

**I\_133\_0236-3**

**133rd General Assembly  
Regular Session  
2019-2020**

**Sub. H. B. No. 13**

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**A BILL**

To amend sections 133.13, 727.01, and 5739.02 and 1  
to enact sections 188.01, 188.03, 188.05, 2  
188.06, 188.07, 188.08, 188.09, 188.10, 188.13, 3  
188.15, 188.16, 188.17, 188.18, 188.19, 188.20, 4  
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505.881, 4926.01, 4926.02, 4926.03, 4926.05, 12  
4926.07, 4926.08, 4926.09, 4926.10, 4926.13, 13  
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4926.42, 4926.45, 4926.47, 4963.60, 4963.601, 17  
4963.603, 4963.604, 4963.605, 4963.606, 18  
4963.607, 4963.608, 4963.6011, 4963.6012, 19  
4963.6013, 4963.6014, 4963.6015, 4963.6018, 20  
4963.6019, 4963.6020, 4963.6023, 4963.6024, 21  
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4963.6032, 4963.6034, 4963.6035, 4963.6038, 23  
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4963.6045, 4963.6048, 4963.6049, 4963.6052, 25  
4963.6053, 4963.6054, 4963.6057, 4963.6058, 26  
4963.6059, 4963.6062, 4963.6063, 4963.6065, and 27  
4963.6067 of the Revised Code regarding 28  
broadband expansion, including access to 29  
electric cooperative easements and facilities 30  
and railroad rights of way, and to make an 31  
appropriation. 32

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 133.13, 727.01, and 5739.02 be 33  
amended and sections 188.01, 188.03, 188.05, 188.06, 188.07, 34  
188.08, 188.09, 188.10, 188.13, 188.15, 188.16, 188.17, 188.18, 35  
188.19, 188.20, 188.21, 188.23, 188.24, 188.25, 188.30, 188.31, 36  
188.33, 188.34, 188.35, 188.36, 188.37, 188.40, 188.41, 188.43, 37  
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4926.03, 4926.05, 4926.07, 4926.08, 4926.09, 4926.10, 4926.13, 42  
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4926.27, 4926.30, 4926.35, 4926.36, 4926.37, 4926.38, 4926.40, 44  
4926.41, 4926.42, 4926.45, 4926.47, 4963.60, 4963.601, 4963.603, 45  
4963.604, 4963.605, 4963.606, 4963.607, 4963.608, 4963.6011, 46  
4963.6012, 4963.6013, 4963.6014, 4963.6015, 4963.6018, 47  
4963.6019, 4963.6020, 4963.6023, 4963.6024, 4963.6025, 48  
4963.6026, 4963.6030, 4963.6031, 4963.6032, 4963.6034, 49

4963.6035, 4963.6038, 4963.6041, 4963.6042, 4963.6043, 50  
4963.6044, 4963.6045, 4963.6048, 4963.6049, 4963.6052, 51  
4963.6053, 4963.6054, 4963.6057, 4963.6058, 4963.6059, 52  
4963.6062, 4963.6063, 4963.6065, and 4963.6067 of the Revised 53  
Code be enacted to read as follows: 54

**Sec. 133.13.** If the special assessments are to be paid in 55  
one annual installment, the taxing authority of a subdivision 56  
may issue securities in anticipation of its levy or collection 57  
of special assessments to pay the costs of the subdivision's 58  
broadband funding gap portion for an eligible project under 59  
sections 188.01 to 188.77 of the Revised Code, lighting, 60  
sprinkling, sweeping, cleaning, providing related or similar 61  
services or the services described in section 727.011 of the 62  
Revised Code, or of removing snow, ice, and debris from, or 63  
treating the surface of, streets, alleys, and public ways and 64  
places. 65

Such securities shall not be general obligations of the 66  
issuing subdivision, and shall not pledge to the payment of debt 67  
charges any receipts other than the special assessments 68  
anticipated, except that a municipal corporation, without 69  
incurring debt subject to direct or indirect debt limitations, 70  
may also pledge and apply proceeds of its municipal income tax 71  
to pay those debt charges. No property tax shall be levied or 72  
pledged for the payment of debt charges on the securities. The 73  
securities shall mature no later than the last day of December 74  
of the year in which the special assessments anticipated are 75  
scheduled to be collected. 76

The legislation authorizing the securities shall 77  
appropriate the special assessments anticipated, and such 78  
special assessments shall be deemed to be pledged and 79

appropriated, first to the payment of the debt charges on the 80  
securities. After provision has been made for the payment in 81  
full of those debt charges, the balance of the special 82  
assessments may be appropriated and applied for the purposes for 83  
which they were levied. 84

Sec. 188.01. As used in sections 188.01 to 188.77 of the 85  
Revised Code: 86

(A) "Application" means an application made under section 87  
188.13 of the Revised Code for a program grant. 88

(B) "Broadband funding gap" means the difference between 89  
the total amount of money a broadband provider calculates is 90  
necessary to construct the last mile of a specific broadband 91  
network and the total amount of money that the provider has 92  
determined is the maximum amount of money that is cost effective 93  
for the provider to invest in last mile construction for that 94  
network. 95

(C) (1) "Broadband provider" means one of the following: 96

(a) A video service provider as defined in section 1332.21 97  
of the Revised Code; 98

(b) A provider that is capable of providing tier one or 99  
tier two broadband service and is one of the following: 100

(i) A telecommunications service provider; 101

(ii) A satellite broadcasting service provider; 102

(iii) A wireless service provider as defined in section 103  
4927.01 of the Revised Code. 104

(2) "Broadband provider" does not include a governmental 105  
or quasi-governmental entity. 106

(D) "Eligible project" means a project to provide tier two broadband service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under sections 188.13 to 188.46 of the Revised Code. 107  
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(E) "Last mile" means the last portion of a physical broadband network that connects an eligible project to the broader network used to provide tier two broadband service, and to which all of the following apply: 112  
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(1) It includes other network infrastructure in the last portion of the network that is needed to provide tier two broadband 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. 116  
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(2) It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance. 121  
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(F) "Ohio residential broadband expansion grant program" means the program established under sections 188.01 to 188.77 of the Revised Code. 123  
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(G) "Program grant" means money awarded under the Ohio residential broadband expansion grant program to assist in covering the broadband funding gap for an eligible project. 126  
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(H) "Satellite broadcasting service" has the same meaning as in section 5739.01 of the Revised Code. 129  
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(I) "Telecommunications service" has the same meaning as in section 1332.21 of the Revised Code. 131  
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(J) "Tier one broadband service" means a retail wireline or wireless broadband service capable of delivering internet 133  
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access at speeds of at least ten but less than twenty-five 135  
megabits per second downstream and at least one but less than 136  
three megabits per second upstream. 137

(K) "Tier two broadband service" means a retail wireline 138  
or wireless broadband service capable of delivering internet 139  
access at speeds of at least twenty-five megabits per second 140  
downstream and at least three megabits per second upstream. 141

(L) "Tier one area" means an area that has access to tier 142  
one broadband service but not tier two broadband service. "Tier 143  
one area" includes an area where construction of a network to 144  
provide tier one broadband service is in progress and is 145  
scheduled to be completed within a two-year period. "Tier one 146  
area" excludes an area where construction of a network to 147  
provide tier two broadband service is in progress and is 148  
scheduled to be completed within a two-year period. 149

(M) "Unserved area" means an area without access to tier 150  
one broadband service or tier two broadband service. "Unserved 151  
area" excludes an area where construction of a network to 152  
provide tier one broadband service or tier two broadband service 153  
is in progress and is scheduled to be completed within a two- 154  
year period. 155

**Sec. 188.03.** There is hereby established the Ohio 156  
residential broadband expansion grant program within the 157  
department of commerce. The department shall administer and 158  
provide staff assistance for the program. The department shall 159  
be responsible for receiving and reviewing applications for 160  
program grants and for sending completed applications to the 161  
broadband expansion program authority for final review and award 162  
of program grants. 163

Sec. 188.05. (A) (1) There is hereby created, within the 164  
department of commerce, the broadband expansion program 165  
authority, which shall consist of the director of commerce or 166  
the director's designee, the chief investment officer of 167  
JobsOhio or the chief investment officer's designee, and three 168  
other members as follows: one member appointed by the president 169  
of the senate, one member appointed by the speaker of the house 170  
of representatives, and one member appointed by the governor. 171

(2) Appointed members shall have expertise in broadband 172  
infrastructure and technology. Appointed members may not be 173  
affiliated with or employed by the broadband industry or in a 174  
position to benefit from a program grant. 175

(3) The assignment of designees by the director and the 176  
chief investment officer shall be made in writing. 177

(B) Appointed members shall serve four year terms and are 178  
eligible for reappointment. 179

(C) Vacancies shall be filled in the same manner as 180  
provided for original appointments. Any member appointed to fill 181  
a vacancy occurring prior to the expiration of the term for 182  
which the member's predecessor was appointed shall hold office 183  
for the remainder of that term. 184

(D) (1) (a) Appointed members shall receive a monthly 185  
stipend as calculated under section 145.016 of the Revised Code 186  
in an amount that will qualify each member for one year of 187  
retirement service credit under the Ohio public employees 188  
retirement system for each year of the member's term. 189

(b) Notwithstanding the requirement of section 145.58 of 190  
the Revised Code that eligibility for health care coverage 191  
provided under that section be based on years and types of 192

service credit in accordance with rules adopted by the public 193  
employees retirement board, if the board provides health care 194  
coverage under that section, no service credit earned for 195  
service as a member of the authority shall be considered for 196  
purposes of determining eligibility for coverage under that 197  
section. 198

(c) Members shall receive reimbursement for their 199  
necessary and actual expenses incurred in performing the 200  
business of the authority. The reimbursements constitute, as 201  
applicable, administrative costs of the Ohio residential 202  
broadband expansion grant program. 203

(2) An appointed member of the authority who is currently 204  
serving as an administrative department head under section 205  
121.03 of the Revised Code is not eligible to receive a stipend 206  
under division (A) of this section. 207

(3) The department shall be responsible for paying all 208  
reimbursements and stipends under this section. 209

(E) The director, or the director's designee, shall serve 210  
as chairperson of the authority. The members of the authority 211  
annually shall elect a vice-chairperson from the members of the 212  
authority. Three members of the authority constitute a quorum to 213  
transact and vote on the business of the authority. An 214  
affirmative vote of three members is necessary to approve any 215  
business, including the election of the vice-chairperson. 216

(F) If the director assigns a designee to serve on the 217  
authority, the director shall appoint a professional employee of 218  
the department of commerce to serve as the director's designee 219  
at authority meetings. In the absence of the director or the 220  
director's designee, the vice-chairperson of the authority shall 221

