

Economic Development

H.B. 2

Primary Sponsors: Reps. Carfagna and Stewart

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Ohio Residential Broadband Expansion Grant Program

- Creates the Ohio Residential Broadband Expansion Grant Program (grant program) within the Department of Development (DEV).
- Requires DEV to receive and review applications for grants and send completed applications to the Broadband Expansion Program Authority for review and award of grants for eligible projects.
- Defines grant program terms, such as:
 - “Eligible project” – a project to provide tier two broadband service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under the act;
 - “Tier one service” and “tier two service” – retail wireline or wireless broadband service delivering internet access at speeds of (1) at least 10 but less than 25 megabits downstream and 1 but less than 3 megabits upstream for tier one service and (2) at least 25 megabits per second downstream and 3 megabits per second upstream for tier two service;
 - “Tier one area” – an area that has access to tier one but not tier two broadband service, including an area where tier one service is being constructed and is scheduled to be completed within two years.
 - “Unserved area” – an area without access to tier one or tier two broadband service.
- Requires a broadband provider to construct last mile broadband infrastructure after receiving a grant.

Broadband Expansion Program Authority

- Creates the Authority within DEV and exempts it from the Sunset Review Law.
- Names as Authority members the Director of Development (DEV Director) and the Director of InnovateOhio or their designees and three appointed members, to serve four-year terms with reappointment permitted, with the Speaker of the House, the Senate President, and the Governor each making one appointment.
- Specifies that appointed Authority members must have broadband infrastructure and technology expertise, but may not be affiliated with or employed by the broadband industry or be in a position to benefit from a program grant.

- Requires appointed members to receive compensation in the form of reimbursement of necessary and actual expenses and a monthly stipend, except that an appointed member who also serves as a state administrative department head will not receive the stipend.
- Calculates the monthly stipend such that it qualifies each appointed member for one year of service credit with the Ohio Public Employees Retirement System (OPERS) for each year of the appointed member's four-year term, but specifies that the service credit may not be considered for determining health care coverage if offered by OPERS.
- Requires the Authority to conduct hearings and to do several tasks, including for example, to monitor the grant program by tracking details for annual applications and annual grants and to continually examine, and propose updates to, any broadband plan enacted by the General Assembly or issued in an Executive Order of the Governor.
- Requires the Authority to make an annual report by December 1 to the Governor and General Assembly regarding its hearings, monitoring, examination, review, and other duties regarding broadband service and to make the report available on DEV's website.

Application process for grants

- Permits a broadband provider to apply to DEV for a grant for an eligible project in person, by certified mail or email, or via a designated DEV website.
- Requires the application form to include a statement informing the applicant that failure to comply with the grant program or to meet required tier two service proposed in the application may require the refund of all or part of the grant.
- Requires applications to include several items including, for example, the location and a description of the project, a letter of intent that a broadband provider will provide access to tier two service, the amount of the broadband funding gap and the state funds requested, and the broadband speeds planned for the project.
- Disqualifies an application for a grant if:
 - It proposes to provide tier two service where already available; or
 - In the proposed area, construction of tier two service is in progress and (1) is being constructed without program funding by the broadband provider that submitted the application or (2) is scheduled to be completed by another provider within two years after the date of a challenge to the application.
- Requires DEV to accept grant applications each fiscal year and to fund grants until funds for the fiscal year are no longer available.
- Requires that applications be accepted during up to two 60- to 90-day submission periods each fiscal year, as specified by the Authority.
- After receiving notice from DEV that an application is incomplete, permits the provider to complete and refile the application before the end of the submission period, or not more than 14 days after the period ends if DEV grants an extension for good cause shown.

Proprietary and trade secret information

- Requires DEV to review information and documents submitted (in an application or project challenge) by a broadband provider to determine whether it is proprietary or a trade secret and to keep the information and documents confidential unless DEV finds that it is not proprietary or a trade secret and therefore is not confidential.

