DEPARTMENT OF DEVELOPMENT

Rename agency as Department of Development

- Changes the name of the Development Services Agency and the Director of Development Services back to the Department of Development and Director of Development, respectively.

Ohio Residential Broadband Expansion Grant Program

- Creates the Ohio Residential Broadband Expansion Grant Program (grant program) within the Department of Development (DOD).
- Requires DOD to receive and review applications for program grants and send completed applications to the Broadband Expansion Program Authority for review and award of program grant money for eligible projects under the grant program.
- Specifies that an eligible project may not proceed unless the Authority awards the project a program grant.
- Requires a broadband provider to construct last mile broadband infrastructure after receiving a program grant award.

Broadband Expansion Program Authority

- Creates the Authority within DOD and exempts the Authority from Ohio's Agency Sunset Review Law.
- Names as Authority members the DOD Director and the Director of InnovateOhio or their designees, and three appointed members, 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.
- Provides the appointed members compensation in the form of reimbursement of necessary and actual expenses.
- Provides a monthly stipend for each appointed member, except that an appointed member that also serves as a state administrative department head will not receive the stipend.
- Requires the monthly stipend to be calculated 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.

- Provides for appointment of the chairperson and vice-chairperson, filling vacancies, conducting meetings, including conducting meetings electronically, and voting requirements.
- 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 program grants and to continually examine, and propose updates to, any broadband plan provided by law enacted by the General Assembly or by Executive Order issued by 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 various other duties regarding broadband service in Ohio and to make the report available on DOD's website.
- Prohibits the Authority from disclosing any proprietary or trade secrets in the report.

Application process for program grants

- Permits a broadband provider to apply for a program grant for an eligible project.
- 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 a portion of the program grant.
- Permits applications to be submitted in person or by certified mail or email, or uploaded to a designated DOD website for applications.
- 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 the service, the amount of the broadband funding gap and the state funds amounts requested, and the broadband speeds planned for the project.
- Provides that an application is ineligible for a program 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 not later than two years after the date of a challenge to the application.
- Requires DOD to accept applications for program grants each fiscal year and to fund program grants until funds for the fiscal year are no longer available.
- Requires applications to be accepted during not more than two 60- to 90-day submission periods each fiscal year as specified by the Authority.
- After receiving notice from DOD that a broadband provider's 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 DOD grants an extension for good cause shown.

Proprietary and trade secret information

- Requires DOD 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 DOD finds that it is not proprietary or a trade secret and therefore is not confidential.

Financial assurance condition for receiving grants

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

DOD application website

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

County-requested solicitations for broadband providers

- Permits a board of county commissioners, by resolution, to request DOD to solicit applications from broadband providers for program grants for eligible projects in the municipal corporations and townships of the county.
- Requires a solicitation request to identify, to the extent possible, the residential addresses in unserved or tier one areas of the county, 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 DOD to solicit applications for program grants if a county makes a request and not later than seven days after receiving a request, to make it and the accompanying information available for review on DOD's website for up to two years.
- Specifies that an application for a program grant 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 grant program requirement.
- Specifies that DOD is not responsible for a broadband provider's failure to respond to a county-requested solicitation made by DOD or to submit an application.

Project challenge process

- Permits a challenging provider to challenge, in writing, all or part of a completed application for a program grant not later than 65 days (or longer if an extension is granted) after the close of the submission period (or extension period).

- Specifies that 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.
- Requires the challenging provider to provide, by certified mail, a written copy of the challenge to the broadband provider that submitted the application (applicant provider) and the Authority.
- Specifies that for a challenge to succeed, a challenging provider must provide sufficient evidence to DOD 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.
- Permit a challenging provider to demonstrate that all or part of a project under an application is ineligible for a program 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 an extension of another 14 days is granted for good cause shown) to revise and resubmit its application if the Authority upholds all or part of a challenge and to provide a copy or the revised application to the Authority and the challenging provider by certified mail or email or by uploading it to DOD's website.
- Specifies that an application is considered to be withdrawn if an applicant provider fails to respond to an Authority notification or to revise an application to the Authority's satisfaction.
- Requires the Authority to review a revised application and decide whether to accept the application or uphold the challenge within 14 days of receiving the revised application.

Scoring system for application review

- Requires DOD, in consultation with the Authority, to establish a weighted scorning system to evaluate and select applications for program grants and make it available on DOD's website.

- 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 in 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 program 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 is offered by other broadband providers in Ohio without grant program funding.

Program grant awards

- Requires the Authority to award program grants after reviewing applications sent to it, 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 for program grants

- Makes appropriations to DOD for grants under the Ohio Residential Broadband Expansion Grant Program.

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 made with a VSP, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all of the eligible project costs incurred by the broadband provider prior to completion of the project or award of a program 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.

Distribution of grant funds

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

Speed verification

- Permits DOD, through an independent third party, to conduct speed verification tests of an eligible project that receives a program 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 reporting period (see "**Grant award reports**," below), after receiving a complaint about 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.
- Permits DOD to withhold payments for failure to meet at least the minimum broadband service speeds required under the bill until the speeds are achieved.

Program noncompliance

- Requires DOD to (1) notify a broadband provider if the provider, after receiving a program grant, has not complied with program requirements and (2) provide the provider the opportunity to explain or cure the noncompliance.
- Permits DOD to require the broadband provider to refund (1) an amount of the program grant award as DOD determines and (2) to the appropriate municipal corporation, county, or township, the entire amount of general revenue funds or other discretionary funds 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 DOD determines that a refund must be paid.

Grant award reports

- Requires each broadband provider that receives a program 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 DOD 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 program grant funds have been used, 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 DOD'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 bill:
  - Entitles the state, DOD, Authority, or any other governmental entity to any ownership or other rights to broadband infrastructure constructed by a broadband provider pursuant to a program grant for an eligible project; or
  - Prevents the assignment, sale, change in ownership, or similar transaction for that infrastructure and specifies that no such transaction relieves the successor of obligations under the bill.

Rules

- Requires DOD to adopt rules for the grant program including rules for an application form and application procedures and procedures for periodic program grant disbursements.
- Permits DOD to adopt rules that include additional application requirements; procedures for, and circumstances under which, partial funding of applications is permitted; procedures for Authority meetings, extension periods, and application challenges, hearings, and public comment; and procedures for county-requested solicitations for broadband providers.
- Specifies that DOD rules are not subject to certain provisions of Ohio law governing review of agency rules regarding regulatory restrictions.

Electric cooperative easement use for broadband

- Allows an easement granted to an electric cooperative for transmitting, delivering, or otherwise providing electric power (easement) to be used, apportioned, or subleased to provide broadband service without such 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.
- Provides that an action for damages must 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 provides that any damages awarded 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.
- Provides that the court may not grant injunctive relief or any other equitable relief for the action for damages.

Court determination

- Provides that any court determination regarding an easement subject to the action for damages, must 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 county in which the servient estate is located 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

- Provides that the electric cooperative easement provisions of the bill do not expand the powers of the State, its agencies, or any political subdivision beyond the authority existing under federal or state law.

Appropriation of property laws not applicable

- Provides that Ohio law governing the appropriation of property do not apply to the electric cooperative easement provisions of the bill.

Electric cooperative pole attachments

- Requires that, on request from a broadband provider, telecommunications service provider, video service provider, or wireless service provider, an electric cooperative must grant the provider nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions in accordance with the bill.
- 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.

- Requires an electric cooperative to establish fees for provider attachments 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 in effect on the date of the attachment.
- 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.
- Designates a pole attachment complaint hearing as a special statutory procedure under the Rules of Civil Procedure.
- Requires pole attachment complaint venues to lie (1) in the county location 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 county location of the headquarters 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 appeal 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 bill and are heard in venue pursuant to that law or the Rules of Civil Procedure.

Transfer of minority business enterprise and related programs

- Transfers the administration of the minority business enterprise program, the encouraging diversity, growth, and equity program, the women-owned business enterprise program, and the veteran-friendly business procurement program from the Department of Administrative Services (DAS) to DOD.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, who instead reports to a position determined by the DAS Director.

Minority Development Financing Advisory Board

- Corrects erroneous cross-references to clarify that the Minority Development Financing Advisory Board is not responsible for administering certain tax credit and grant programs administered by the Department of Development.

Job creation tax credit

- Allows any employer that receives the job creation tax credit (JCTC) to count work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

Rename agency as Department of Development

(R.C. 121.02, 121.03, 122.01, 122.011, 122.60, 122.601, 122.603, 122.86, 122.89, 123.01, 149.311, 166.01, 166.03, 174.01, 174.02, 184.01, 1551.01, 1551.33, 1551.35, 5119.34, 5703.21; Repealed R.C. 184.011, 3735.01, and 5701.15; R.C. 140.01, as amended in Section 130.10; Section 518.20)

The bill renames the Development Services Agency (DSA) as the Department of Development. Similarly, the Director of Development Services is renamed the Director of Development. The change reverses the name change in 2012 by S.B. 314 of the 129th General Assembly. The bill does not make the change uniformly throughout the Revised Code. Instead, the change is reflected in several sections addressing the Department's operations, and the bill directs that references to DSA and its Director throughout the Revised Code mean the renamed Department and its Director.