<u>serve as chairperson of authority meetings.</u>	222
<u>(G) The authority is not an agency for purposes of</u>	223
<u>sections 101.82 to 101.87 of the Revised Code.</u>	224
<b><u>Sec. 188.06.</u></b> (A) <u>Members of the broadband expansion</u>	225
<u>program authority may attend meetings of the authority</u>	226
<u>electronically by means of electronic communication if all of</u>	227
<u>the following apply:</u>	228
<u>(1) At least three of the members attending the meeting</u>	229
<u>are present in person at the place where the meeting is</u>	230
<u>conducted.</u>	231
<u>(2) The means of electronic communication permits, for the</u>	232
<u>duration of the meeting, simultaneous communication among the</u>	233
<u>members attending electronically, the members attending in</u>	234
<u>person, and all members of the public attending in person.</u>	235
<u>(3) All votes taken at the meeting are to be taken by roll</u>	236
<u>call vote.</u>	237
<u>(B) Except in the case of an emergency, a member who</u>	238
<u>intends to attend a meeting by means of electronic communication</u>	239
<u>shall notify the chairperson of the member's intent not less</u>	240
<u>than forty-eight hours before the scheduled time of the meeting.</u>	241
<b><u>Sec. 188.07.</u></b> <u>The broadband expansion program authority</u>	242
<u>shall consider each application for a program grant that the</u>	243
<u>department of commerce has reviewed and sent to it. The</u>	244
<u>authority shall score all applications according to the scoring</u>	245
<u>system established under section 188.40 of the Revised Code and</u>	246
<u>award program grants based on that system according to sections</u>	247
<u>188.43 and 188.44 of the Revised Code.</u>	248
<b><u>Sec. 188.08.</u></b> <u>The broadband expansion program authority</u>	249

<u>shall do the following:</u>	250
<u>(A) Continually examine, and propose updates to, any</u>	251
<u>broadband plan provided by law enacted by the general assembly</u>	252
<u>or executive order issued by the governor;</u>	253
<u>(B) Monitor the Ohio residential broadband expansion grant</u>	254
<u>program, including by doing the following;</u>	255
<u>(1) Tracking the details for annual applications to the</u>	256
<u>program, including:</u>	257
<u>(a) The number of applications;</u>	258
<u>(b) The geographic locations of the eligible projects</u>	259
<u>listed in the applications;</u>	260
<u>(c) The broadband providers submitting applications;</u>	261
<u>(d) A description of the tier two broadband infrastructure</u>	262
<u>and technology proposed in applications;</u>	263
<u>(e) A description of any public right-of-way or public</u>	264
<u>facilities to be utilized for the projects;</u>	265
<u>(f) The speeds of the tier two broadband services under</u>	266
<u>the projects;</u>	267
<u>(g) The amount of the grant funds requested for each</u>	268
<u>project and the proportion of project funding to be provided by</u>	269
<u>the broadband provider and by other entities;</u>	270
<u>(h) The number of residential and nonresidential locations</u>	271
<u>that will have access to tier two broadband service under</u>	272
<u>each</u>	273
<u>project.</u>	274
<u>(2) Tracking the program grants awarded annually,</u>	275

<u>including:</u>	276
<u>(a) The number of program grants;</u>	277
<u>(b) The geographic location or locations of the projects;</u>	278
<u>(c) The broadband providers that received program grants and the entities or companies that submitted the application;</u>	279 280
<u>(d) A description of the tier two broadband infrastructure and technology deployed in each project;</u>	281 282
<u>(e) A description of any public right-of-way or public facilities utilized as part of the project;</u>	283 284
<u>(f) The speeds of the tier two broadband services enabled by each project;</u>	285 286
<u>(g) The amounts of each program grant, the share of the project funding provided by the broadband provider, and any share of the project funding provided by other entities;</u>	287 288 289
<u>(h) The number of residential and nonresidential locations that will have access to tier two broadband service for each project.</u>	290 291 292
<u>(3) Listing the amount of any unencumbered program grant funds that remain available for award under the Ohio residential broadband expansion grant program;</u>	293 294 295
<u>(4) Any additional factors deemed necessary by the authority to monitor the program.</u>	296 297
<u>(C) Review all progress reports and operational reports required under section 188.70 of the Revised Code.</u>	298 299
<u>(D) Review all pending county requests made pursuant to section 188.51 of the Revised Code for program grants.</u>	300 301

(E) Identify any best practices for, and impediments to, 302  
the continued expansion of tier two broadband infrastructure and 303  
technology in the state; 304

(F) Coordinate and promote the availability of publicly 305  
accessible digital literacy programs to increase fluency in the 306  
use and security of interactive digital tools and searchable 307  
networks, including the ability to use digital tools safely and 308  
effectively for learning, collaborating, and producing; 309

(G) Identify, examine, and report on any federal or state 310  
government grant or loan program that would promote the 311  
deployment of tier two broadband infrastructure and technology 312  
in the state; 313

(H) Track the availability, location, rates and speeds, 314  
and adoption of programs that offer tier one broadband service 315  
and tier two broadband service in an affordable manner to low- 316  
income consumers in this state. 317

**Sec. 188.09.** The broadband expansion program authority 318  
shall conduct hearings to gather information necessary to 319  
accomplish the duties specified under section 188.08 of the 320  
Revised Code. 321

**Sec. 188.10.** The broadband expansion program authority, 322  
upon majority approval of the authority's members, shall submit 323  
a written public report of its findings and recommendations to 324  
the governor and the general assembly not later than the first 325  
of December of each calendar year 326

. The authority shall not disclose any proprietary 327  
information or trade secrets in the report. Copies of the report 328  
shall be available on the department of commerce's web site. 329

**Sec. 188.13.** A broadband provider may apply for a program 330

grant under the Ohio residential broadband expansion grant 331  
program. 332

Sec. 188.15. Program grants under the Ohio residential 333  
broadband expansion grant program shall be awarded only for 334  
eligible projects. 335

Sec. 188.16. An application shall be ineligible for a 336  
program grant under the Ohio residential broadband expansion 337  
grant program if either of the following apply: 338

(A) It proposes to provide tier two broadband service to 339  
areas where tier two broadband service is presently available. 340

(B) In the proposed area of service, construction of a 341  
network to provide tier two broadband service currently is in 342  
progress and either of the following applies: 343

(1) It is being constructed, without grant program 344  
funding, by the broadband provider that submitted the 345  
application. 346

(2) It is scheduled to be completed by another broadband 347  
provider not later than two years after the date of a challenge 348  
submitted under section 188.30 of the Revised Code. 349

Sec. 188.17. The broadband expansion program authority 350  
shall award program grants under the Ohio residential broadband 351  
expansion grant program using funds from the Ohio residential 352  
broadband expansion grant program fund created in section 188.37 353  
of the Revised Code. 354

Sec. 188.18. (A) Each fiscal year, the department of 355  
commerce shall fund program grants until funds for that fiscal 356  
year are no longer available. 357

(B) Any application pending at the end of the fiscal year 358

shall be deemed denied, but may be refiled in a subsequent 359  
fiscal year provided that all information in the application is 360  
still current or has been updated. 361

**Sec. 188.19.** (A) (1) Each fiscal year, the department of 362  
commerce shall accept applications for program grants. 363

(2) To apply for a program grant, a broadband provider 364  
shall submit an application to the department on a form 365  
prescribed by the department and shall provide the information 366  
required under section 188.20 of the Revised Code. The form 367  
shall include a statement informing the applicant that failure 368  
to comply with the program or to meet the required tier two 369  
broadband service proposed in the application may require the 370  
refund of all or a portion of the program grant awarded for the 371  
project. 372

(3) Applications may be submitted in person or by 373  
certified mail or electronic mail, or uploaded to a designated 374  
department web site for applications. 375

(B) Applications shall be accepted during a submission 376  
period specified by the broadband expansion program authority. 377  
Each submission period shall be at least sixty but not more than 378  
ninety days. Each fiscal year there shall be not more than two 379  
submission periods. 380

(C) The department shall publish information from 381  
submitted applications on the department's web site as follows: 382

(1) Not later than five days after the close of the 383  
submission period in which the application is made, the 384  
department shall publish, for each completed application, the 385  
list of residential addresses included with the completed 386  
applications under division (A) (1) (a) of section 188.20 of the 387

Revised Code. 388

(2) Not later than thirty-five days after the close of the 389  
submission period in which the application is made, the 390  
department shall publish all information from each completed 391  
application that it determines is not confidential under section 392  
188.23 of the Revised Code. 393

(D) If an application is incomplete, the department shall 394  
notify the broadband provider that submitted the application. 395  
The notification shall list what information is incomplete and 396  
shall describe the procedure for refiling a completed 397  
application. 398

(E) The department shall review an application determined 399  
incomplete under division (D) of this section as provided in 400  
sections 188.19 to 188.36 of the Revised Code if the application 401  
is completed and refiled: 402

(1) Before the end of the submission period described 403  
under division (B) of this section; or 404

(2) Not later than fourteen days after the end of the 405  
submission period described under division (B) of this section, 406  
if the department, for good cause shown, has granted the 407  
broadband provider an extension period of not more than fourteen 408  
days in which to file the completed application. 409

(F) The department shall deny an incomplete application if 410  
the broadband provider fails to complete and refile it within 411  
the applicable submission period or extension period. 412  
Applications that are denied shall not be published on the 413  
department's web site. 414

**Sec. 188.20.** (A) An application for a program grant under 415  
the Ohio residential broadband expansion grant program shall 416

include, at a minimum, the following information for an eligible project: 417  
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(1) The location and description of the project, 419  
including: 420

(a) The residential addresses in the unserved or tier one areas where tier two broadband service will be available following completion of the project; 421  
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(b) A notarized letter of intent that the broadband provider will provide access to tier two broadband service to all of the residential addresses listed in the project; 424  
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(c) A notarized letter of intent by the broadband provider that none of the funds provided by the program grant will be used to extend or deploy facilities to any residences other than those in the unserved or tier one areas that are part of the project. 427  
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(2) The amount of the broadband funding gap and the amount of state funds requested; 432  
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(3) The amount of any financial or in-kind contributions to be used towards the broadband funding gap and identification of the contribution sources, which may include, but are not limited to, any combination of the following: 434  
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(a) Funds that the broadband provider is willing to contribute to the broadband funding gap; 438  
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(b) Funds received or approved under any other federal or state government grant or loan program; 440  
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(c) General revenue funds of a municipal corporation, township, or county comprising the area of the eligible project; 442  
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<u>(d) Other discretionary funds of the municipal</u>	444
<u>corporation, township, or county comprising the area of the</u>	445
<u>eligible project;</u>	446
<u>(e) Any alternate payment terms that the broadband</u>	447
<u>provider and any legislative authority in which the project is</u>	448
<u>located have negotiated and agreed to pursuant to section 188.25</u>	449
<u>of the Revised Code;</u>	450
<u>(f) Contributions or grants from individuals,</u>	451
<u>organizations, or companies;</u>	452
<u>(g) Property tax assessments made by the municipal</u>	453
<u>corporation under Chapter 727. of the Revised Code, township</u>	454
<u>under section 505.881 of the Revised Code, or county under</u>	455
<u>section 303.251 of the Revised Code.</u>	456
<u>(4) The source and amount of any financial or in-kind</u>	457
<u>contributions received or approved for any part of the overall</u>	458
<u>eligible project cost, but not applied to the broadband funding</u>	459
<u>gap;</u>	460
<u>(5) A description of, or documentation demonstrating, the</u>	461
<u>broadband provider's managerial and technical expertise and</u>	462
<u>experience with broadband service projects;</u>	463
<u>(6) Whether the broadband provider plans to use wired,</u>	464
<u>wireless, or satellite technology to complete the project;</u>	465
<u>(7) A description of the scalability of the project;</u>	466
<u>(8) The megabit-per-second broadband download and upload</u>	467
<u>speeds planned for the project;</u>	468
<u>(9) A description of the broadband provider's customer</u>	469
<u>service capabilities, including any locally based call centers</u>	470
<u>or customer service offices;</u>	471