Financial assurance

- Permits the Authority to require a broadband provider that is awarded a grant to provide a performance bond, letter of credit, or other financial assurance acceptable to the Authority before construction begins.

DEV application website

- Requires certain grant program and application information, except for denied applications, to be published on DEV's website, including, for example, the residential addresses included with completed applications, all other information included with applications that is not confidential, and status updates regarding Authority decisions regarding project challenges.

County-requested solicitations for broadband providers

- Permits a board of county commissioners, by resolution, to request DEV to solicit applications from broadband providers for grants for eligible projects in the county's municipal corporations and townships.
- Requires a solicitation request to identify, to the extent possible, the residential addresses in unserved or tier one areas, provide a point of contact for the county, municipal corporations, and townships where the addresses are located, and include any helpful relevant information, documents, or materials for the application.
- Requires DEV to solicit applications for grants if a county makes a request and, within seven days after receiving it, to make it and the accompanying information available for review on DEV's website for up to two years.
- Specifies that a grant application made in response to a county request must fully comply with all grant program requirements and that nothing in the county request provides relief from compliance with any program requirement.
- Specifies that DEV is not responsible for a broadband provider's failure to respond to a county-requested solicitation made by DEV or to submit an application.

Project application challenge process

- After a completed application is published on the DEV website, permits a challenging provider to challenge, in writing, all or part of a completed grant application not later than 65 days after the close of the submission period or 14-day extension period if one is granted.

- Defines “challenging provider” as a (1) broadband provider that provides tier two service within or directly adjacent to an eligible project or (2) 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.
- Requires the challenging provider to submit, by certified mail, a written copy of the challenge to the applicant provider and the Authority.
- Specifies that for a challenge to succeed, a challenging provider must submit sufficient evidence to DEV demonstrating that all or part of a project under the application is ineligible for a grant by:
 - Disputing that the eligible project contains unserved or tier one areas; and
 - Attesting to the challenging provider’s existing or planned offering of tier two service to all or part of the eligible project.
- Permits a challenging provider to demonstrate that all or part of a project under an application is ineligible for a grant, by presenting shapefile data, residential addresses, maps, or similar geographic details, but not census block or census tract level data.
- Permits the Authority to suspend all or part of a challenged application or reject the challenge and approve the application, and requires the Authority to notify the applicant provider and the challenging provider of its decisions by providing a copy of the decision by certified mail or email.
- Requires the Authority to allow an applicant provider 14 days (unless another 14-day extension is granted for good cause shown) to revise and resubmit its application, if the Authority upholds all or part of a challenge, and to submit the revised application to the Authority and challenging provider by certified mail or email or via DEV’s website.
- Specifies that an application is considered to be withdrawn if the applicant provider fails to respond to an Authority notification or to revise an application to the Authority’s satisfaction.
- Requires the Authority to review and decide whether to accept the revised application or uphold the challenge within 14 days of receiving the revised application.

Scoring system for application review

- Requires DEV, in consultation with the Authority, to establish a weighted scoring system to evaluate and select grant applications and make it available on DEV’s website at least 30 days before the application submission period begins.
- Specifies that the scoring system must prioritize applications according to certain factors, listed in order from highest to lowest and, as an example, lists the highest two factors as (1) eligible projects for unserved areas, rather than tier one areas and (2) eligible projects located in distressed areas.

- Allows the Authority to consider, after the weighted factors, any other factors it determines reasonable, appropriate, and consistent with facilitating the economic deployment of tier two service to unserved or tier one areas.
- Prohibits the Authority, when awarding grants, from considering:
 - Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified in the grant program; or
 - Factors that would constrain the broadband provider from offering or providing tier two service as it is offered by other broadband providers in Ohio without grant program funding.

Grant awards

- Requires the Authority to award grants after reviewing applications sent by DEV, considering all regulatory obligations under the law and basing the awards on the scoring system, and to notify the broadband providers that submitted applications upon making the awards.