Ongoing DSA operations are to be continued by the Department, including the following:

- All DSA rules, orders, and determinations are to continue as though made by the Department;
- DSA employees continue as employees of the Department;
- The Department must be substituted for DSA in any pending court or agency proceedings to which DSA is a party.

Ohio Residential Broadband Expansion Grant Program

(R.C. 122.40 to 122.4077, 133.13, 303.251, 505.881, and 727.01; Sections 259.10, 259.30, and 513.10)

The bill creates the grant program within the Department of Development (DOD) and requires DOD to administer and provide staff assistance for the grant program.

Definitions

Definitions for the grant program include the following:

Term	Definition
"Broadband funding gap"	The difference between the total amount of money a broadband provider calculates is necessary to construct the last mile of a specific broadband network and the total amount of money that the provider has determined is the maximum amount of money that is cost effective for the provider to invest in last mile construction for that network *(R.C. 122.40(B))*.
"Broadband provider"	A (1) video service provider or (2) provider that is capable of providing tier one or tier two service and is a telecommunications service provider, satellite broadcasting service provider, or a wireless service provider. A "broadband provider" does not include a governmental or quasi-governmental entity. *(R.C. 122.40(C); R.C. 1332.21 and 4927.01, not in the bill.)*
"Tier one broadband service" and "tier two broadband service"	Retail wireline or wireless broadband service capable of delivering internet access at speeds of at least: ▪ 10 but less than 25 megabits per second downstream and at least 1 but less than 3 megabits per second upstream for "tier one broadband service" (tier one service, as used in this analysis); ▪ 25 megabits per second downstream and at least 3 megabits per second upstream for "tier two broadband service" (tier two service, as used in this analysis). *(R.C. 122.40(J) and (K).)*
"Eligible project"	A project to provide tier two 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 bill *(R.C. 122.40(D))*.
"Last mile"	The last portion of a physical broadband network that connects an eligible project to the broader network used to provide tier two service to which both of the following apply: It includes other network infrastructure in the last portion of the network that is needed to provide tier two service to residences as part of an eligible project, but does not include network infrastructure in any portion of the network that is outside of the last portion; ▪ It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance. *(R.C. 122.40(E).)*
"Program grant"	Money awarded under the grant program to assist in covering the broadband funding gap for an eligible project *(R.C. 122.40(G)).*

Term	Definition
"Tier one area"	An area that has access to tier one service but not tier two service, including an area where construction of a network to provide *tier one service* is in progress and scheduled to be completed within a two-year period. "Tier one area" excludes an area where construction of a network to provide *tier two service* is in progress and scheduled to be completed within a two-year period. *(R.C. 122.40(L).)*
"Unserved area"	An area without access to tier one service or tier two service, excluding an area where construction of a network to provide *tier one service or tier two service* is in progress and scheduled to be completed within a two-year period *(R.C. 122.40(M))*.

Broadband Expansion Program Authority

The bill creates the Authority within DOD. DOD must receive and review applications for program grants and send them to the Authority for the final review and awarding of program grants. The Authority must consider each application that DOD has reviewed and sent to it, score each application based on the scoring system established under the bill, and award program grants based on that system. See "**Authority's application review**" (below).

The bill excludes the Authority from those state agencies subject to review under the sunset review law.[18]

Authority membership

As established under the bill, the Authority has five members: the DOD Director or designee, the Director of the Office of InnovateOhio or designee, one member appointed by the Speaker of the House, one member appointed by the Senate President, and one member appointed by the Governor. Vacancies must be filled in the same manner as original appointments, and any member appointed to fill a vacancy serves the remainder of the term being filled. If a designee is assigned to the Authority, the designation must be in writing by the applicable Director.

Appointed members

Appointed members serve four-year terms and are eligible for reappointment. They must have expertise in broadband infrastructure and technology, but must not be affiliated with, or employed by, the broadband industry or in a position to benefit from a program grant.

Under the bill, they receive a monthly stipend as calculated under the Ohio Public Employees Retirement System (OPERS) law in an amount that will qualify each member for one year of OPERS retirement service credit for each year of the member's term. However,

[18] R.C. 101.82 to 101.87, not in the bill.

notwithstanding any OPERS requirement that eligibility for health care coverage be based on years and types of service credit according to OPERS Board rules, if the Board provides health care coverage, no service credit earned for service as a member of the authority may be considered for purposes of determining eligibility for such health care coverage.[19]

Members receive reimbursement for their necessary and actual expenses incurred in performing Authority business. An appointed member who is currently serving as the head of a state administrative department is not eligible to receive the monthly stipend for appointed Authority members.

DOD is responsible for paying all stipends and reimbursements. And reimbursements constitute administrative costs of the grant program.

Authority meetings

Under the bill, the DOD Director or designee serves as the chairperson of the Authority. Authority members annually elect one of the members as the vice-chairperson. The bill sets attendance of three members as the quorum necessary to do business and requires an affirmative vote of three members to approve any business, including the election of the vice-chairperson. If the DOD Director assigns a designee to serve on the Authority, the designee must be a professional employee of DOD, who will serve as the Director's designee at Authority meetings. The bill requires the vice-chairperson to chair Authority meetings in the absence of both the Director and the Director's designee.

Members of the Authority may attend meetings electronically by electronic communication if: (1) at least three members attend the meeting in person at the place where the meeting is conducted, (2) the electronic communication for the meeting permits simultaneous communication among all Authority members, including those attending electronically, and all members of the public attending in person, and (3) all votes are taken by roll call vote.

If a member chooses to attend a meeting electronically, the member must notify the chairperson not less than 48 hours before the scheduled meeting time, except in the case of an emergency. The bill does not specify what constitutes an emergency or if remote attendance due to an emergency affects the three-person requirement for a meeting to take place.

Authority duties

The Authority is responsible for performing specific duties regarding the grant program and other duties regarding the review of broadband-related topics. Under the bill, the Authority must conduct hearings to gather information necessary to accomplish the duties described below.

Grant specific duties

The Authority must do the following, specific to the grant program:

[19] R.C. 145.016 and 145.58, not in the bill.

- Monitor the grant program by:
  - Tracking the details for (1) annual applications and (2) program grants awarded annually, including:
    - The number of applications and program grants;
    - The geographic locations of eligible projects;
    - The broadband providers submitting applications and, for awards being tracked, the entities or companies that submitted the application;
    - A description of the tier two service infrastructure and technology proposed or deployed;
    - A description of any public right-of-way or public facilities to be utilized or actually utilized for the projects;
    - The speeds of the tier two service under the applied-for or enabled projects;
    - The amount of program grant funds requested or awarded for each project and the proportion of project funding to be provided, or share of funding provided, by the broadband provider and other entities;
    - The number of residential and nonresidential locations that will have access to tier two service under each project.
  - Listing the amount of any unencumbered program grant funds that remain available for award under the grant program;
  - Adding any additional factors deemed necessary by the authority to monitor the program.
- Review all project progress reports and operational reports submitted by broadband providers that receive a program grant;
- Review all pending county requests made for program grants.

Other duties

The bill also requires the Authority to:

- Continually examine, and propose updates to, any broadband plan provided by law enacted by the General Assembly or Executive Order issued by the Governor;
- Identify any best practices for, and impediments to, the continued expansion of tier two service infrastructure and technology in the state;
- Coordinate and promote the availability of publicly accessible digital literacy programs to increase fluency in the use and security of interactive digital tools and searchable networks, including the ability to use digital tools safely and effectively for learning, collaborating, and producing;

- Identify, examine, and report on any federal or state government grant or loan program that would promote the deployment of tier two service infrastructure and technology in Ohio;
- Track the availability, location, rates and speeds, and adoption of programs that offer tier one service and tier two service in an affordable manner to low income consumers in Ohio.

Report

The bill requires the Authority to submit a written public report of its findings and recommendations to the Governor and the General Assembly by December 1 each calendar year and make the report available on DOD's website. The report must receive approval from a majority of the Authority's members, and it may not disclose any proprietary information or trade secrets.

It appears this annual report is separate from the annual report that focuses entirely on the grant program, with the result that the Authority must make two annual reports. See "**Authority grant program report**" (below).

Application process for program grants

A broadband provider may apply for a program grant under the grant program, and program grants may be awarded only for eligible projects.

Ineligible projects

The bill specifies that an application is ineligible for a program grant if either of the following apply:

- It proposes to provide tier two service to areas where such service is presently available;
- In the proposed area of service, construction of a network to provide tier two service currently is in progress and either (1) it is being constructed, without grant program funding, by the broadband provider that submitted the application or (2) it is scheduled to be completed by another broadband provider not later than two years after the date of a challenge to the application is submitted. See "**Project challenge process**" (below).

