature.ohio.gov.

The act requires the Nominating Council to provide the Governor with a list of possible initial appointees to the Authority not later than 90 days after October 3, 2023 (the effective date of the provision). However, since the Governor vetoed the provisions that create the Nominating Council, this requirement likely has no effect.

Nuclear agreements

(R.C. 3748.03 and 3748.23)

The act makes changes to Ohio law governing agreements with the Federal government regarding nuclear licensing and regulatory issues.

Governor

The act provides that the Governor may enter into agreements with USDOE or branches of the U.S. military, in addition to with USNRC under continuing law, to permit the state to license and exercise related regulatory authority with respect to byproduct material, source material, the commercial disposal of low-level radioactive waste, and special nuclear material in quantities not sufficient to form a critical mass.

Authority (VETOED)

The Governor vetoed a provision that would have allowed the Authority to pursue the same agreements with the USNRC, USDOE, or branches of the U.S. military, and to do so on behalf of the Governor. Under continuing law, ODH remains the only agency authorized to pursue such an agreement.

Rules not in conflict or superseded (VETOED)

The Governor vetoed a provision that would have prohibited rules adopted under continuing law by the Director of Health for radiation control from conflicting with, or superseding, the rules adopted by the Authority under the act.[57]

Legislative intent

(R.C. 4164.02)

The General Assembly declares its intent is to encourage the use of these provisions promoting nuclear development in Ohio as a model for future legislation to further the pursuit of innovative research and development for any industry in Ohio.

[57] R.C. 3748.04, not in the act.