(10) 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; 472  
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(11) The length of time that the broadband provider has been operating in the state; 476  
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(12) Proof that the broadband provider has the financial stability to complete the project; 478  
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(13) A projected construction timetable, including the anticipated date of the provision of tier two broadband service access within the project; 480  
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(14) 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; 483  
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(15) A notification from the broadband provider informing the department of commerce of any information contained in the application, or within related documents submitted with it, that the provider considers proprietary or a trade secret; 487  
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(16) A notarized statement that the broadband provider accepts the condition that noncompliance with Ohio residential broadband expansion grant program requirements may require the provider to refund all or part of any program grant the provider receives; 491  
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(17) 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 496  
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utility, to enable the offering of tier two broadband service 501  
under the project; 502

(18) Other relevant information that the department 503  
determines is necessary and prescribes by rule; 504

(19) Any other information the broadband provider 505  
considers necessary. 506

(B) To meet the requirement to provide proof of financial 507  
responsibility in the application, the broadband provider may 508  
submit publicly available financial statements with its 509  
application. 510

**Sec. 188.21.** As a condition for receiving a program grant 511  
under the Ohio residential broadband expansion grant program, 512  
the broadband expansion program authority may require a 513  
broadband provider that is awarded a program grant to provide a 514  
performance bond, letter of credit, or other financial assurance 515  
acceptable to the authority prior to the commencement of 516  
construction. The bond, letter of credit, or assurance shall be 517  
in the sum, and with the sureties, that the state prescribes and 518  
shall be payable to the state, as applicable. 519

The bond, letter of credit, or assurance may include the 520  
condition that the broadband provider will faithfully execute 521  
and complete the project. 522

The purpose of the performance bond, letter of credit, or 523  
other financial assurance is to assure completion of the 524  
project. The bond, letter of credit, or assurance shall not be 525  
required after the project is complete. 526

**Sec. 188.23.** Pursuant to rules adopted under this chapter, 527  
the department of commerce shall evaluate the information and 528  
documents submitted by a broadband provider in an application 529

under section 188.13 of the Revised Code or by a challenging 530  
broadband provider under section 188.30 of the Revised Code. The 531  
evaluation shall determine whether the information and documents 532  
are proprietary or constitute a trade secret. Upon receipt of 533  
the information and documents, the department shall keep them 534  
confidential and shall not publish them on the department's web 535  
site, unless the department finds that any information or 536  
document is not proprietary or a trade secret. Any information 537  
or document found not to be proprietary or a trade secret under 538  
this section shall not be considered confidential and shall be 539  
published on the department web site as is required for an 540  
application under division (C) (2) of section 188.19 of the 541  
Revised Code. 542

**Sec. 188.24.** The department of commerce shall establish an 543  
automatic notification process through which interested parties 544  
may receive electronic mail notifications when the department 545  
publishes application and other information on its web site 546  
pursuant to this chapter. 547

**Sec. 188.25.** A broadband provider may enter into an 548  
arrangement to designate video service provider fees remitted by 549  
the broadband provider for contribution towards an eligible 550  
project's broadband funding gap under the following 551  
circumstances: 552

(A) The broadband provider is a video service provider 553  
that, pursuant to section 1332.32 of the Revised Code, collects 554  
and remits video service provider fees to one or more 555  
legislative authorities in which an eligible project is located. 556

(B) The arrangement is entered into by mutual consent with 557  
one or more of the legislative authorities in which the eligible 558  
project is located. 559

Sec. 188.30. (A) (1) (a) A broadband provider that provides tier two broadband service within or directly adjacent to an eligible project may challenge, in writing, all or part of a completed application for a program grant for the project not later than sixty-five days after the close of the submission period, or an extension granted under division (E) (2) of section 188.19 of the Revised Code, in which the application was made. 560-566

(b) The department, for good cause shown, may grant the broadband provider an extension of not more than fourteen days in which to submit a challenge.- 567-569

(2) The broadband provider challenging the application shall provide, by certified mail, a written copy of the challenge to the department and to the broadband provider that submitted the application. The copy provided to the department may include any information the challenging broadband provider considers to be proprietary or a trade secret. Proprietary information or trade secrets may be redacted from the copy provided to the broadband provider that submitted the application. 570-578

(B) No challenge to an application may be accepted before the completed application is published in its entirety on the department of commerce's web site pursuant to division (C) (2) of section 188.19 of the Revised Code. 579-582

Sec. 188.31. To successfully challenge an application, a broadband provider shall provide sufficient evidence to the department of commerce demonstrating that all or part of a project under the application is ineligible for a grant. The challenge shall, at minimum, include the following information: 583-587

(A) Sufficient evidence disputing the notarized letter of 588

intent submitted with the application that the eligible project 589  
contains unserved or tier one areas; 590

(B) Sufficient evidence attesting to the challenging 591  
broadband provider's existing or planned offering of tier two 592  
broadband service for residential addresses that are part of the 593  
eligible project, which evidence shall include the following: 594

(1) With regard to existing tier two broadband service, a 595  
signed, notarized statement submitted by the challenging 596  
broadband provider that identifies the residential addresses 597  
that are part of the eligible project and to which the 598  
challenging broadband provider offers broadband service; 599

(2) With regard to the planned provision of tier two 600  
broadband service by a challenging broadband provider as 601  
described in division (B) of section 188.16 of the Revised Code, 602  
both of the following: 603

(a) A signed, notarized statement submitted by the 604  
challenging broadband provider that identifies the residential 605  
addresses that are part of the eligible project and to which the 606  
challenging broadband provider will offer broadband service; 607

(b) A summary of the construction efforts that includes 608  
the dates when tier two broadband construction is expected to be 609  
completed and when tier two broadband service will first be 610  
offered to the residential addresses that are part of the 611  
eligible project being challenged. 612

**Sec. 188.33.** (A) Not later than thirty days after receipt 613  
of a challenge under sections 188.30 to 188.35 of the Revised 614  
Code, the broadband expansion program authority may do either of 615  
the following: 616

(1) Suspend, subject to division (B) of this section, all 617

or part of the application; 618

(2) Reject the challenge, approve the application, and 619  
proceed with the application process. 620

(B) The authority shall allow the broadband provider that 621  
submitted the application being challenged to revise the 622  
application consistent with sections 188.01 to 188.77 of the 623  
Revised Code, if the authority upholds a challenge to all or 624  
part of the application. 625

(C) The authority shall notify both the broadband provider 626  
that submitted the application and the challenging broadband 627  
provider of any decision made under this section by providing a 628  
copy of the decision by certified mail or electronic mail. The 629  
authority shall update the status of the application on the 630  
department of commerce web site. 631

**Sec. 188.34.** (A) If the broadband expansion program 632  
authority suspends all or part of an application, the broadband 633  
provider that submitted the application may revise and resubmit 634  
the application not later than fourteen days after receiving the 635  
suspension notification sent by the authority pursuant to 636  
section 188.33 of the Revised Code. The broadband provider may 637  
request, and the authority may grant for good cause shown, an 638  
extension period of not more than fourteen days in which the 639  
broadband provider may resubmit the application. 640

(B) When revising the application, the broadband provider 641  
shall not expand the scope or impact of the original 642  
application, nor shall the provider add any new residential 643  
addresses to the eligible project. 644

(C) The broadband provider shall provide a copy of the 645  
revised application to both the authority and the challenging 646

broadband provider by certified mail or by electronic mail or by 647  
uploading it to the department of commerce designated web site 648  
for applications. The department shall publish the revised 649  
application on the department's public web site provided that 650  
any information determined to be proprietary or a trade secret 651  
under section 188.23 of the Revised Code is redacted. 652

(D) Any failure to respond to the notification or properly 653  
revise the application to the authority's satisfaction shall be 654  
considered a withdrawal of the application. 655

**Sec. 188.35.** Upon receipt of a revised application under 656  
section 188.34 of the Revised Code, the broadband expansion 657  
program authority shall review the revised application and 658  
decide whether to accept it or uphold the challenge under 659  
sections 188.30 to 188.35 of the Revised Code within fourteen 660  
days. The authority shall provide a copy of its decision to both 661  
the broadband provider that submitted the revised application 662  
and the challenging broadband provider by certified mail or 663  
electronic mail and shall update the status of the application 664  
on the department's web site. The decision shall be considered 665  
final, and further challenges to the revised application are 666  
prohibited. 667

**Sec. 188.36.** If the broadband expansion program authority 668  
upholds a challenge to an application under sections 188.30 to 669  
188.35 of the Revised Code and the challenging broadband 670  
provider fails to provide tier two broadband service as 671  
described in the challenge, the challenging broadband provider, 672  
after a reasonable opportunity to be heard, may be required to 673  
do any or all of the following, in addition to being subject to 674  
other remedies available under the law: 675

(A) Pay to the department of commerce the amount of the 676

original broadband funding gap described in section 188.20 of 677  
the Revised Code for the application that was challenged; 678

(B) Comply with the requirements of any other penalties 679  
prescribed by rule of the department and imposed after 680  
consultation with the authority. 681

**Sec. 188.37.** Any money collected under section 188.36 of 682  
the Revised Code and funds appropriated for the Ohio residential 683  
broadband expansion grant program shall be deposited into the 684  
Ohio residential broadband expansion grant program fund, which 685  
is hereby created in the state treasury. All amounts in the 686  
fund, including interest earned on those amounts, shall be used 687  
by the department of commerce exclusively for grants under 688  
sections 188.01 to 188.77 of the Revised Code. 689

**Sec. 188.40.** The department of commerce, in consultation 690  
with the broadband expansion program authority, shall establish 691  
a weighted scoring system to evaluate and select applications 692  
for program grants. The scoring system shall be available on the 693  
department's web site at least thirty days before the beginning 694  
of the application submission period set by the department by 695  
rule. 696

**Sec. 188.41.** (A) The scoring system established under 697  
section 188.40 of the Revised Code shall prioritize 698  
applications, from highest to lowest weight, in the following 699  
order: 700

(1) Eligible projects for unserved areas, rather than tier 701  
one areas; 702

(2) Eligible projects located within distressed areas as 703  
defined under section 122.19 of the Revised Code; 704

(3) Eligible projects that are receiving or have been 705

approved to receive any financial or in-kind contributions 706  
towards the broadband funding gap identified in the application 707  
under division (A) (3) of section 188.20 of the Revised Code, 708  
including the amounts and proportions of the contributions; 709