Application process

Under the bill, DOD must accept applications from broadband providers for program grants each fiscal year. Applications may be submitted in person, by certified mail or email, or uploaded to a designated DOD website for applications.

To apply, a broadband provider must submit an application to DOD on a form DOD prescribes. The form must include a statement informing the applicant that failure to comply with the grant program or to meet the required tier two service proposed in the application may require the refund of all or a portion of the program grant awarded for the project.

Application requirements

Grant program applications must include, at a minimum, the following information for an eligible project:

- The location and description of the project, including:
  - The residential addresses in the unserved or tier one areas where tier two service will be available upon project completion; and
  - A notarized letter of intent by the broadband provider that (1) the provider will provide access to tier two service to all of the residential addresses listed in the project and (2) none of the funds provided by the program grant will be used to extend or deploy facilities to any residences other than those in unserved or tier one areas that are part of the project.
- The amount of the broadband funding gap and the amount of state funds requested;
- The amount of any financial or in-kind contributions to be used towards the broadband funding gap and identification of the contribution sources, which, in any combination, may include:
  - Funds that the broadband provider is willing to contribute to the broadband funding gap;
  - Funds received or approved under any other federal or state government grant or loan program;
  - General revenue funds of a municipal corporation, township, or county comprising the area of the eligible project;
  - Other discretionary funds of the municipal corporation, township, or county comprising the area of the eligible project;
  - Any alternate payment terms permitted as described in "**Funding from video service providers (VSPs)**" (below) that the broadband provider and any legislative authority in which the project is located have negotiated and agreed to;
  - Contributions or grants from individuals, organizations, or companies;
  - Property tax assessments made by a municipal corporation, township, or county as described under "**Funding from special assessments**" (below).
- The source and amount of any financial or in-kind contributions received or approved for any part of the overall eligible project cost, but not applied to the broadband funding gap;
- A description of, or documentation demonstrating, the broadband provider's managerial and technical expertise and experience with broadband service projects;
- Whether the provider plans to use wired, wireless, or satellite technology to complete the project;
- A description of the scalability of the project;

- The megabit-per-second broadband download and upload speeds planned for the project;
- A description of the broadband provider's customer service capabilities, including any locally based call centers or customer service offices;
- A copy of the broadband provider's general customer service policies, including any policy to credit customers for service outages or the provider's failure to keep scheduled appointments for service;
- The length of time that the broadband provider has been operating in Ohio;
- Proof that the broadband provider has the financial stability to complete the project, which, to meet this requirement, may be publicly available financial statements submitted with the application;
- A projected construction timetable, including the anticipated date of the provision of tier two service access within the project;
- A description of anticipated or preliminary government authorizations, permits, and other approvals required in connection with the project, and an estimated timetable for the acquisition of such approvals;
- A notification from the broadband provider informing DOD of any information contained in the application, or within related documents submitted with it, that the provider considers proprietary or a trade secret;
- A notarized statement that the broadband provider accepts the condition that noncompliance with the grant program requirements may require the provider to refund all or part of any program grant the provider receives;
- A brief description of any arrangements, including any subleases of infrastructure or joint ownership arrangements that the broadband provider that submitted the application has entered into, or plans to enter into, with another broadband provider, an electric cooperative, or an electric distribution utility (EDU), to enable the offering of tier two service under the project;
- Other relevant information that DOD determines is necessary and prescribes by rule;
- Any other information the broadband provider considers necessary.

Application submission period

Under the bill, applications must be accepted during a submission period specified by the Authority, each of which must be at least 60, but not more than 90 days. During each fiscal year, there may not be more than two submission periods.

Incomplete applications

The bill requires DOD to notify a broadband provider if its application is incomplete and to list in the notification what information is incomplete. The notification must also describe the procedure for refiling a completed application.

If an application is determined to be incomplete, DOD must review the application if it is completed and refiled before the end of the submission period. The bill allows the application to be refiled not later than 14 days after the end of the submission period, if DOD, for good cause shown, has granted the broadband provider an extension period of up to 14 days in which to file the completed application.

DOD must deny an incomplete application if the provider fails to complete and refile it within the applicable submission period or extension period.

Proprietary and trade secret information

Under the bill, DOD, according to rules it adopts, must evaluate the information and documents submitted with a broadband provider's application or with a challenge to the application submitted by another broadband provider. The purpose of the evaluation is to determine whether the information or documents are proprietary or constitute a trade secret. When DOD receives the information and documents, it must keep them confidential and may not publish them on DOD's website. If DOD finds that any information or document is not proprietary or a trade secret, it is not considered confidential and must be published on the website according to the bill's requirements.

Financial assurance condition for receiving grants

As a condition for receiving a program grant, the Authority may require a broadband provider awarded a program grant to provide a performance bond, letter of credit, or other financial assurance acceptable to the Authority before construction begins. The purpose of the performance bond, letter of credit, or other financial assurance is to assure completion of the project and is not required after the project is complete.

The bond, letter of credit, or assurance must be in the sum, and with the sureties, that the state prescribes and must be payable to the state, as applicable. The bond, letter of credit, or assurance may include the condition that the provider will faithfully execute and complete the project.

DOD application website

Although DOD may not publish an application on DOD's website if it has been denied, certain application information must be published on the website. Under the bill, DOD must publish:

- The scoring system for reviewing applications at least 30 days before the application submission period described in "**Scoring system for application review**" (below);
- Requests to DOD from boards of county commissioners to solicit program grant applications, as described under "**County-requested solicitation for program grants**" (below);
- For each completed application:
  - The list of residential addresses included with the application, not later than five days after the close of the submission period in which the application is made; and

- All information DOD determines is not confidential not later than 35 days after the close of the submission period in which the application is made.

- Any updates to the status of an application following a challenge made as described in "**Project challenge process**" (below);
- The program grants awarded under the grant program;
- The Authority's grant program annual report.

Notification process

The bill requires DOD to establish an automatic notification process through which interested parties may receive email notifications when DOD publishes grant program application and other information on its website.

County-requested solicitation for broadband providers

The bill permits a board of county commissioners, upon adoption of a resolution, to request DOD to solicit applications from broadband providers for program grants. The solicitations are to be for eligible projects in the municipal corporations and townships of the county. A county request must identify, to the extent possible, the residential addresses in unserved or tier one areas of the county and provide a point of contact at the county, municipal corporations, and townships in which the addresses are located. The request may include any relevant information, documents, or materials that may be helpful for an application.

If DOD receives a request from a board of county commissioners, it must, on behalf of the county, solicit applications for program grants. Not later than seven days after it receives the county's request, DOD must make the request and accompanying information submitted with it, available on its website for a period not to exceed two years. Under the bill, DOD is not responsible for any failure by a broadband provider to respond to the request or to submit a program grant application.

If a provider applies for a program grant in response to a DOD solicitation, the application submitted by the provider must fully comply with all grant program requirements. And, as specified under the bill, nothing in the program grant solicitation process may be construed as providing relief from compliance with any program requirements.

Project challenge process

Under the bill, a program grant application may be challenged by a "challenging provider." A "challenging provider" is either of the following:

- A broadband provider that provides tier two service within or directly adjacent to an eligible project;
- 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.

A challenge to all or part of a completed application for a project's program grant must be in writing and must be made not later than 65 days after the close of the application submission period or the extension period, if one is granted by DOD.

The challenge deadline may be extended by DOD for up to 14 days, for good cause shown. However, no challenge may be accepted before the completed application is published in its entirety on the Department's website.

The bill requires a challenging provider to provide a written copy of the challenge by certified mail to DOD and the broadband provider that submitted the application (applicant provider). The copy sent to DOD may include any information that the challenging provider considers to be proprietary or a trade secret. Proprietary information or trade secrets may be redacted from the copy sent to the applicant provider.

Challenge evidence

The bill specifies the requirements for successfully challenging an application. To do so, a challenging provider must provide sufficient evidence to DOD demonstrating that all or part of a project under the application is ineligible for a grant. The challenge must, at minimum, include the following information:

- Sufficient evidence disputing the notarized letter of intent submitted with the application that the eligible project contains unserved or tier one areas;
- Sufficient evidence attesting to the challenging provider's existing or planned offering of tier two service to all or part of the eligible project, which evidence must include the following:
  - With regard to existing tier two service, a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider offers broadband service;
  - With regard to the planned provision of tier two service by a challenging provider being constructed or scheduled to be completed within two years of the challenge date (1) a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider will offer broadband service and (2) a summary of the construction efforts that includes the dates when tier two service construction is expected to be completed and when tier two service will first be offered to the part of the eligible project being challenged.

To demonstrate that all or part of a project under an application is ineligible for a program grant under the bill, a challenging provider may present shapefile data, residential addresses, maps, or similar geographic details. But, the bill specifies that census block or census tract level data is not acceptable as evidence of the ineligibility of all or part of the project.

Challenge response

The bill specifies that the Authority has a 30-day period after receipt of an application challenge in which to take action. The Authority may do either of the following:

- Suspend all or part of the application being challenged;
- Reject the challenge, approve the application, and proceed with the application process.