Funding

- Creates the Ohio Residential Broadband Expansion Grant Program Fund in the state treasury to be used exclusively for grants awarded by the Authority.
- Requires the Authority to award grants using money from the fund and other appropriations made by the General Assembly.
- Requires the transfer of \$20 million from the Facilities Establishment Fund to the Ohio Residential Broadband Expansion Grant Program Fund on May 17, 2021, or as soon as possible thereafter, and appropriates the transferred amount for FY 2021.

Funding from video service providers (VSPs)

- Permits a broadband provider to enter into an arrangement to designate video service provider (VSP) fees remitted by the provider for contribution towards an eligible project's broadband funding gap if:
 - The provider is a VSP that collects and remits VSP fees to one or more legislative authorities in which an eligible project is located; and
 - The arrangement is entered into by mutual consent with the legislative authorities.
- Specifies that, under the alternate payment term arrangements with a VSP, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all project costs incurred by the broadband provider prior to completion of the project or award of a grant.

Funding from special assessments

- Permits a municipal corporation, county, or township to fund a portion of the broadband funding gap for an eligible project through a property tax assessment made by the

municipal corporation, county, or township, and permits the taxing district to issue securities in anticipation of the levy or collection of the assessment.

Distribution of grant funds

- Requires up to 30% of a grant to be disbursed before project construction begins, up to 60% to be disbursed periodically over the course of the project construction according to DEV rules, and the remainder to be disbursed not later than 60 days after notification that construction is complete.

Speed verification

- Permits DEV, through an independent third party, to conduct speed verification tests of an eligible project that receives a grant.
- Requires speed verification tests to occur after project construction is complete but prior to the final grant disbursement, and at any time during the four-year reporting period (see “**Grant award reports,**” below), after receiving a complaint concerning a residence that is part of the eligible project.
- Requires the speed verification tests to be conducted on at least two days at two different times each day.
- If a project fails to meet the minimum broadband service speeds required, permits DEV to withhold payments until the speeds are achieved.

Program noncompliance

- Requires DEV to (1) notify a broadband provider if the provider, after receiving a grant, has not complied with program requirements and (2) provide the provider the opportunity to explain or cure the noncompliance.
- Permits DEV to require the broadband provider to refund (1) an amount of the grant award as DEV determines and (2) to the appropriate municipal corporation, county, or township, the entire amount they contributed toward the broadband funding gap.
- Requires the broadband provider to pay the refund for noncompliance, or failure to explain or cure the noncompliance, not more than 30 days after DEV determines that a refund must be paid.

Grant award reports

- Requires each broadband provider that receives a grant to submit:
 - An annual progress report on the status of the deployment of the broadband network for which the grant was awarded; and
 - An operational report with DEV not later than 60 days after the project’s completion and annually for another four years.

- Requires broadband provider reports to include an account of how grant funds have been used and the progress toward fulfilling the objectives for which the grant was awarded, and specifies minimum requirements for the report.

Authority grant program report

- Requires the Authority to complete an annual report that evaluates the grant program's success, includes certain program information and the findings and recommendations agreed to by a majority of Authority members, and to include the evaluation, findings, and recommendations in its annual report required by law of all state departments.
- Requires the Authority to publish the report on DEV's website and to provide the report to the Governor and the General Assembly by December 1 each year.

Broadband infrastructure ownership rights

- Specifies that nothing in the act:
 - Entitles the state, DEV, Authority, or any other governmental entity to any ownership or other rights to broadband infrastructure constructed by a broadband provider with a grant for an eligible project; or
 - Prevents an assignment, sale, change in ownership, or similar transaction for that infrastructure and specifies that no such transaction relieves the successor of obligations under the act.

Rules

- Requires DEV to adopt rules for the grant program, including rules for an application form and application procedures and procedures for periodic grant disbursements.
- Specifies that DEV rules are not subject to certain provisions of Ohio law governing review of agency rules regarding regulatory restrictions.