(4) Eligible projects for which the proposed construction 710  
will utilize state rights-of-way or otherwise require attachment 711  
to, or use of, public facilities or conduit to provide tier two 712  
broadband service to an eligible project; 713

(5) Eligible projects based on proposed upstream and 714  
downstream speeds and the scalability of the tier two broadband 715  
service infrastructure proposed to be deployed to speeds higher 716  
than twenty-five megabits per second downstream and three 717  
megabits per second upstream; 718

(6) Eligible projects based on each of the following, in 719  
equal measure, without favoring one broadband provider over 720  
another: 721

(a) Demonstrated support, supported by evidence, for 722  
community and economic development efforts in, or adjacent to, 723  
the projects, including the provision of tier two broadband 724  
service to commercial and nonresidential entities as a result 725  
of, but not funded directly by, the program; 726

(b) The broadband provider's experience, technical 727  
ability, and financial capability in successfully deploying and 728  
providing tier two broadband service; 729

(c) The length of time the broadband provider has been 730  
providing tier two broadband service in the state; 731

(d) The extent to which funding is necessary to deploy 732  
tier two broadband service infrastructure in an economically 733  
feasible manner to the eligible project; 734

(e) The ability of the broadband provider to leverage nearby or adjacent tier one or tier two broadband service infrastructure to facilitate the proposed deployment and provision of tier two broadband service to the eligible project; 735  
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(f) If existing tier one or tier two broadband 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; 739  
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(g) The eligible projects' location within Ohio opportunity zones as defined under division (A) (2) of section 122.84 of the Revised Code. 743  
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(B) The department may include in the weighted scoring system any other factors it determines to be reasonable, appropriate, and consistent with the purpose of facilitating the economic deployment of tier two broadband service to unserved or tier one areas. The factors included under this division shall be considered after the weighted factors described in division (A) of this section. 746  
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**Sec. 188.43.** (A) The broadband expansion program authority shall award program grants under the Ohio residential broadband expansion grant program after reviewing applications sent to the authority by the department of commerce. Awards shall be granted after the authority scores applications based on the scoring system under sections 188.40 and 188.41 of the Revised Code. 753  
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(B) In awarding program grants, the authority shall consider all regulatory obligations under applicable law. The authority may not consider any of the following: 759  
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(1) Proposed project conditions that require open access networks or that establish a specific rate, service, or other 762  
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obligation not specified for the Ohio residential broadband expansion grant program; 764  
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(2) Factors that would constrain a broadband provider that receives a grant from offering or providing tier two broadband service in the same manner as the service is offered by broadband providers in other areas of the state without funding from the Ohio residential broadband expansion grant program. 766  
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(C) Upon making the program grant awards, the authority shall notify the broadband providers that submitted applications of the award decisions. The authority shall publish the program grant awards on the department of commerce's web site. 771  
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**Sec. 188.44.** After the broadband expansion program authority awards a program grant under section 188.43 of the Revised Code, the department of commerce shall disburse the program grant as follows: 775  
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(A) A portion of the program grant, not to exceed thirty per cent, shall be disbursed before construction of the project begins. 779  
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(B) A portion of the program grant, not to exceed sixty per cent, shall be disbursed through periodic payments over the course of construction of the eligible project as determined by the department by rules adopted under section 188.77 of the Revised Code. 782  
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(C) The remaining portion shall be disbursed not later than sixty days after the broadband provider notifies the authority that it has completed construction of the project. 787  
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**Sec. 188.45.** (A) The department of commerce may, through an independent third party, conduct speed verification tests of an eligible project that receives a program grant. Such tests 790  
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shall occur as follows: 793

(1) After the construction is complete, but prior to the 794  
final disbursement made under division (C) of section 188.44 of 795  
the Revised Code to verify that tier two broadband service is 796  
being offered; 797

(2) At any time during the reporting period required under 798  
division (B) of section 188.70 of the Revised Code, after 799  
receiving a complaint concerning a residence that is part of the 800  
eligible project. 801

(B) To evaluate compliance with tier two broadband service 802  
standards, speed verification tests conducted under this section 803  
shall be conducted on at least two different days and at two 804  
different times on each of those days. 805

(C) The department may withhold payments under this 806  
section for failure to meet at least the minimum speeds required 807  
under division (A) (8) of section 188.20 of the Revised Code. 808  
Payments may be held until such speeds are achieved. 809

**Sec. 188.46.** (A) If the department of commerce determines 810  
that a broadband provider that has been awarded a program grant 811  
under the Ohio residential broadband expansion grant program has 812  
not complied with the requirements of the program, the 813  
department shall notify the provider of the noncompliance. In 814  
accordance with rules adopted by the department under section 815  
188.77 of the Revised Code, the department shall give the 816  
provider an opportunity to explain or cure the noncompliance. 817

(B) After reviewing the broadband provider's explanation 818  
or effort to cure the noncompliance, the following shall apply: 819

(1) The department may require the provider to refund an 820  
amount equal to all, or a portion of, the amount of the program 821

grant awarded to the provider, as determined by the department. 822

(2) The department may require the broadband provider to 823  
refund to the appropriate municipal corporation, township, or 824  
county the entire amount of general revenue funds or other 825  
discretionary funds that it contributed toward the broadband 826  
funding gap under division (A) (3) (c) or (d) of section 188.20 of 827  
the Revised Code. 828

(C) Not more than thirty days after the department's 829  
decision requiring a refund for program noncompliance or a 830  
failure to explain or cure it, the broadband provider shall pay 831  
the refund required under division (B) of this section. Payments 832  
shall be made directly to the municipal corporation, township, 833  
or county that contributed funds toward the broadband funding 834  
gap. 835

**Sec. 188.50.** Upon adoption of a resolution, a board of 836  
county commissioners may request the department of commerce to 837  
solicit applications from broadband providers for program grants 838  
under the Ohio residential broadband expansion grant program for 839  
eligible projects in the municipal corporations and townships of 840  
the county. 841

A request made by a county shall identify, to the extent 842  
possible, the residential addresses in unserved or tier one 843  
areas of the county and provide a point of contact at the county 844  
and the municipal corporations and townships in which the 845  
addresses are located. The request may include any relevant 846  
information, documents, or materials that may be helpful for an 847  
application. 848

**Sec. 188.51.** Upon receipt of a request from a board of 849  
county commissioners pursuant to section 188.50 of the Revised 850

Code, the department of commerce shall solicit, on behalf of the 851  
county, applications for program grants for eligible projects 852  
under the Ohio residential broadband expansion grant program. 853  
Not later than seven days after receipt of the request, the 854  
department shall make the request, and any accompanying 855  
information submitted with the request, available for review on 856  
the department's web site. The request shall remain available on 857  
the web site for a period not to exceed two years. 858

Sec. 188.53. An application for a program grant under the 859  
Ohio residential broadband expansion grant program made in 860  
response to a request under section 188.50 of the Revised Code 861  
shall fully comply with all of the program requirements. Nothing 862  
in sections 188.50, 188.51, and 188.53 of the Revised Code shall 863  
be construed as providing relief from compliance with any 864  
program requirements. 865

Sec. 188.55. The department of commerce shall not be 866  
responsible for any failure by a broadband provider to respond 867  
to a request made by the department pursuant to section 188.51 868  
of the Revised Code or to submit an application for a program 869  
grant under the Ohio residential broadband expansion grant 870  
program. 871

Sec. 188.60. (A) An eligible project shall not proceed 872  
unless the broadband expansion program authority awards a 873  
program grant under section 188.43 of the Revised Code. 874

(B) After receiving a program grant award, the broadband 875  
provider shall construct and install last mile broadband 876  
infrastructure to the eligible project. 877

Sec. 188.61. Under alternate payment term arrangements 878  
made under section 188.25 of the Revised Code, unless otherwise 879

negotiated, the participating legislative authorities in which 880  
the eligible project is located shall assume all financial 881  
responsibility for all of the eligible project costs incurred by 882  
the broadband provider prior to completion of the project or the 883  
award of a program grant. 884

**Sec. 188.63.** (A) Nothing in this chapter entitles the 885  
state of Ohio, the department of commerce, the broadband 886  
expansion program authority, or any other governmental entity to 887  
any ownership or other rights to broadband infrastructure 888  
constructed by a broadband provider pursuant to a program grant 889  
awarded to an eligible project. 890

(B) Nothing in this chapter prevents an assignment, sale, 891  
change in ownership, or other similar transaction associated 892  
with broadband infrastructure constructed by a broadband 893  
provider pursuant to a program grant awarded to an eligible 894  
project. No assignment, sale, change in ownership, or other 895  
similar transaction relieves the successor of any obligation 896  
under this chapter. 897

**Sec. 188.70.** (A) Each broadband provider that receives a 898  
program grant shall submit to the department an annual progress 899  
report on the status of the deployment of the broadband network 900  
described in the eligible project for which the program grant 901  
award was made. 902

(B) The broadband provider shall submit an operational 903  
report with the department not later than sixty days after the 904  
completion of the project and annually thereafter for a period 905  
of four years. 906

**Sec. 188.71.** (A) The reports required under section 188.70 907  
of the Revised Code and except as provided in section 188.75 of 908

the Revised Code, all information and documents in them shall be 909  
in a format specified by the department of commerce and shall be 910  
publicly available on the department's web site. 911

(B) In each report, the broadband provider shall include 912  
an account of how program grant funds have been used and the 913  
project's progress toward fulfilling the objectives for which 914  
the program grant was awarded. The reports, at a minimum, shall 915  
include the following: 916

(1) The number of residences that have access to tier two 917  
broadband services as a result of the eligible project; 918

(2) The number of commercial and nonresidential entities 919  
that are not funded directly by the grant program but have 920  
access to tier two broadband service as a result of the eligible 921  
project; 922

(3) The upstream and downstream speed of the broadband 923  
service provided; 924

(4) The average price of broadband service; 925

(5) The number of broadband service subscriptions 926  
attributable to the program grant. 927

**Sec. 188.73.** The department of commerce may set a due date 928  
for the reports required under section 188.70 of the Revised 929  
Code and, for good cause shown, may grant extensions of the 930  
report due dates. 931

**Sec. 188.75.** Reports required under section 188.70 of 932  
the Revised Code, and all information and documents in them, 933  
shall be maintained on a confidential basis by the department of 934  
commerce and shall not be published on the department's web site 935  
until the department determines what information or documents 936

are not confidential pursuant to section 188.23 of the Revised Code. 937  
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**Sec. 188.76.** (A) The broadband expansion program authority shall complete an annual report for the Ohio residential broadband expansion grant program. The report shall evaluate the success of the program grants awarded under section 188.43 of the Revised Code in making tier two broadband services available to unserved and tier one areas. The report shall include the following information: 939  
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(1) The number of applications received; 946