The Authority must notify the applicant provider and the challenging provider of any decision regarding the challenge by providing a copy of the decision by certified mail or email. The Authority also must update the status of the application on DOD's website.

Application revisions permitted

The bill requires the Authority to allow the applicant provider to revise its application, if the Authority upholds a challenge to, or suspends, all or part of the application. The applicant provider may revise and resubmit the application not later than 14 days after receiving the Authority's suspension notification. For good cause shown, the Authority, upon request of the applicant provider, may grant an extension period of up to 14 days in which the applicant provider may resubmit the application. The bill specifies that the applicant provider cannot expand the scope or impact of the original application or add any new residential addresses to the eligible project in the application.

An applicant provider must provide a copy of the revised application to the Authority and challenging provider by certified mail or email, or by uploading it to DOD's designated website for applications. The bill requires DOD to publish the revised application on its public website provided that any information determined to be proprietary or a trade secret is redacted.

The bill specifies that any failure to respond to the notification or to properly revise the application to the Authority's satisfaction is considered to be a withdrawal of the application.

Within 14 days of receipt of a revised application, the Authority must review it and decide whether to accept it or uphold the challenge. The Authority must provide a copy of its decision to both the applicant provider and the challenging provider by certified mail or email and must update the status of the application on DOD's website. Under the bill, the Authority's decision is considered final, and further challenges to the revised application are prohibited.

Failure of challenging provider after challenge is upheld

Under the bill, a challenging provider may be subject to payments and penalties in addition to other remedies available under the law if the challenging provider fails to provide tier two service as described in a challenge that has been upheld by the Authority. After a reasonable opportunity to be heard, the challenging provider may be required to (1) pay to DOD the amount of the original broadband funding gap for the application that was challenged, (2) comply with the requirements of any other penalties prescribed by DOD rule and imposed after consultation with the Authority, or (3) both.

Scoring system for application review

The bill requires DOD in consultation with the Authority, to establish a weighted scoring system to evaluate and select applications for program grants. The scoring system must be available on DOD's website at least 30 days before the beginning of the application submission period. Under the scoring system, applications must be prioritized, from highest to lowest weight, in the following order, for those eligible projects that are:

- For unserved areas, rather than tier one areas;

- Located within distressed areas as defined under the Urban and Rural Initiative Grant Program;
- Receiving or approved to receive any financial or in-kind contributions towards the broadband funding gap identified in the application, including the amounts and proportions of the contributions;
- Proposing construction that will utilize state rights-of-way or otherwise require attachment to, or use of, public facilities or conduit to provide tier two service to an eligible project;
- Based on proposed upstream and downstream speeds and the scalability of the tier two service infrastructure proposed to be deployed to speeds higher than 25 megabits per second downstream and 3 megabits per second upstream;
- Based on each of the following, in equal measure, without favoring one broadband provider over another:
  - Demonstrated support, supported by evidence, for community and economic development efforts in, or adjacent to, the projects, including the provision of tier two service to commercial and nonresidential entities as a result of, but not funded directly by, the grant program;
  - The broadband provider's experience, technical ability, and financial capability in successfully deploying and providing tier two service;
  - The length of time the broadband provider has been providing tier two service in Ohio;
  - The extent to which funding is necessary to deploy tier two service infrastructure in an economically feasible manner to the eligible project;
  - The ability of the broadband provider to leverage nearby or adjacent tier one or tier two service infrastructure to facilitate the proposed deployment and provision of tier two service to the eligible project;
  - If existing tier one or tier two service infrastructure exists in the area of the eligible project, the extent to which the project utilizes or upgrades the existing tier one or tier two infrastructure, rather than duplicates it;
  - The eligible projects' location within Ohio opportunity zones.[20]

The bill allows DOD to include any other factors in the scoring system that it determines to be reasonable, appropriate, and consistent with the purpose of facilitating the economic deployment of tier two service to unserved or tier one areas. But, the additional factors must be considered after the weighted factors described above.

[20] R.C. 122.19 and 122.84, not in the bill.

Program grant awards

The Authority must award program grants after reviewing applications sent by DOD. Awards must be granted after the Authority scores them according to the scoring system described above. The bill requires the Authority to consider all regulatory obligations under applicable law before awarding grants, but it does not state to what regulatory obligations the requirement refers. The bill requires the Authority to notify the applicant providers of its award decisions and publish the grant awards on DOD's website.

When making grant awards, the Authority may not consider the following:

- Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified for the grant program;
- Factors that would constrain a broadband provider that receives a program grant from offering or providing tier two service in the same manner as the service is offered in other areas of the state by providers that do not receive funding from the grant program.

The bill requires a broadband provider's eligible project under the grant program to be awarded a program grant by the Authority before the project may proceed. After receiving a program grant award, the provider must construct and install last mile broadband infrastructure to the eligible project.

Funding for program grants

Program grants awarded by the Authority must be awarded using funds appropriated by the General Assembly for the grant program. Collections for noncompliance payments and penalties under the bill must be deposited in the General Revenue Fund,[21] but the bill does not specify how the money from these payments and penalties is to be used. The bill requires DOD to administer and provide staff assistance for the grant program,[22] but does not expressly provide funding for the administration of the grant program.

Appropriation

The bill makes appropriations from the General Revenue Fund to DOD to be used to make program grants.

Funding process

Under the bill, DOD must fund program grants each fiscal year until funds for that fiscal year are no longer available. If any applications are left pending at the end of the fiscal year, the bill specifies that they be deemed denied. But, the bill permits applications to be refiled in a subsequent fiscal year provided that all application information is still current or has been updated.

[21] R.C. 122.4017 and 122.4037.

[22] R.C. 122.401.

Funding from video service providers (VSPs)

The bill specifies that a broadband provider may designate VSP fees remitted by the provider towards an eligible project's broadband funding gap. To do this, a provider must enter into an arrangement to designate the contribution under the following circumstances:

- The broadband provider is a VSP that collects and remits VSP fees to one or more legislative authorities in which an eligible project is located;
- The arrangement is entered into by mutual consent with one or more of the legislative authorities in which the eligible project is located.

The Video Service Authorization law permits the quarterly collection of fees from VSPs for payment to each municipal corporation or township in which the VSP offers video service. VSPs may collect the fee from subscribers that have a service address within the municipal corporation or township.[23]

Under alternative payment term arrangements, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all the eligible project costs incurred by the VSP prior to completion of the project or the award of a program grant.

Funding from special assessments

The bill permits municipal corporations, townships, and counties to levy special assessments if a program grant is awarded for an eligible project under the grant program. Under the bill, a special assessment may be levied upon residential property within the municipal corporation, township, or county for the purpose of providing a contribution by the county towards the funding gap for the eligible project. Assessments may only be levied on the property that is subject to the eligible project. Municipal corporation, county, and township assessments must be at a rate that will produce a total assessment that is not more than the county's or township's contribution toward the funding gap for the eligible project.

Before adopting the resolution for such an assessment, the township or county must send written notice of the assessment to the affected property owner stating the estimated assessment. The bill provides a procedure for a property owner to file a written objection with the board of township trustees or the board of county commissioners as appropriate within two weeks after the assessment notice was mailed. The board must review the written objection and may revise the estimated assessment before adopting the resolution authorizing it. The property owner may go to court to appeal the final assessment for the property levied in the resolution.

The board of township trustees or the board of county commissioners as appropriate must certify the amounts to be levied upon each affected property to the county auditor, who must enter the amounts on the tax duplicate for collection by the county treasurer in the same manner as the collection of taxes on real property. The assessments, when collected from property owners, must be paid into a special fund in the county treasury or township treasury

[23] R.C. 1332.32, not in the bill.

created for funding an eligible project that has received a program grant and is located in the county or township. The money from the fund may only be used for the purposes for which the assessments were levied.

Assessments to property in a municipal corporation that are permitted under the bill are likely subject to current law provisions such as those that provide for notices of estimated assessments to be sent to affected property owners, procedures for a property owner to object to an assessment, and for hearings regarding the objection.[24]

The bill permits the taxing authority of the municipal corporation, township, or county to issue securities in anticipation of its levy or collection of special assessments to pay the costs of the broadband funding gap portion for an eligible project under the bill.

Distribution of program grant funds

As established by the bill, program grants awarded by the Authority must be disbursed by DOD as follows:

- Up to 30% of the grant must be disbursed before project construction begins;
- Up to 60% of the grant must be disbursed through periodic payments over the course of the eligible project's construction as determined by DOD rules;
- The remainder of the grant must be disbursed not later than 60 days after the broadband provider notifies the Authority that it has completed construction of the project.

Speed verification

The bill permits DOD, through an independent third party, to conduct speed verification tests of an eligible project that receives a program grant. The tests must occur (1) after the construction is complete, but prior to the final disbursement of the program grant to verify that tier two service is being offered and (2) after receiving a complaint concerning a residence that is part of the eligible project, at any time during the reporting period for operational reports described in "**Grant award reports**" (below).