Use of electric cooperative easements for broadband

- Allows an easement granted to an electric cooperative for transmitting, delivering, or otherwise providing electric power to be used, apportioned, or subleased to provide broadband service without the use, apportionment, or sublease being considered an additional burden on the servient estate (which is the land burdened by the easement).

Easement action

- Allows for servient estate owners to bring an action for damages regarding the use, apportionment, or sublease of the easement.
- Prohibits a servient estate owner from bringing the action if:
 - The owner, directly or through membership in an electric cooperative or otherwise, authorized the cooperative's electric delivery system for broadband services;
 - The owner, or any previous owners, has agreed to, or granted permission for, the easement's use for broadband service; or

- The broadband service facilities are used or could be used to assist in the transmission, delivery, or use of electric service.
- Requires an action for damages to be brought within one year of any alleged damages or else the claim is forfeited.
- Limits damages to the difference between the fair market value (as determined by a qualified real estate appraiser) of the owner's interest in the property of the servient estate immediately before and after the provision of broadband service and requires any damages awarded to be a fixed amount that cannot continue, accumulate, or accrue.
- Prohibits past, current, or future revenues or profits derived or to be derived from the use, apportionment, or sublease of an easement for broadband service from being admissible for any purpose in the action for damages.
- Prohibits the court from granting injunctive relief or any other equitable relief for the action for damages.

Court determination

- Requires any court determination regarding an easement subject to the action for damages to be considered a finding that the provision of broadband service is an allowable use or purpose under the easement as if specifically stated in the terms of the easement.
- Requires a court determination in the action for damages to be filed by the defendant with the county recorder of the servient estate's county and requires the recorder to make a notation in the official record linking the determination to the servient estate and easement.

State power not expanded

- States that the act's electric cooperative easement provisions do not expand the powers of the state, its agencies, or any political subdivision beyond the authority under federal or state law.

Appropriation of property laws not applicable

- States that Ohio law governing the appropriation of property does not apply to the act's electric cooperative easement provisions.

Electric cooperative pole attachments

- Requires that, on request from a broadband, telecommunications service, video service, or wireless service provider, an electric cooperative must grant nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions for their attachments, as specified in the act.
- Establishes a process for a provider to request and for an electric cooperative to consider, and to grant or deny, the provider's attachments to the cooperative's poles, including decision-making standards and time frames established by the Federal Communications

Commission (FCC), unless a court of common pleas determines a different time frame for granting or denying access.

- Requires a provider and electric cooperative to (1) comply with make-ready work processes under federal law and FCC orders and regulations, unless a court of common pleas establishes a different process and (2) provide good-faith estimates for any make-ready work regarding provider attachments to cooperative poles.
- For any annual recurring provider attachment fee, requires the electric cooperative to establish the fee in accordance with the federal law formula for cable pole attachment rates and FCC orders and regulations implementing the formula, unless a court of common pleas establishes a different process.
- Requires a provider's attachments to an electric cooperative's poles to meet: (1) the most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative and (2) the National Electric Safety Code.
- Establishes provisions for pole modification and requirements for sharing costs for a modification.
- Establishes procedures, requirements, and remedies for an electric cooperative or provider to settle pole attachment disputes in a court of common pleas and requires the court's determination to be a final appealable order.
- Designates a pole attachment complaint hearing as a special statutory proceeding under the Rules of Civil Procedure.
- Requires pole attachment complaint venues to lie (1) in the county of the cooperative's Ohio headquarters, if at least some portion of the attachment will occur in that county or (2) in the county where the largest physical portion of the attachment will occur, if no portion of the attachment is in the headquarters' county or more than one cooperative is a party to the complaint.
- Specifies that court orders relative to venue are final orders that may be reviewed, affirmed, modified, or reversed as specified in Ohio appellate procedure law and that orders not specifically related to venue are reviewable on appeal just as judgments in any civil action.
- Specifies that land acquisitions under Ohio law governing the appropriation of property are not affected by the act and are heard in a venue pursuant to that law or the Rules of Civil Procedure.