(2) The number of applications that received program grants; 947  
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(3) The amount of broadband infrastructure constructed for eligible projects; 949  
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(4) The number of residences receiving, for that year, tier two broadband service for the first time under the program; 951  
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(5) Findings and recommendations that have been agreed to by a majority of the authority members. 953  
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(B) The report shall be published on the department of commerce's web site and shall be included as part of its annual report filed under section 121.18 of the Revised Code. The authority shall present the report annually to the governor and the general assembly not later than the first of December of each calendar year. 955  
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**Sec. 188.77.** (A) The department of commerce shall adopt rules for the Ohio residential broadband expansion grant program. The rules shall establish an application form and application procedures for the program and procedures for 961  
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<u>periodic program grant disbursements.</u>	965
<u>(B) The rules may include the following:</u>	966
<u>(1) Requirements for a program application in addition to the requirements described in section 188.20 of the Revised Code;</u>	967 968 969
<u>(2) Procedures for and circumstances under which partial funding of applications is permitted;</u>	970 971
<u>(3) Procedures for broadband expansion program authority meetings, extension periods for applications and application challenges, hearings, and opportunities for public comment.</u>	972 973 974
<u>(C) The department may adopt rules and procedures to implement sections 188.51, 188.53, and 188.55 of the Revised Code.</u>	975 976 977
<u>(D) Rules adopted under this chapter are not subject to section 121.95 of the Revised Code.</u>	978 979
<u>(E) The department and the authority are not subject to division (F) of section 121.95 of the Revised Code regarding the development and adoption of rules pursuant to this chapter.</u>	980 981 982
<b><u>Sec. 188.80.</u></b> <u>As used in sections 188.80 to 188.91 of the Revised Code:</u>	983 984
<u>(A) "Broadband service" means 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</u>	985 986 987 988 989 990 991 992

service" includes video service, voice over internet protocol 993  
service, and internet protocol-enabled services. 994

(B) "Electric cooperative" has the same meaning as in 995  
section 4928.01 of the Revised Code. 996

(C) "Internet protocol-enabled services" and "voice over 997  
internet protocol service" have the same meanings as in section 998  
4927.01 of the Revised Code. 999

(D) "Servient estate" means the land burdened by an 1000  
easement. 1001

(E) "Video programming" means any programming generally 1002  
considered comparable to programming provided by a television 1003  
broadcast station. 1004

(F) "Video service" means video programming services 1005  
without regard to delivery technology, including internet 1006  
protocol technology and video programming provided as a part of 1007  
a service that enables users to access content, information, 1008  
electronic mail, or other services offered over the public 1009  
internet. 1010

**Sec. 188.81.** An easement granted to an electric 1011  
cooperative for purposes of transmitting, delivering, or 1012  
otherwise providing electric power may be used, apportioned, or 1013  
subleased to provide broadband service and such use, 1014  
apportionment, or sublease shall not be considered an additional 1015  
burden on the servient estate. 1016

**Sec. 188.83.** (A) If the owner of the servient estate of an 1017  
easement described in section 188.81 of the Revised Code brings 1018  
an action regarding the use, apportionment, or sublease of the 1019  
easement for broadband service, the court may award damages to 1020  
the owner equal to not more than the difference between the 1021

following: 1022

(1) The fair market value of the owner's interest in the 1023  
property of the estate immediately before the provision of 1024  
broadband service; 1025

(2) The fair market value of the owner's interest in the 1026  
property of the estate immediately after the provision of 1027  
broadband service. 1028

(B) Any damages awarded under division (A) of this section 1029  
shall be a fixed amount that shall not continue, accumulate, or 1030  
accrue. 1031

(C) The values described in division (A) of this section 1032  
shall be established by the testimony of a qualified real estate 1033  
appraiser. 1034

**Sec. 188.84.** The court may not grant injunctive relief or 1035  
any other equitable relief for an action described in section 1036  
188.83 of the Revised Code. 1037

**Sec. 188.85.** Actions described in section 188.83 of the 1038  
Revised Code shall be brought within one year of any alleged 1039  
damage described in that section. Any action not brought within 1040  
one year will result in forfeiture of that claim. 1041

**Sec. 188.87.** Past, current, or future revenues or profits 1042  
derived or to be derived from the use, apportionment, or 1043  
sublease of an easement for broadband service are not admissible 1044  
for any purpose in an action described in section 188.83 of the 1045  
Revised Code. 1046

**Sec. 188.88.** Any court determination regarding an easement 1047  
subject to an action described in section 188.83 of the Revised 1048  
Code shall be considered a finding that the provision of 1049

broadband service is an allowable use or purpose under the 1050  
easement as if the use or purpose was specifically stated in the 1051  
terms of the easement. 1052

**Sec. 188.89.** A court determination described in section 1053  
188.88 of the Revised Code shall be filed by the defendant in 1054  
the action with the county recorder of the county in which the 1055  
servient estate subject to the determination is located. The 1056  
recorder shall make a notation in the official record that links 1057  
the determination to the servient estate and the easement 1058  
subject to the determination. 1059

**Sec. 188.91.** The owner of a servient estate of an easement 1060  
described in section 188.81 of the Revised Code may not bring an 1061  
action described in section 188.83 of the Revised Code if any of 1062  
the following apply: 1063

(A) The owner, either directly or through the owner's 1064  
membership in the electric cooperative or otherwise, authorized 1065  
the electric cooperative's electric delivery system for the 1066  
provision of broadband services. 1067

(B) The owner, or any of the previous owners of the 1068  
property that makes up the servient estate, has agreed to, or 1069  
granted permission for, the use of the easement to provide 1070  
broadband service. 1071

(C) The facilities providing broadband service are used or 1072  
are capable of being used to assist in the transmission, 1073  
delivery, or use of electric service. 1074

**Sec. 188.93.** Sections 188.80 to 188.91 of the Revised Code 1075  
shall not be construed as expanding the authority of the state, 1076  
its agencies, or political subdivisions beyond the authority 1077  
existing under federal law or the laws of this state. 1078

Sec. 188.95. Sections 163.01 to 163.22 of the Revised Code 1079  
do not apply regarding the application of sections 188.80 to 1080  
188.91 of the Revised Code. 1081

Sec. 303.251. (A) If a program grant is awarded for an 1082  
eligible project under sections 188.01 to 188.77 of the Revised 1083  
Code, the board of county commissioners of the county in which 1084  
the project is situated, by resolution, may levy a special 1085  
assessment upon residential property within the county for the 1086  
purpose of providing a contribution from the county towards the 1087  
funding gap for the eligible project. Assessments under this 1088  
section shall be levied only upon the residential property that 1089  
is subject to the eligible project. Before adopting the 1090  
resolution, the board shall send written notice to each affected 1091  
property owner stating the estimated assessment for that 1092  
property. If an owner objects to the stated estimated 1093  
assessment, the owner shall file a written objection with the 1094  
board not later than two weeks after the notice is mailed. The 1095  
board shall review the written objections and may revise the 1096  
estimated assessments before adopting the resolution. If the 1097  
property owner objects to the final assessment for the property 1098  
levied in the resolution, the owner may appeal the final 1099  
assessment under Chapter 2506. of the Revised Code. 1100

(B) The assessment shall be at a rate that will produce a 1101  
total assessment that is not more than the county's contribution 1102  
towards the funding gap for the eligible project as described in 1103  
the application under section 188.20 of the Revised Code. The 1104  
board shall certify the amount to be levied upon each affected 1105  
property to the county auditor, who shall enter the amount on 1106  
the tax duplicate for collection by the county treasurer in 1107  
equal semiannual installments in the same manner and at the same 1108  
times as the collection of taxes on real property. Assessments 1109

shall be paid by owners of the properties upon which assessments 1110  
are levied. 1111

(C) The assessments, when collected, shall be paid by the 1112  
county auditor by warrant on the county treasurer into a special 1113  
fund in the county treasury created for the purpose of funding 1114  
an eligible project for which a program grant is awarded under 1115  
sections 188.01 to 188.77 of the Revised Code and that is 1116  
located in the county. The board may expend moneys from the fund 1117  
only for the purposes for which the assessments were levied. 1118

**Sec. 505.881.** (A) If a program grant is awarded for an 1119  
eligible project under sections 188.01 to 188.77 of the Revised 1120  
Code, the board of township trustees in which the project is 1121  
situated, by resolution, may levy a special assessment upon 1122  
residential property within the township for the purpose of 1123  
providing a contribution from the township towards the broadband 1124  
funding gap for the eligible project. Assessments under this 1125  
section shall be levied only upon the residential property that 1126  
is subject to the eligible project. Before adopting the 1127  
resolution, the board shall send written notice to each affected 1128  
property owner stating the estimated assessment for that 1129  
property. If an owner objects to the stated estimated 1130  
assessment, the owner shall file a written objection with the 1131  
board not later than two weeks after the notice is mailed. The 1132  
board shall review the written objection and may revise the 1133  
estimated assessment before adopting the resolution. If the 1134  
property owner objects to the final assessment for the property 1135  
levied in the resolution, the owner may appeal the final 1136  
assessment under Chapter 2506. of the Revised Code. 1137

(B) The assessment shall be at a rate that will produce a 1138  
total assessment that is not more than the township's 1139

contribution towards the funding gap for the eligible project as 1140  
described in the application under section 188.20 of the Revised 1141  
Code. The board shall certify the amount to be levied upon each 1142  
affected property to the county auditor, who shall enter the 1143  
amount on the tax duplicate for collection by the county 1144  
treasurer in equal semiannual installments in the same manner 1145  
and at the same times as the collection of taxes on real 1146  
property. Assessments shall be paid by owners of the properties 1147  
upon which assessments are levied. 1148

(C) The assessments, when collected, shall be paid by the 1149  
county auditor by warrant on the county treasurer into a special 1150  
fund in the township treasury created for the purpose of funding 1151  
an eligible project for which a program grant is awarded under 1152  
sections 188.01 to 188.77 of the Revised Code and that is 1153  
located in the township. The board may expend moneys from the 1154  
fund only for the purposes for which the assessments were 1155  
levied. 1156