To evaluate compliance with tier two service standards, speed verification tests conducted under the bill must be conducted on at least two different days and at two different times on each of those days. DOD may withhold payments for a provider's failure to meet at least the minimum speeds stated in the project's application and may hold the payments until the speeds are achieved.

Program noncompliance

If DOD determines that a broadband provider awarded a program grant under the grant program has not complied with the requirements, the bill requires DOD to notify the provider of the noncompliance and to give the provider an opportunity to explain or cure the noncompliance, in accordance with DOD rules. DOD, after reviewing the broadband provider's explanation or effort to cure the noncompliance, may require the provider to (1) refund an amount equal to all,

[24] R.C. 727.13, 727.15, 727.16, 727.17, 727.30, and 727.301, not in the bill.

or a portion of, the provider's program grant award as determined by DOD or (2) refund to the appropriate municipal corporation, township, or county the entire amount of general revenue funds or other discretionary funds that it contributed toward the broadband funding gap.

Under the bill, a provider must pay the refund not more than 30 days after DOD's decision requiring the refund or a provider's failure to explain or cure the noncompliance. Payments must be made directly to the municipal corporation, township, or county that contributed funds toward the broadband funding gap. The bill does not specify to whom refunds of program grant awards would be made, but presumably they would be paid to DOD.

Grant award reports

Under the bill, each broadband provider that receives a program grant must submit an annual progress report to DOD. The report must provide the status of the deployment of the broadband network described in the eligible project that was awarded the program grant. The broadband provider also must submit an operational report with DOD not later than 60 days after the project's completion and annually thereafter for a period of four years. DOD may set report due dates and, for good cause shown, may grant extensions of the report due dates.

The reports and all information and documents in them must be in a format that DOD specifies and publicly available on DOD's website. However, DOD must maintain the reports, and information and documents in them, on a confidential basis and may not publish them on the its website until it determines what information or documents are not confidential.

Report contents

In the reports required by the bill, a broadband provider must include an account of how program grant funds have been used and the project's progress toward fulfilling the project's objectives for which the grant was awarded. Reports must include, at a minimum, the following:

- The number of residences that have access to tier two services as a result of the eligible project;
- The number of commercial and nonresidential entities, though not funded directly by the grant program, have access to tier two service as a result of the eligible project;
- The upstream and downstream speed of the broadband service provided;
- The average price of broadband service;
- The number of broadband service subscriptions attributable to the program grant.

Authority grant program report

The bill requires the Authority to complete an annual report for the grant program and requires the report to evaluate the success of the program grants in making tier two service available to unserved and tier one areas. It must include the following information:

- The number of applications received and the number of them that received program grants;
- The amount of broadband infrastructure constructed for eligible projects;

- The number of residences receiving, for that year, tier two service for the first time under the program;
- Findings and recommendations that have been agreed to by a majority of Authority members.

The report must be published on DOD's website and included as part of DOD's annual report of transactions and proceedings required of all state departments under current law. The Authority must present the report annually to the Governor and the General Assembly not later than December 1 of each calendar year.

Broadband infrastructure ownership rights

The bill specifies that nothing in the grant program entitles the state, DOD, the Authority, or any governmental entity to any ownership or other rights to broadband infrastructure that a broadband provider constructs with a program grant. The bill also specifies that nothing in the grant program prevents assignment, sale, change in ownership, or other similar transaction associated with broadband infrastructure constructed by a provider under the program. The bill also specifies that if such a transaction occurs, the transaction does not relieve the successor of any obligation established under the grant program.

Rules

The bill requires DOD to adopt rules for the grant program that establish an application form and application procedures, and procedures for periodic program grant disbursements. The rules may include:

- Program application requirements in addition to those specified in the bill;
- Procedures for partial funding of applications and circumstances under which partial funding is permitted;
- Procedures for Authority meetings, extension periods for applications and application challenges, hearings, and opportunities for public comment.
- Procedures to implement the bill's provisions regarding county-requested solicitations for program grants.

The bill specifies that rules adopted under the bill are not subject to the requirements in current law governing agency review of rules to identify regulatory restrictions. In addition, DOD and the Authority are exempted from the requirements of that law governing the "remove two regulatory restrictions to adopt one regulatory restriction," with respect to the rules adopted under the bill.

Use of electric cooperative easements for broadband

(R.C. 188.01 to 188.30)

The bill provides that an easement granted to an electric cooperative for the purpose of transmitting, delivering, or otherwise providing electric power (easement) may be used,

apportioned, or subleased to provide broadband service. The bill also provides such use, apportionment, or sublease is not to be considered an additional burden on the servient estate.

Definitions

Definitions regarding the use of an electric cooperative easement for broadband under the bill include those listed in the table below:

Term	Definition
"Broadband service"	Any wholesale or retail service that consists of, or includes the provision of, connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources and that either provides access to the internet or provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" includes video service, voice-over-internet-protocol service, and internet protocol-enabled services. *(R.C. 188.01(A).)*
"Electric cooperative"	A not-for-profit electric light company, as defined under the competitive retail electric service law, that both is or has been funded under the federal Rural Electrification Act of 1936 and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or a not-for-profit successor of that company *(R.C. 188.01(B); R.C. 4928.01(A)(5), not in the bill).*
"Internet protocol-enabled services"	As defined in ongoing telecommunications law, any services, capabilities, functionalities, or applications that are provided using internet protocol or a successor protocol to enable an end user to send or receive communications in internet protocol format or a successor format, regardless of how any particular such service is classified by the Federal Communications Commission (FCC), and includes voice over internet protocol service *(R.C. 188.01(C); R.C. 4927.01(A)(6), not in the bill).*
"Servient estate"	The land burdened by an easement (this, simply, is the land over or through which the easement runs) *(R.C. 188.01(D)).*
"Video programming"	Any programming generally considered comparable to programming provided by a television broadcast station *(R.C. 188.01(E)).*
"Video service"	Video programming services without regard to delivery technology, including internet protocol technology and video programming provided as a part of a service that enables users to access content, information, email, or other services offered over the public internet *(R.C. 188.01(F)).*

Term	Definition
"Voice over internet protocol service"	A service, as defined in ongoing telecommunications law, that enables real-time, two-way, voice communications that originate or terminate from the user's location using internet protocol or a successor protocol, including any such service that permits an end user to receive calls from and terminate calls to the public switched network *(R.C. 188.01(C); R.C. 4927.01(A)(17), not in the bill).*

Easement action

The bill provides that if a servient estate owner brings an action regarding the use, apportionment, or sublease of the easement for broadband service (easement action), a court may award damages to the owner equal to not more than the difference between the following:

- The fair market value of the owner's interest in the property of the estate immediately before the provision of broadband service;
- The fair market value of the owner's interest in the property of the estate immediately after the provision of broadband service.

Establishment of fair market value

The fair market values used in the calculation of damages must be established by the testimony of a qualified real estate appraiser. The bill does not indicate how the appraiser is to be chosen.

Fixed amount of damages

The bill provides that any damages awarded under the easement action must be a fixed amount that cannot continue, accumulate, or accrue.

Evidence of revenue or profits not allowed

The bill provides that past, current, or future revenues or profits derived or to be derived from the use, apportionment, or sublease of the easement for broadband service are not admissible for any purpose in the easement action.

Injunctive relief not allowed

The bill prohibits a court from granting injunctive relief or any other equitable relief in the easement action.

Statute of limitations

The bill requires that an easement action must be brought within one year of any alleged damages. Any action not brought within that time will result in forfeiture of the claim.

Other bars to bringing an action for damages

The bill prohibits a servient estate owner from bringing an easement action in the following circumstances:

- When the owner directly, or through the owner's membership in the electric cooperative or otherwise, authorized the electric cooperative's electric delivery system for the provision of broadband services;
- The owner, or any of the previous owners of the property that makes up the servient estate, has agreed to, or granted permission for, the use of the easement to provide broadband services;
- The facilities providing broadband service are used or are capable of being used to assist in the transmission, delivery, or use of electric service.

Effect of court determination

Any court determination regarding an easement subject to an easement action is considered a finding that the broadband service is an allowable use or purpose under the easement. The easement is treated as if the use or purpose was specifically stated in the terms of the easement.

Filing court determination with county recorder

The bill requires the defendant in an easement action to file the court determination with the county recorder of the county in which the servient estate is located. The recorder must make a notation in the official record that links the determination to the servient estate and the easement subject to the determination.

State power not expanded

The bill provides that it does not expand the powers of the State, its agencies, or any political subdivision beyond the authority existing under federal or state law.

Appropriation of property laws not applicable

Ohio law regarding the appropriation of property does not apply regarding the application of the bill's provisions.[25]

Electric cooperative pole attachments

(R.C. 4926.01 to 4926.60)

The bill requires that, upon request from a provider, an electric cooperative must grant the provider nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions in accordance with the bill's provisions. Generally, the bill establishes procedures for requesting and determining access to poles, pole attachment and modification provisions, and procedures for resolving pole attachment disputes.

Definitions

Definitions that apply to electric cooperative pole attachments under the bill include the following:

[25] R.C. 163.01 to 163.22, not in the bill.

Term	Definition
"Attachment"	Any wire, wireless facility, cable, antennae facility, or apparatus for the transmission of text, signs, signals, pictures, sounds, or other forms of information installed by or on behalf of a provider upon any pole owned or controlled, in whole or in part, by one or more electric cooperatives.
"Broadband provider"	A video service provider or a provider that is capable of providing tier one or tier two broadband service and is a telecommunications provider, satellite broadcasting service provider, or a wireless service provider. A "broadband provider" does not include a governmental or quasi-governmental entity.
"Electric cooperative"	A not-for-profit electric light company, as defined under the competitive retail electric service law, that both is or has been financed under the federal Rural Electrification Act of 1936 and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or not-for-profit successor of that company.[26]
"Incremental cost"	Pole attachment costs incurred by an electric cooperative for providing long-run service.
"Make-ready work"	"Make-ready," "complex make-ready," or "simple make-ready" as determined by the nature of the work required and defined in federal pole attachment regulations.[27]
"Provider"	(1) A broadband provider, (2) telecommunications service provider (a provider of telecommunications service, which is the offering of telecommunications for a fee to the public, or effectively directly to the public, regardless of the facilities used), (3) video service provider (VSP) (a person granted a video service authorization under existing VSP law), or (4) wireless service provider (a facilities-based provider of wireless service to one or more end users in Ohio).[28]

[26] R.C. 4928.01(A)(5), not in the bill.

[27] 47 Code of Federal Regulations (C.F.R.) 1.1402.

[28] R.C. 1332.21(M) and 4927.01(A)(13) and (20), not in the bill. The definitions in the bill of "provider" and "broadband provider" overlap such that the requirement that the telecommunications service provider and wireless service provider be capable of providing tier one or tier two broadband service likely becomes irrelevant for the electric cooperative pole attachment provisions under the bill.

Requesting access and review

Under the bill, a provider requesting access to an electric cooperative's poles must submit the request in writing. Upon receipt, the cooperative must review the request under a uniformly applied, efficient, and transparent process. The electric cooperative must grant or deny the access within the time frame established by the FCC, unless a court of common pleas determines a different time frame for granting or denying access.

Reasons for an electric cooperative to deny access may include: (1) insufficient capacity or (2) safety, reliability, or generally applicable engineering standards. These reasons must be applied on a nondiscriminatory basis.

The bill requires a cooperative to confirm a denial in writing. The denial must be specific and include all relevant evidence and information supporting the denial as well as an explanation of how that evidence and information relates to one or both of the factors described above on which the denial is based.

For an accepted request, the bill allows an electric cooperative to require a provider to execute an agreement for a pole attachment under nondiscriminatory, just, and reasonable rates, terms, and conditions under the bill's provisions if the cooperative requires all other attaching parties to also execute an agreement.

Make-ready work

The bill requires a provider and electric cooperative to comply with the process for make-ready work under the federal law on pole attachment requirements and FCC orders and regulations implementing that law, unless a court of common pleas establishes a different process for make-ready work. Generally, under the Code of Federal Regulations, "make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole.[29]

The cooperative must provide a good-faith estimate for any make-ready work, which must include pole replacement, if necessary. All make-ready costs must be based on the cooperative's actual costs not recovered through the annual recurring attachment rate. The cooperative must provide detailed information of the actual costs.

A cooperative that charges an annual recurring attachment fee must establish the fee in accordance with the cable pole attachment rate formula in federal law and FCC orders and regulations implementing that formula, unless a court of common pleas establishes a different attachment fee.

Attachment requirements

The bill requires a provider's attachments on an electric cooperative's poles to comply with both of the following:

[29] 47 C.F.R. 1.1402.

- The most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative;
- The National Electric Safety Code adopted by the Institute of Electrical and Electronics Engineers in effect on the date of the attachment.

The bill also specifies that nothing in the bill affects a provider or other attaching party's obligation to obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment.

Pole modification

The bill provides that if an electric cooperative's pole facility is modified, a party with a preexisting attachment to the modified facility is considered to directly benefit from a modification if, after receiving notification of the modification, the party adds to or modifies its attachment.

The bill requires all parties that obtain access to the facility as a result of a modification and all parties that directly benefit from the modification to share proportionately in the modification cost. Also, if a party makes an attachment to the facility after the completion of the modification, the party must share proportionately in the costs of the modification if that modification rendered the added attachment possible.

In contrast, a party with a preexisting attachment to a pole is not required to pay any costs for rearranging or replacing its attachment if the rearrangement or replacement is necessary because of another party's request for an additional attachment or modification of an existing attachment. This does not apply if a modification by an electric cooperative is necessary for an electric service that uses smart grid or other technology.

Pole attachment disputes

Complaints

The bill allows, subject to the bill's "**Venue requirements**" (see below), an electric cooperative or provider to file a complaint regarding pole attachment disputes with the court of common pleas of the county in which the cooperative's Ohio headquarters is located. The bill also gives those courts jurisdiction to hear complaints and grant remedies under the bill regarding attachment disputes for which a complaint is filed.

Venue requirements

The bill specifies that any civil proceeding that is a pole attachment complaint is also considered a special statutory proceeding under Ohio's Rules of Civil Procedure (Civil Rules) and must be conducted in accordance with the Civil Rules for commencement of an action, but not the general venue provisions.[30]

The bill specifies that venue for pole attachment complaint proceedings is in the county in which the cooperative's Ohio headquarters is located, provided that at least some portion of

[30] Civ.R. 1(C) and (C)(8), and Civ.R. 3, not in the bill.

the attachment will occur in that county. If no portion of the attachment is in the county in which the headquarters is located, or if more than one cooperative is a party to the complaint, then venue is in the county in which the largest physical portion of the attachment will occur.

Under the bill, court orders relative to venue are final orders that may be reviewed, affirmed, modified, or reversed as specified in Ohio law for procedure on appeal. And, orders not specifically related to venue are reviewable on appeal in the same manner as judgments in any civil action.[31]

Land acquisitions under Ohio law governing the appropriation of property are not affected by the bill. They must be heard in a venue as provided under that law for procedure on appeal or Civil Rule 3.[32]

Burden of proof and court determinations

Before a common pleas court may grant any remedy under the bill regarding a pole attachment complaint, the complainant must establish, and the court must determine, by a preponderance of evidence, each of the following:

- That any rate, term, or condition complained of is not just and reasonable or a denial of access was unlawful;
- If the complaint concerns any rate, term, or condition, that is (1) contained in one of the following or (2) demanded by either party as a condition to entering into one of the following:
  - A new pole attachment agreement;
  - An amendment, renewal, or replacement of an existing agreement that may be terminated, amended, renewed, or replaced on or after the effective date of the bill.
- If the complaint concerns any rate, term, or condition, that the provider and the cooperative first attempted to negotiate regarding the terms of a new, amended, renewed, or replaced agreement for a period of at least 45 days prior to filing the complaint.

The complainant has the burden to establish a prima facie case that the rate, term, or condition complained of is not just and reasonable, or that the denial of access was unlawful. In a denial of access case, the electric cooperative has the burden of establishing, by a preponderance of the evidence, that the denial was lawful after the complainant establishes a prima facie case.

In a pole attachment complaint, if an electric cooperative claims that the proposed rate is lower than its incremental costs, the cooperative has the burden of establishing, by a

[31] R.C. 2905.02(B)(2), not in the bill.

[32] Civ.R. 3, not in the bill.

preponderance of evidence, its incremental costs. There is a rebuttable presumption, in a pole attachment complaint, that each of the following are just and reasonable:

- The time frame to grant or deny access, if it is within the time frame established by FCC;
- The process for make-ready work, if it is in accordance with the process for make-ready work under federal law and FCC orders and regulations implementing that process;
- The charged rate, if the cooperative can show that its charged rate does not exceed an annual recurring attachment rate calculated under the cable pole attachment rate formula in federal law and the FCC orders and regulations implementing that formula.

Remedies

Under the bill, if a court of common pleas determines that any rate, term, or condition described in the pole attachment complaint is not just and reasonable, it may do any of the following, although it is not limited to them:

- Terminate the rate, term, or condition and prescribe a just and reasonable rate, term, or condition;
- Require entry into a pole attachment agreement on just and reasonable rates, terms, and conditions;
- Require access to poles as provided under the bill;
- Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the court;
- Order a refund or payment, as appropriate.

A court-ordered refund or payment may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period described in the complaint. However, the period during which refunds or payments are made cannot exceed two years.

Finally, the bill provides that a court of common pleas determination resolving a complaint must be issued in the form of a final appealable order.