**Sec. 727.01.** Each municipal corporation shall have special 1157  
power to levy and collect special assessments. The legislative 1158  
authority of a municipal corporation may assess upon the 1159  
abutting, adjacent, and contiguous, or other specially 1160  
benefited, lots or lands in the municipal corporation, any part 1161  
of the cost connected with the improvement of any street, alley, 1162  
dock, wharf, pier, public road, place, boulevard, parkway, or 1163  
park entrance or an easement of the municipal corporation 1164  
available for the purpose of the improvement to be made in it by 1165  
grading, draining, curbing, paving, repaving, repairing, 1166  
treating the surface with substances designed to lay the dust on 1167  
it or preserve it, constructing sidewalks, piers, wharves, 1168  
docks, retaining walls, sewers, sewage disposal works and 1169  
treatment plants, sewage pumping stations, water treatment 1170

plants, water pumping stations, reservoirs, and water storage 1171  
tanks or standpipes, together with the facilities and 1172  
appurtenances necessary and proper therefor, drains, storm-water 1173  
retention basins, watercourses, water mains, or laying of water 1174  
pipe, or the lighting, sprinkling, sweeping, or cleaning 1175  
thereof, or removing snow therefrom, any part of the cost and 1176  
expense of planting, maintaining, and removing shade trees 1177  
thereupon; any part of the cost of a voluntary action, as 1178  
defined in section 3746.01 of the Revised Code, undertaken 1179  
pursuant to Chapter 3746. of the Revised Code by a special 1180  
improvement district created under Chapter 1710. of the Revised 1181  
Code, including the cost of acquiring property with respect to 1182  
which the voluntary action is undertaken; any part of the cost 1183  
and expense of constructing, maintaining, repairing, cleaning, 1184  
and enclosing ditches; any part of the cost and expense of 1185  
operating, maintaining, and replacing heating and cooling 1186  
facilities for enclosed pedestrian canopies and malls; any part 1187  
of the cost and expense of acquiring and improving parking 1188  
facilities and structures for off-street parking of motor 1189  
vehicles or of acquiring land and improving it by clearing, 1190  
grading, draining, paving, lighting, erecting, constructing, and 1191  
equipping it for parking facilities and structures for off- 1192  
street parking of motor vehicles, to the extent authorized by 1193  
section 717.05 of the Revised Code, but only if no special 1194  
assessment made for the purpose of developing off-street parking 1195  
facilities and structures is levied against any land being used 1196  
solely for off-street parking or against any land used solely 1197  
for single or two-family dwellings; any part of the cost and 1198  
expense of operating and maintaining the off-street parking 1199  
facilities and structures; and any part of the cost connected 1200  
with changing the channel of, or narrowing, widening, dredging, 1201  
deepening, or improving, any stream or watercourse, and for 1202

constructing or improving any levees or boulevards on any stream 1203  
or watercourse, or along or about any stream or watercourse, 1204  
together with any retaining wall, riprap protection, bulkhead, 1205  
culverts, approaches, flood gates, waterways, or drains 1206  
incidental to any stream or watercourse, or for making any other 1207  
improvement of any river or lake front, whether it is privately 1208  
or publicly owned, which the legislative authority declares 1209  
conducive to the public health, convenience, or welfare. If a 1210  
program grant is awarded for an eligible project under sections 1211  
188.01 to 188.77 of the Revised Code, a municipal corporation 1212  
may levy, against dwellings that are subject to the project, a 1213  
special assessment for the purpose of providing a contribution 1214  
from the municipal corporation towards the funding gap for the 1215  
project. The assessment shall be at a rate that will produce a 1216  
total assessment that is not more than the municipal 1217  
corporation's contribution towards the funding gap for the 1218  
eligible project as described in the application under section 1219  
188.20 of the Revised Code. In addition, a municipal corporation 1220  
may levy a special assessment for public improvement or public 1221  
services plans of a district formed under Chapter 1710. of the 1222  
Revised Code, as provided in that chapter. Except as otherwise 1223  
provided in Chapter 1710. of the Revised Code, special 1224  
assessments may be levied by any of the following methods: 1225

(A) By a percentage of the tax value of the property 1226  
assessed; 1227

(B) In proportion to the benefits that may result from the 1228  
improvement; 1229

(C) By the front foot of the property bounding and 1230  
abutting upon the improvement. 1231

**Sec. 4926.01. As used in this chapter:** 1232

"Attachment" means 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. 1233  
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"Broadband provider" has the same meaning as in section 188.01 of the Revised Code. 1239  
1240

"Electric cooperative" has the same meaning as in section 4928.01 of the Revised Code. 1241  
1242

"Incremental cost" means pole attachment costs incurred by an electric cooperative for providing long-run service. 1243  
1244

"Make-ready work" means, as determined by the nature of the work required, "make-ready," "complex make-ready," or "simple make-ready" as those terms are defined in 47 C.F.R. 1.1402. 1245  
1246  
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"Provider" means a broadband provider, telecommunications service provider, video service provider, or wireless service provider. 1249  
1250  
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"Telecommunications service provider" means a provider of "telecommunications service" as defined in section 4927.01 of the Revised Code. 1252  
1253  
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"Video service provider" has the same meaning as in section 1332.21 of the Revised Code. 1255  
1256

"Wireless service provider" has the same meaning as in section 4927.01 of the Revised Code. 1257  
1258

**Sec. 4926.02.** On the request of a provider, an electric cooperative shall grant the provider nondiscriminatory access to 1259  
1260

the cooperative's poles for just and reasonable rates, terms, 1261  
and conditions for their attachments according to sections 1262  
4926.03 to 4926.22 of the Revised Code. 1263

**Sec. 4926.03.** A provider requesting access to an electric 1264  
cooperative's poles shall submit the request in writing and 1265  
shall include with the request a copy of the provider's 1266  
registration payment notification received under section 4926.25 1267  
of the Revised Code. 1268

**Sec. 4926.05.** An electric cooperative may require a 1269  
provider to execute an agreement for a pole attachment for just 1270  
and reasonable rates, terms, and conditions if the cooperative 1271  
requires all other attaching parties to execute such an 1272  
agreement. 1273

**Sec. 4926.07.** After receiving a request for access, an 1274  
electric cooperative shall grant or deny access within the time 1275  
frame established by rules 4901:1-3-01 to 4901:01-3-06 of the 1276  
Administrative Code adopted by the public utilities commission. 1277

**Sec. 4926.08.** (A) An electric cooperative may deny a 1278  
provider access to its poles for either of the following reasons 1279  
if the reasons are applied on a nondiscriminatory basis: 1280

(1) Insufficient capacity; 1281

(2) Safety, reliability, or generally applicable 1282  
engineering standards. 1283

(B) A cooperative shall deny a provider access to its 1284  
poles if the request is not accompanied by a current 1285  
registration payment notification. 1286

**Sec. 4926.09.** An electric cooperative shall not grant a 1287  
provider access to its pole facilities if the cooperative has 1288

not paid the fee required under section 4926.35 of the Revised Code. 1289  
1290

**Sec. 4926.10.** If an electric cooperative denies an access request submitted under section 4926.08 of the Revised Code, the cooperative must confirm the denial in writing. The denial shall be specific and shall include all relevant evidence and information supporting the denial and an explanation of how that evidence and information relates to the factors described in section 4926.08 of the Revised Code on which the denial is based. 1291  
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**Sec. 4926.13.** A provider and an electric cooperative shall comply with the process for make-ready work under rules 4901:1-3-01 to 4901:01-3-06 of the Administrative Code and the commission orders implementing rules 4901:1-3-01 to 4901:01-3-06 of the Administrative Code. A good-faith estimate established by the cooperative for any make-ready work shall include pole replacement if necessary. All make-ready costs shall be based on the cooperative's actual costs not recovered through the annual recurring attachment rate. The cooperative shall provide detailed documentation of the actual costs. 1299  
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**Sec. 4926.14.** The attachment of facilities on the poles of an electric cooperative by a provider shall comply with the following: 1309  
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(A) The most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative; 1312  
1313

(B) The national electric safety code adopted by the institute of electrical and electronics engineers in effect on the date of the attachment. 1314  
1315  
1316

**Sec. 4926.15.** Nothing in this chapter affects a provider 1317

or other attaching party's obligation to obtain any necessary 1318  
authorization before occupying public ways or private rights-of- 1319  
way with its attachment. 1320

**Sec. 4926.20.** If an electric cooperative's pole facility 1321  
is modified, a party with a preexisting attachment to the 1322  
modified facility is considered to directly benefit from a 1323  
modification if, after receiving notification of the 1324  
modification, the party adds to or modifies its attachment. 1325

**Sec. 4926.21.** (A) If an electric cooperative's pole 1326  
facility is modified, all parties that obtain access to the 1327  
facility as a result of the modification and all parties that 1328  
directly benefit from the modification shall share 1329  
proportionately in the cost of the modification. 1330

(B) If a party makes an attachment to the facility after 1331  
the completion of the modification, the party shall share 1332  
proportionately in the costs of the modification if that 1333  
modification rendered the added attachment possible. 1334

**Sec. 4926.22.** Unless a modification by an electric 1335  
cooperative is necessary for an electric service that uses smart 1336  
grid or other technology, a party with a preexisting attachment 1337  
to a pole is not required to bear any of the costs of 1338  
rearranging or replacing its attachment if the rearrangement or 1339  
replacement is necessary because of another party's request for 1340  
an additional attachment or a modification of an existing 1341  
attachment. 1342

**Sec. 4926.25.** Each electric cooperative and each provider 1343  
requesting access to an electric cooperative's pole facilities 1344  
under section 4926.02 of the Revised Code shall register with 1345  
the public utilities commission and pay an annual registration 1346

fee of one hundred dollars. 1347

Sec. 4926.26. The registration and fee required under 1348  
section 4926.25 of the Revised Code shall be submitted on a 1349  
form, and paid in a manner, as prescribed by the public 1350  
utilities commission. 1351

Sec. 4926.27. Promptly after receiving a registration fee 1352  
paid under section 4926.25 of the Revised Code, the public 1353  
utilities commission shall submit to the provider or electric 1354  
cooperative that paid the fee a notification that the commission 1355  
received the registration fee payment. 1356

Sec. 4926.30. There is hereby created in 1357  
the state treasury the electric cooperative pole attachment fund 1358  
to be administered by the public utilities commission. The fund 1359  
shall consist of all registration fees paid under 1360  
section 4926.25 of the Revised Code. The fund shall retain the 1361  
interest earned. The amounts in the fund shall be used by the 1362  
commission in carrying out its duties under this chapter. 1363

Sec. 4926.35. An electric cooperative or a provider may 1364  
file a complaint with the public utilities commission regarding 1365  
pole attachment disputes under this chapter. 1366

Sec. 4926.36. The public utilities commission has 1367  
jurisdiction to hear complaints and to grant remedies under this 1368  
chapter regarding attachment disputes for which a complaint is 1369  
filed. A complaint filed under section 4926.35 of the Revised 1370  
Code is subject to the same procedures as a complaint filed 1371  
pursuant to section 4905.26 of the Revised Code. 1372

Sec. 4926.37. Not later than one hundred eighty days after 1373  
a complaint is filed under section 4926.35 of the Revised Code, 1374  
the public utilities commission shall make a decision regarding 1375

the complaint. 1376

**Sec. 4926.38.** Before the public utilities commission may 1377  
order any remedy under section 4926.45 of the Revised Code 1378  
regarding a pole attachment complaint filed under this chapter, 1379  
the commission shall determine, and a complainant shall 1380  
establish, both of the following: 1381

(A) Whether any rate, term, or condition complained of is 1382  
not just and reasonable or a denial of access was unlawful. 1383

(B) Whether one of the following occurs on or after the 1384  
effective date of this section: 1385

(1) Any rate, term, or condition described in the 1386  
complaint is contained in a new pole attachment agreement or in 1387  
a previously existing pole attachment agreement that is amended, 1388  
renewed, or replaced by executing a new agreement; 1389

(2) There has been an unreasonable denial of access or 1390  
unreasonable refusal to enter into a new, amended, renewed, or 1391  
replacement pole attachment agreement. 1392

**Sec. 4926.40.** (A) The complainant under section 4926.35 of 1393  
the Revised Code has the burden of establishing a prima facie 1394  
case that the rate, term, or condition complained of is not just 1395  
and reasonable or that the denial of access was unlawful. 1396