Transfer of minority business enterprise and related programs

(R.C. 121.07 and 122.92; with conforming changes in numerous other R.C. sections; Sections 518.10 to 518.16)

On July 1, 2021, the bill transfers the responsibility for the administration of certain programs currently under the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to the Department of Development (DEV) (currently called the Development Services Agency). These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program, and the veteran-friendly business procurement program. These programs require state agencies to set aside a certain amount of their contracts each year to

award to business enterprises owned by certain eligible individuals and certified under the program. These individuals, respectively, are certain racial minorities, economically and socially disadvantaged individuals, women, and veteran-friendly businesses.

The bill also changes the role of the Equal Opportunity Employment Coordinator, an office created under DAS.[33] Under current law, each office created under this current law provision is the head of a division within the department in which it is created. The bill specifies that the Coordinator is no longer the head of a division, instead reporting to a position to be determined by the DAS Director.

The bill contains numerous general transfer of authority provisions. All records, documents, files, equipment, assets, and other materials of the programs are transferred from DAS to DEV. Business related to the programs begun but not completed by DAS on July 1, 2021, must be completed by DEV. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. The rules, orders, and determinations of DAS pertaining to the programs continue in effect under DEV until modified or rescinded. Further, no judicial or administrative action or proceeding pending on July 1, 2021, is affected by the transfer, and those actions must be prosecuted or defended in the name of the Director of DEV or DEV, as appropriate. When the Equal Employment Coordinator, the Director of DAS, or DAS is referred to in any rule, contract, grant, or other document related to the administration of these programs, the reference is deemed to refer to the DEV Director or DEV, as appropriate.

The bill exempts the transfer of employees from Ohio's public employees' collective bargaining law. And, subject to general layoff provisions, DAS employees are transferred to DEV. Between July 1, 2021, and June 30, 2022, the DEV Director may establish, change, and abolish positions of DEV and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote DEV employees who are not subject to Ohio's public employees' collective bargaining law. This authority includes assigning or reassigning an exempt employee to a bargaining unit classification, but includes provisions if the new position is in a lower classification. These actions are not subject to appeal to the State Personnel Board of Review.

The bill also provides that the DEV Director may enter into one or more contracts with private or government entities for staff training and development to facilitate the transfer, and that the contracts are not subject to competitive bidding thresholds.

The bill permits the Controlling Board, upon the request of the DEV Director, to increase appropriations for any fund, as necessary, to assist in paying for increases in compensation and salaries as a result of the transfer. The bill requires the OBM Director to make budget and accounting changes made necessary by the transfer.

The bill also requires DEV, on or before September 1, 2023, to submit a report to the General Assembly and the Governor regarding the effects of the transfer, including data comparing the efficiency of the program under DAS versus DEV. The report must include, to the extent the data is available, data on the number of businesses certified, the length of time

[33] R.C. 121.04, not in the bill.

required to process certifications, and the number of complaints received from applicants regarding the process. DAS must cooperate with DEV to provide any data it might have, dating back to two years before the effective date of the transfer. The data from DEV must cover the period between July 1, 2021, and July 1, 2023. The data from DAS must cover the period from July 1, 2019, to July 1, 2021. The report also must include information regarding the number of employees transferred and the number of employees laid off pursuant to the transfer under the bill.

Finally, the bill requires the Director of the Legislative Service Commission to renumber related DAS rules to the appropriate Ohio Administrative Code Section for DEV. Any new rules or amendments to the rules implementing the transfer that are proposed before June 30, 2023, are not subject to the two-for-one requirement, which prohibits certain state agencies from adopting a new regulatory restriction unless it eliminates two or more restrictions.

Minority Development Financing Advisory Board

(R.C. 122.72, 122.73, 122.74, 122.78, 122.79, and 122.82)

The bill clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the motion picture and theatre credit, the small business investment credit, and the opportunity zone fund investment credit, rests with the Department of Development, not the Minority Development Financing Advisory Board (MDFAB). These programs and credits, under continuing law, are administered by the Department of Development, but certain erroneous cross references in current law suggest that the MDFAB has that responsibility.

Under continuing law, the MDFAB assists the Department in the administration of several minority business financing programs primarily designed to encourage the establishment and expansion of minority business enterprises.

Job creation tax credit

(R.C. 122.17)

The bill allows employers, even those currently in a job creation tax credit (JCTC) agreement, to count work-from-home employees in computing the JCTC credit amount and verifying its compliance with the agreement.

Background

Under continuing law, the Tax Credit Authority (TCA) is authorized to enter into JCTC agreements with employers to foster job creation and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the JCTC agreement). The credit may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), petroleum activity tax (PAT), domestic or foreign insurance company premiums taxes, or personal income tax. If the amount of the credit exceeds the tax otherwise due, the excess is refundable. Each employer

must file an annual report in which it reports its number of employees and payroll, among other metrics.

Work-from-home employees

Continuing law authorizes employers whose JCTC application was approved after September 28, 2017, to treat work-from-home employees the same as employees who work at the employer's project location, as long as the work-from-home employees reside in Ohio and are supervised from the project location. (This is the effective date of the provision in H.B. 49 of the 132nd General Assembly that authorized the inclusion of such employees.) Consequently, the payroll of such work-from-home employees is included in the computation of the credit, and such employees are counted towards any employment and payroll metrics required in the JCTC agreement.

The bill extends this authorization to employers whose application was approved before September 28, 2017, beginning with JCTC reporting periods ending in 2020, allowing those employers to also count those work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

DEPARTMENT OF DEVELOPMENTAL DISABILITIES

Technology First Task Force and technology first policy

- Declares that it is the policy of the state to provide individuals with developmental disabilities with access to innovative technology solutions.
- Requires the Department of Developmental Disabilities to coordinate with other state agencies to implement the policy.
- Requires the Director of Developmental Disabilities to establish, in coordination with other state agencies, the Technology First Task Force.

Medicaid rates for ICF/IID services

- Eliminates a formula for determining an ICF/IID's Medicaid payment rate that expires on July 1, 2021.
- Provides that the mean FY 2022 and FY 2023 Medicaid rates for all ICFs/IID after certain modifications are made cannot exceed $350.87.
- Requires the Department to reduce the FY 2022 and FY 2023 Medicaid rates for ICFs/IID if the federal government requires that the ICF/IID franchise permit fee be reduced or eliminated.

ICF/IID franchise permit fee

- Requires the Department to adjust the franchise permit fee rate and associated ICF/IID invoices so as not to exceed the indirect guarantee percentage if that percentage is adjusted by the U.S. Secretary of Health and Human Services at any time during a fiscal year.

Transfer of residential facility license

- Provides that a license that specifies the location of a residential facility that (1) was leased by the operator between July 1, 1995, and July 1, 1996, and (2) has been operating without a lease agreement for at least four years is not transferrable if the licensee is not the building owner.
- If the operator of such a facility no longer operates the residential facility at the location specified in the license, permits the building owner to request that the Director of Developmental Disabilities transfer the license to a different licensee or management contractor.

Developmental centers services and cost recovery

- Permits a Department developmental center to provide services to (1) individuals with developmental disabilities who reside in the community and (2) providers who provide services to such individuals.

- Permits the Department to establish a method for recovering the costs associated with providing these services.

County DD board waiver allocation plan

- Eliminates a requirement that each county DD board submit an annual plan to DD for approval.
- Instead, requires county DD boards to annually submit to the Department (1) a waiver allocation projection and (2) assurances that the board employs or contracts with both a business manager and a Medicaid services manager, or has an agreement with another county DD board that employs or contracts with those individuals.

County DD board business manager

- Eliminates the ability of a county DD board to receive a subsidy from the Department for employing a business manager.

County DD boards annual cost reports

- Permits, rather than requires, the Department, or an entity designated by DD, to audit annual cost reports submitted by a regional council or county DD board.
- Specifies that any audit conducted must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services.
- Eliminates a duplicative provision of law requiring county DD boards to submit annual cost reports to the Department.

Release of records and reports by county DD boards

- Permits disclosure of a certificate, application, record, or report that identifies a resident of an institution for persons with intellectual disabilities when needed for a guardianship proceeding.
- Permits the release of a record or report maintained by a county DD board or an entity under contract with a board when requested by a probate court for a guardianship proceeding or by the Department for certain purposes.

County share of nonfederal Medicaid expenditures

- Requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

County subsidies used in nonfederal share

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county boards.

Medicaid rates for homemaker/personal care services

- Provides for the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee in the Individual Options Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

Innovative pilot projects

- Permits the Director to authorize, in FY 2022 and FY 2023, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards.

Ohio Developmental Disabilities Council

- Updates citations to federal law regarding the creation and operation of the Ohio Developmental Disabilities Council.

Technology First Task Force and technology first policy

(R.C. 5123.025 and 5123.026)

The bill declares that it is the policy of the state that individuals with developmental disabilities have access to innovative technology solutions. As part of the policy, it provides that technology can ensure that individuals with developmental disabilities have increased opportunities to live, work, and thrive in their homes, communities, and places of employment through the use of state of the art planning, innovative technology, and supports that focus on these individuals' talents, skills, and interests.

The bill requires the following entities to implement the technology first policy: the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, the Opportunities for Ohioans with Disabilities Agency, and any other state agency that provides technology services to individuals with developmental disabilities.

As the primary agency responsible for implementing this policy, the bill requires the Department of Developmental Disabilities to partner with the Office of InnovateOhio to coordinate the actions taken by other state agencies to implement the policy. The Department and other state agencies may adopt rules to implement this policy. The Department must ensure that other agencies fully implement the policy and, in coordination with the Technology First Task Force established under the bill, must compile and annually submit data to the Governor and Lieutenant Governor regarding the policy's implementation.

The bill requires the Director of Developmental Disabilities to establish the Technology First Task Force, which is tasked with (1) expanding innovative technology solutions within the operation and delivery of services to individuals with developmental disabilities, (2) using technology to reduce the barriers individuals with developmental disabilities experience, and (3) aligning policies for all state agencies that are members of the task force.

The Technology First Task Force consists of representatives from the Office of InnovateOhio, the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, and the Opportunities for Ohioans with Disabilities Agency. The bill permits the Department of Developmental Disabilities to enter into interagency agreements with any of the agencies that are members of the task force. These agreements may specify the roles and responsibilities of the members of the task force, including any financial contributions for which each member is responsible, and the projects and activities the task force will undertake.

Medicaid rates for ICF/IID services

(Repealed R.C. 5124.171, 5124.195, 5124.196, 5125.197, 5124.198, 5124.199, 5124.211, 5124.231, and 5124.28; conforming changes in R.C. 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.21, 5124.23, 5124.29, 5124.30, 5124.38, 5124.39, 5125.40, 5124.41, and 5124.46; Section 261.150)

Under current law, an ICF/IID's Medicaid payment rate is the higher of the two rates determined under two different formulas. The older formula predates H.B. 24 of the 132nd General Assembly, which enacted the newer one in 2018. The older formula expires beginning with FY 2022, at which time an ICF/IID's rate is to be determined under the newer formula. The bill eliminates language regarding the older formula which becomes obsolete on July 1, 2021, and makes corresponding changes to existing law to reflect the elimination.

The bill requires the Department of Developmental Disabilities to make certain modifications to the new formula. The first modification concerns the target amount and requires the Department to adjust the per Medicaid day rate for ICFs/IID if the mean total per Medicaid day rate for ICFs/IID exceeds $350.87. If the mean total per Medicaid day rate is greater than $350.87, the Department must adjust the rate by the percentage by which the mean total per Medicaid day rate exceeds $350.87.

The second modification concerns the franchise permit fee that continuing law requires ICFs/IID to pay (see below). The bill provides that if the U.S. Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department must reduce the Medicaid payment rate for ICFs/IID. The reduction must reflect the loss to the state of the revenue and federal Medicaid funds generated from the franchise permit fee.

ICF/IID franchise permit fee

(R.C. 5168.60 and 5168.61)

Continuing law imposes a franchise permit fee on ICFs/IID, which is assessed quarterly. The franchise permit fee is a healthcare related tax imposed on ICFs/IID, which is used to help fund the state share of the Medicaid program for Medicaid services utilized by ICFs/IID. Any healthcare related tax must comply with federal requirements to be considered a permissible source of revenue to pay for a portion of the state share for Medicaid, including that it must (1) be broad-based, (2) be uniformly imposed throughout the state, and (3) not hold the taxpayer harmless.

Under federal law, a healthcare related tax is considered to hold a taxpayer harmless if the state provides for a payment, offset, or waiver that guarantees to hold taxpayers harmless for greater than 6% of the cost of the tax imposed. This 6% threshold is known as the indirect guarantee percentage.[34]

The bill provides that in the event that the U.S. Secretary of Health and Human Services adjusts the indirect guarantee percentage (to a percentage other than 6%) at any time during a fiscal year, the Department must adjust the franchise permit fee rate and any associated ICF/IID invoices so as not to exceed the new percentage.

Transfer of residential facility license

(R.C. 5123.19)

The bill includes provisions for residential facilities that are both of the following:

1. Were leased by the residential facility operator between July 1, 1995, and July 1, 1996; and

2. Have been operating without a lease agreement for at least four years.

Under the bill, a license that specifies the location of a residential facility meeting the above criteria is not transferrable to a different location if the licensee is not the owner of the building where the residential facility is located. If the licensee no longer operates the residential facility at the location specified in the license, the owner of the building where the residential facility is located may request that the Director of Developmental Disabilities transfer the license to a different licensee or contractor that is willing to operate the residential facility at that location. The Director must grant the license to the residential facility owner upon the owner's request. The bill clarifies that these provisions do not require the Director to issue additional residential facility licenses.

Developmental centers services and cost recovery

(R.C. 5123.034)

The bill permits a Department developmental center to provide services to individuals with developmental disabilities who reside in the community in which the center is located. Additionally, a developmental center may provide services to providers who provide services to these individuals in the community. The bill allows the Department to establish a method for recovering the costs associated with providing these services through a developmental center. There are eight developmental centers in Ohio, each of which is Medicaid-certified and licensed as an ICF/IID.

[34] 42 U.S.C. 1396b(w)(4)(C).

County DD board waiver allocation plan

(R.C. 5126.054, 5126.055, and 5126.056; repealed R.C. 5123.046)

The bill eliminates a requirement that each county DD board submit an annual plan to the Department for approval that includes, among other things, the number of individuals with developmental disabilities in the county the board serves who are on the board's waitlist, the service needs of each individual on the waitlist, and the projected annual cost for their services.

Instead, the bill requires each county DD board to submit to the Department an annual projection of the number of individuals to whom the board intends to provide home and community-based services based on available funding. Available funding must be based on the board's projected funding as indicated in its annual five-year projection report submitted to the Department.

Additionally, county DD boards are required to provide annual assurances to the Department that the board employs or contracts with a business manager, or has entered an agreement with another county board that employs or contracts with a business manager to have the business manager serve both county boards. The bill also requires county boards to assure the Department that the board employs or contracts with a Medicaid services manager, or has entered an agreement with another county board that employs or contracts with a Medicaid services manager to have the Medicaid services manager serve both. The bill prohibits the superintendent of a county DD board from serving as the board's business manager or Medicaid services manager.

County DD board business manager

(R.C. 5126.121, repealed)

The bill eliminates law that allows county DD boards to receive a subsidy from the Department to employ a business manager. To be eligible for the subsidy under current law, a county board must employ a business manager who satisfies education and experience requirements specified in rules adopted by the Department.

County DD boards annual cost reports

(R.C. 5126.05 and 5126.131; repealed R.C. 5126.12)

The bill makes it discretionary, instead of mandatory, for the Department to perform an audit of the annual cost report submitted by a county DD board or regional council. It adds that any audit that is performed must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services. Finally, it repeals a section containing a duplicative requirement that county DD boards submit annual cost reports to the Department.

Release of records and reports by county DD boards

(R.C. 5123.89 and 5126.044)

Current law generally requires that all certificates, applications, records, and reports that directly or indirectly identify a resident or former resident of an institution for persons with intellectual disabilities be kept confidential, except under specified circumstances. The bill adds

an exception to this general requirement permitting disclosure if the certificate, application, record, or report is needed for a guardianship proceeding.

Current law also generally prohibits disclosure of the identity of an individual or a record or report regarding an eligible individual that is maintained by a county DD board or an entity under contract with a board, except under specified circumstances. The bill adds two exceptions to the general prohibition. The first permits a county DD board or an entity under contract with a board to release a record or report if requested by a probate court for a guardianship proceeding. Any record or report that is released may only be released to the parties of the proceeding. The second exception permits the release of a record or report if requested by the Department for the purpose of a proceeding for admission to an institution for persons with intellectual disabilities or to comply with a court order regarding a person's competence in a criminal case.

County share of nonfederal Medicaid expenditures

(Section 261.100)

The bill requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, current law requires the board to pay this share for waiver services provided to an individual whom it determines is eligible for its services. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

County subsidies used in nonfederal share

(Section 261.130)

The bill requires the Director of Developmental Disabilities to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county DD boards if (1) Medicaid covers the services, (2) the services are provided to a Medicaid recipient who is eligible for them and the recipient does not occupy a bed that use to be included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003, (3) the services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county DD board, and (4) the provider of the services has a valid Medicaid provider agreement for the services for the time that they are provided.

Medicaid rates for homemaker/personal care services

(Section 261.140)

The bill requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services that are provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided during the period beginning July 1, 2021, and ending July 1, 2023.

An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,[35] or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.
- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The Director of Developmental Disabilities has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

Innovative pilot projects

(Section 261.120)

For FY 2022 and FY 2023, the bill permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county DD boards; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio.

Ohio Developmental Disabilities Council

(R.C. 5123.35)

The bill updates the federal law citations in existing law regarding the creation and the operation of the Ohio Developmental Disabilities Council, which is tasked with serving as an advocate for all persons with developmental disabilities.

[35] A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options Medicaid waiver program.