(B) In a case involving a denial of access, the 1397  
cooperative has the burden of establishing that the denial was 1398  
lawful, once a prima facie case is established by the 1399  
complainant. 1400

**Sec. 4926.41.** In a complaint filed under section 4926.35 1401  
of the Revised Code, if an electric cooperative claims that the 1402  
proposed rate is lower than its incremental costs, the 1403

cooperative has the burden of establishing its incremental 1404  
costs. 1405

Sec. 4926.42. In a complaint filed under section 4926.35 1406  
of the Revised Code, there is a rebuttable presumption that the 1407  
charged rate is just and reasonable, if the cooperative can show 1408  
that its charged rate does not exceed an annual recurring 1409  
attachment rate permitted under rules 4901:1-3-01 to 4901:01-3- 1410  
06 of the Administrative Code. 1411

Sec. 4926.45. (A) If, pursuant to a complaint filed under 1412  
section 4926.35 of the Revised Code, the public utilities 1413  
commission determines that any rate, term, or condition 1414  
described in the complaint is not just and reasonable, it may do 1415  
any of the following: 1416

(1) Terminate the rate, term, or condition and prescribe a 1417  
just and reasonable rate, term, or condition; 1418

(2) Require entry into a pole attachment agreement on just 1419  
and reasonable rates, terms, and conditions; 1420

(3) Require access to poles as provided under sections 1421  
4926.03 to 4926.22 of the Revised Code; 1422

(4) Substitute in the pole attachment agreement the just 1423  
and reasonable rate, term, or condition established by the 1424  
commission; 1425

(5) Order a refund or payment, as appropriate. 1426

(B) A refund or payment ordered under this section may not 1427  
exceed the difference between the actual amount paid under the 1428  
unjust and unreasonable rate, term, or condition and the amount 1429  
that would have been paid under the rate, term, or condition 1430  
established by the commission for the period described in the 1431

complaint, provided that the period during which refunds or 1432  
payments are made does not exceed two years. 1433

Sec. 4926.47. A public utilities commission determination 1434  
resolving a complaint under sections 4926.35 to 4926.45 of the 1435  
Revised Code shall be issued in the form of a final order. 1436

Sec. 4963.60. As used in sections 4963.60 to 4963.6067 of 1437  
the Revised Code: 1438

(A) "Cross" or "crossing" means the placement and use of 1439  
any provider facility over, under, or across a railroad right of 1440  
way from a public right of way. 1441

(B) "Crossing notice" means a notice described in, and 1442  
submitted to a railroad under, section 4963.603 of the Revised 1443  
Code. 1444

(C) "Facility" means any cable, conduit, wire, supporting 1445  
poles and guys, manhole, or other material or equipment, used by 1446  
a provider to furnish service it is authorized to provide. 1447

(D) "Political subdivision" has the same meaning as in 1448  
section 9.23 of the Revised Code. 1449

(E) "Provider" means either of the following: 1450

(1) A telephone company as defined in division (A) of 1451  
section 4905.03 of the Revised Code; 1452

(2) A video service provider as defined in section 1332.21 1453  
of the Revised Code. 1454

(F) "Public right of way" means the surface of, and the 1455  
space within, through, on, across, above, or below, any public 1456  
street, public road, public highway, public freeway, public 1457  
lane, public path, public alley, public court, public sidewalk, 1458

public boulevard, public parkway, public drive, and any other 1459  
land dedicated or otherwise designated or assumed in any formal 1460  
or prescriptive manner for a compatible purpose use, which is 1461  
owned or controlled by the state or any political subdivision of 1462  
the state, or that is land otherwise dedicated to public use as 1463  
described in the valuation records created under interstate 1464  
commerce commission valuation order number 7. 1465

(G) "Railroad" has the same meaning as in section 4907.02 1466  
of the Revised Code. 1467

(H) "Railroad right of way" means land granted or reserved 1468  
for track for rail transportation by a railroad that is either 1469  
of the following: 1470

(1) In active use; 1471

(2) Out of service, but the railroad retains the right to 1472  
reactivate it. 1473

**Sec. 4963.601.** A provider may construct a crossing in 1474  
accordance with sections 4963.60 to 4963.6067 of the Revised 1475  
Code. 1476

**Sec. 4963.603.** A provider seeking to construct a crossing 1477  
shall submit a written notice to the railroad whose railroad 1478  
right of way is to be subject to the crossing that includes the 1479  
following: 1480

(A) The name, address, telephone number, and electronic 1481  
mail address of the provider and the provider's agent or 1482  
representative authorized to act on behalf of the provider; 1483

(B) A completed engineering drawing showing the crossing 1484  
location and the proposed location of the provider facilities; 1485

(C) The railroad right of way, property, tracks, and wires 1486

the provider proposes to cross. 1487

Sec. 4963.604. A crossing notice may be submitted by 1488  
certified mail, return receipt requested; an internet-based 1489  
interface; or electronic mail. 1490

Sec. 4963.605. A provider shall pay a one-time fee of 1491  
seven hundred fifty dollars for each crossing notice to the 1492  
railroad whose railroad right of way is to be subject to the 1493  
crossing. The provider shall pay the fee at the same time it 1494  
submits the crossing notice. 1495

Sec. 4963.606. The fee required under section 4963.605 of 1496  
the Revised Code shall completely compensate the railroad for 1497  
the crossing described in a crossing notice. Except for costs 1498  
described in section 4963.6038 of the Revised Code, no cost, 1499  
charge, or fee, other than the fee required under section 1500  
4963.605 of the Revised Code may be imposed on a provider for a 1501  
crossing. 1502

Sec. 4963.607. A provider is not required to submit a 1503  
crossing notice for conducting facility maintenance, repair, or 1504  
replacement activity in its crossing if the activity does not 1505  
involve excavation or continuous work within twenty-five feet of 1506  
railroad track located in the right of way containing the 1507  
crossing. 1508

Sec. 4963.608. A railroad whose railroad right of way is 1509  
subject to a crossing shall not require any license, permit, or 1510  
authorization for the construction of the crossing other than a 1511  
crossing notice or a notice required under section 4963.6032 or 1512  
4963.6049 of the Revised Code. 1513

Sec. 4963.6011. A crossing notice submitted in compliance 1514  
with sections 4963.603, 4963.604, and 4963.605 of the Revised 1515

Code shall be considered complete. 1516

Sec. 4963.6012. If a railroad that receives a crossing 1517  
notice determines that the crossing notice does not comply with 1518  
the requirements of sections 4963.603, 4963.604, and 4963.605 of 1519  
the Revised Code, the railroad shall notify the provider in 1520  
writing that the crossing notice is incomplete and shall specify 1521  
the reasons the notice is incomplete and what action must be 1522  
taken to make the crossing notice complete. The railroad shall 1523  
notify the provider by certified mail, return receipt requested, 1524  
that the notice is incomplete not later than fifteen days after 1525  
the date the crossing notice was submitted. 1526

Sec. 4963.6013. If a railroad makes a timely notification 1527  
under section 4963.6012 of the Revised Code that a crossing 1528  
notice is incomplete, the sixty-day period under section 1529  
4963.6030 shall be tolled regarding construction of the crossing 1530  
under the crossing notice until the railroad determines the 1531  
notice is complete. 1532

Sec. 4963.6014. A provider whose crossing notice has been 1533  
determined incomplete under section 4963.6012 of the Revised 1534  
Code may petition the public utilities commission for a 1535  
determination of whether the crossing notice is complete after 1536  
the provider has taken action to complete the crossing notice 1537  
and the railroad still determines the crossing notice is 1538  
incomplete. 1539

Sec. 4963.6015. If a railroad fails to make a timely 1540  
objection under section 4963.6012 of the Revised Code to a 1541  
crossing notice, it shall be deemed complete. 1542

Sec. 4963.6018. If a railroad has an objection to the 1543  
construction of a crossing described in a crossing notice, which 1544

objection is based on failure of the provider to comply with a 1545  
written railroad crossing standard, the railroad shall notify 1546  
the provider in writing, by certified mail, return receipt 1547  
requested, of the objection and shall specify the reason for the 1548  
objection and what action must be taken to address the 1549  
objection. The railroad shall notify the provider of the 1550  
objection not later than fifteen days after the date the 1551  
crossing notice was submitted. 1552

Sec. 4963.6019. If a railroad notifies a provider of an 1553  
objection under section 4963.6018 of the Revised Code, the 1554  
railroad and provider shall make a good faith effort to resolve 1555  
the objection to the satisfaction of the railroad and provider. 1556

Sec. 4963.6020. If a railroad and provider are unable to 1557  
resolve an objection under sections 4963.6018 and 4963.6019 of 1558  
the Revised Code within fifteen days of the date the objection 1559  
notification is sent, the railroad or provider may petition the 1560  
public utilities commission for resolution of the objection. 1561

Sec. 4963.6023. Prior to the resolution of a petition 1562  
filed under section 4963.6014 or 4963.6020 of the Revised Code 1563  
regarding a crossing notice, prior to the expiration of the 1564  
period in section 4963.6030 of the Revised Code regarding a 1565  
crossing notice that is not subject to a petition, or while a 1566  
crossing notice is subject to tolling under section 4963.6013 of 1567  
the Revised Code, the provider may proceed with the construction 1568  
of the crossing under the following conditions: 1569

(A) The provider notifies the railroad of the intent to do 1570  
both of the following: 1571

(1) Proceed with construction of the crossing prior to the 1572  
resolution of the petition or expiration of the time period; 1573

(2) Obtain a bond or letter of credit in the sum of 1574  
twenty-five thousand dollars payable to the railroad for any 1575  
damages resulting from the construction of the crossing; 1576

(B) The provider obtains the bond or letter of credit 1577  
described in division (A) (2) of this section. 1578

(C) The public utilities commission has not made a 1579  
determination under section 4963.6025 of the Revised Code or 1580  
division (B) of section 4963.6026 of the Revised Code. 1581

**Sec. 4963.6024.** A railroad that receives notice under 1582  
division (A) of section 4963.6023 of the Revised Code may 1583  
request the public utilities commission to issue an order 1584  
prohibiting a provider from proceeding with the construction of 1585  
a crossing under section 4963.6023 of the Revised Code because 1586  
there is a reasonable likelihood that one of the following 1587  
situations applies: 1588

(A) The crossing involves a significant and imminent 1589  
likelihood of danger to the public health or safety. 1590

(B) The crossing is a serious threat to the safe operation 1591  
of the railroad or the current use of the railroad right of way 1592  
or public right of way. 1593

**Sec. 4963.6025.** If the public utilities commission 1594  
determines that there is a reasonable likelihood that one or 1595  
both of the situations described in division (A) or (B) of 1596  
section 4963.6024 of the Revised Code applies regarding the 1597  
construction of a crossing under section 4963.6023 of the 1598  
Revised Code, the commission shall do both of the following: 1599

(A) Issue an order temporarily enjoining construction of 1600  
the crossing; 1601

(B) Conduct further proceedings to determine if one or both of the situations apply. 1602  
1603

**Sec. 4963.6026.** If the public utilities commission determines after conducting a proceeding under section 4963.6025 of the Revised Code that one or both of the situations described in division (A) or (B) of section 4963.6024 of the Revised Code apply with respect to the construction of a crossing, the commission shall do one of the following: 1604  
1605  
1606  
1607  
1608  
1609

(A) Issue an order that does the following: 1610

(1) Requires the provider, railroad, or both to take such action the commission determines necessary to remedy the situation regarding the crossing; 1611  
1612  
1613

(2) Resend the order enjoining construction of the crossing. 1614  
1615

(B) Issue an order enjoining construction of the crossing permanently, if no action is possible to remedy the situation regarding the crossing. 1616  
1617  
1618

**Sec. 4963.6030.** (A) Except as provided in division (B) of this section, a provider may begin construction of a crossing under a crossing notice after sixty days have expired since the date the crossing notice was submitted. 1619  
1620  
1621  
1622

(B) The provider may not begin construction of the crossing if the underlying crossing notice is the subject of any of the following: 1623  
1624  
1625

(1) A petition pending under section 4963.6014 or 4963.6020 of the Revised Code; 1626  
1627

(2) A proceeding pending under sections 4963.6024 and 4963.6025 of the Revised Code; 1628  
1629

<u>(3) Tolling under section 4963.6013 of the Revised Code;</u>	1630
<u>(4) A determination under division (B) of section</u>	1631
<u>4963.6026 of the Revised Code.</u>	1632
<b><u>Sec. 4963.6031.</u></b> (A) <u>Except as provided in division (B) of</u>	1633
<u>this section, a provider shall begin construction of a crossing</u>	1634
<u>under a crossing notice not later than one hundred eighty days</u>	1635
<u>after submitting the crossing notice.</u>	1636
<u>(B) A provider shall have such additional time as is</u>	1637
<u>reasonably necessary to begin construction on the crossing</u>	1638
<u>beyond the one-hundred-eighty-day time period, if the provider</u>	1639
<u>is or was subject to any of the following:</u>	1640
<u>(1) A petition or proceeding described under division (B)</u>	1641
<u>(1) or (2) of section 4963.6030 of the Revised Code;</u>	1642
<u>(2) Tolling under section 4963.6013 of the Revised Code;</u>	1643
<u>(3) Force majeure or actions of a third party.</u>	1644
<b><u>Sec. 4963.6032.</u></b> <u>A crossing notice shall expire and the fee</u>	1645
<u>accompanying the crossing notice as provided under section</u>	1646
<u>4963.605 of the Revised Code may be retained by the railroad if</u>	1647
<u>the provider fails to begin construction of the crossing in the</u>	1648
<u>time required under section 4963.6031 of the Revised Code. A</u>	1649
<u>provider that fails to begin construction of a crossing as</u>	1650
<u>described in this section may seek to construct the crossing by</u>	1651
<u>submitting a new crossing notice under section 4963.603 of the</u>	1652
<u>Revised Code.</u>	1653
<b><u>Sec. 4963.6034.</u></b> (A) <u>Each railroad shall establish and</u>	1654
<u>maintain standards for crossings in this state, which shall</u>	1655
<u>include technical requirements for crossings that do not exceed</u>	1656
<u>the requirements of the national electrical safety code</u>	1657

established by the institute of electrical and electronics 1658  
engineers. 1659

(B) Each railroad shall provide the following: 1660

(1) A mailing address, internet-based interface access 1661  
information, and electronic mail address for submission of 1662  
crossing notices under section 4963.604 of the Revised Code; 1663

(2) A telephone number for notices under section 4963.6049 1664  
of the Revised Code. 1665

(C) Each railroad shall provide the information described 1666  
in divisions (A) and (B) of this section on request of a 1667  
provider. 1668

(D) Each railroad shall comply with the requirements of 1669  
this section not later than ninety days after the effective date 1670  
of this section. 1671

**Sec. 4963.6035.** (A) Except as provided in division (B) of 1672  
this section, a railroad shall not establish or impose crossing 1673  
standards in addition to the standards established under 1674  
division (A) of section 4963.6034 of the Revised Code. 1675

(B) A railroad may establish or impose additional crossing 1676  
standards for a particular railroad right of way for which a 1677  
crossing notice is submitted that has unique characteristics and 1678  
the additional standards are reasonably necessary to protect the 1679  
public health and safety or the safe operation and current use 1680  
of the railroad right of way. The additional standards shall not 1681  
exceed the requirements of the national electrical safety code 1682  
established by the institute of electrical and electronics 1683  
engineers. 1684

**Sec. 4963.6038.** If a railroad provides flagging for the 1685

the construction of a crossing, the provider constructing the 1686  
crossing shall reimburse the railroad for the actual, 1687  
reasonable, and documented costs associated with the flagging. 1688  
The reimbursement shall only be required for flagging provided 1689  
during the actual time construction activity for the crossing is 1690  
occurring. 1691

**Sec. 4963.6041.** A railroad may require safety personnel to 1692  
be present during the time construction activity for a crossing 1693  
is occurring. 1694

**Sec. 4963.6042.** If a railroad requires the presence of 1695  
safety personnel during the time construction activity for a 1696  
crossing is occurring, the railroad shall do one of the 1697  
following: 1698

(A) Provide the personnel and make sure they are present 1699  
during the construction activity; 1700

(B) Permit the provider to hire third-party contractors to 1701  
serve as safety personnel and to be present during the 1702  
construction activity. 1703

**Sec. 4963.6043.** If a railroad permits a provider to hire 1704  
safety personnel under section 4963.6042 of the Revised Code, 1705  
the railroad shall provide a list of third party contractors 1706  
approved by the railroad to serve as such safety personnel. 1707

**Sec. 4963.6044.** If a provider hires safety personnel under 1708  
section 4963.6042 of the Revised Code, the provider shall be 1709  
solely responsible for the cost of employing that personnel. 1710

**Sec. 4963.6045.** Safety personnel shall not be required to 1711  
be present in either of the following situations: 1712

(A) For construction activity for a crossing if the 1713

construction activity is not in the railroad right of way; 1714

(B) For facility maintenance, repair, or replacement 1715  
activity in a crossing if the activity does not involve 1716  
excavation or continuous work within twenty-five feet of 1717  
railroad track located in the railroad right of way containing 1718  
the crossing. 1719

Sec. 4963.6048. Each railroad and provider shall be 1720  
responsible for the maintenance and repair of their own property 1721  
located in the railroad right of way containing the crossing. 1722

Sec. 4963.6049. A railroad shall give immediate notice to 1723  
a provider, and a provider shall give immediate notice to a 1724  
railroad, if the railroad or provider needs to perform either of 1725  
the following regarding a crossing to which they are both 1726  
subject, and that performance may affect the other's operations: 1727

(A) Emergency maintenance or repair within the railroad 1728  
right of way containing the crossing; 1729

(B) Maintenance or repair involving excavation or 1730  
continuous work within twenty-five feet of railroad track 1731  
located in the railroad right of way containing the crossing. 1732

Sec. 4963.6052. A railroad may require a provider to 1733  
relocate provider facilities in a crossing, at the railroad's 1734  
expense, if the relocation is necessary to accommodate railroad 1735  
operations. 1736

Sec. 4963.6053. A railroad shall provide a statement or 1737  
other supporting documentation to a provider specifying the 1738  
operational reasons for a relocation requirement under section 1739  
4963.6052 of the Revised Code not later than fifteen days after 1740  
the provider requests the statement or documentation. 1741

Sec. 4963.6054. A provider shall not be subject to any fee 1742  
or charge for relocating provider facilities pursuant to a 1743  
relocation requirement from a railroad under section 4963.6052 1744  
of the Revised Code. 1745

Sec. 4963.6057. Except as provided in section 4963.6058 of 1746  
the Revised Code, a provider shall not transfer or assign any of 1747  
its rights in a crossing without the prior written permission of 1748  
the railroad whose railroad right of way is subject to the 1749  
crossing, which permission that railroad shall not unreasonably 1750  
withhold. 1751

Sec. 4963.6058. A provider may assign or otherwise 1752  
transfer any of its rights in a crossing, without the permission 1753  
of the railroad whose railroad right of way is subject to the 1754  
crossing, to any entity controlled by, controlling, or under the 1755  
common control of, the provider, or to any entity into, or with 1756  
which, the provider is merged or consolidated or which acquires 1757  
ownership or control of all or substantially all of the 1758  
provider's facilities. 1759

Sec. 4963.6059. A provider shall give notice of an 1760  
assignment or transfer of a crossing under section 4963.6058 of 1761  
the Revised Code to the railroad whose railroad right of way is 1762  
subject to the crossing not later than sixty days after the date 1763  
the transfer or assignment is executed. 1764

Sec. 4963.6062. Except as provided in section 4963.6063 of 1765  
the Revised Code, each railroad and provider subject to a 1766  
crossing shall be liable for any damage or injury to any person 1767  
or property caused by their own acts or omissions. 1768

Sec. 4963.6063. Notwithstanding any law or regulation, a 1769  
railroad and provider subject to a crossing shall not be liable 1770

to each other for consequential, incidental, punitive, 1771  
exemplary, indirect, or business interruption damages suffered 1772  
by either, including lost profits, whether established in 1773  
statutes, tort, or contract, regardless of the theory of 1774  
liability on which the liability claim rests. 1775

Sec. 4963.6065. A railroad or provider subject to a 1776  
crossing for which construction has been completed may file a 1777  
petition with the public utilities commission requesting the 1778  
commission to resolve any dispute between the railroad and 1779  
provider regarding the crossing. The commission shall hold a 1780  
hearing and make any determination necessary to resolve the 1781  
dispute. 1782

Sec. 4963.6067. The public utilities commission shall 1783  
adopt rules necessary to effectuate the purposes and 1784  
requirements of sections 4963.60 to 4963.6065 of the Revised 1785  
Code, including rules governing crossing notices, notifications, 1786  
petitions, and proceedings under those sections. 1787

**Sec. 5739.02.** For the purpose of providing revenue with 1788  
which to meet the needs of the state, for the use of the general 1789  
revenue fund of the state, for the purpose of securing a 1790  
thorough and efficient system of common schools throughout the 1791  
state, for the purpose of affording revenues, in addition to 1792  
those from general property taxes, permitted under 1793  
constitutional limitations, and from other sources, for the 1794  
support of local governmental functions, and for the purpose of 1795  
reimbursing the state for the expense of administering this 1796  
chapter, an excise tax is hereby levied on each retail sale made 1797  
in this state. 1798

(A) (1) The tax shall be collected as provided in section 1799  
5739.025 of the Revised Code. The rate of the tax shall be five 1800

and three-fourths per cent. The tax applies and is collectible 1801  
when the sale is made, regardless of the time when the price is 1802  
paid or delivered. 1803

(2) In the case of the lease or rental, with a fixed term 1804  
of more than thirty days or an indefinite term with a minimum 1805  
period of more than thirty days, of any motor vehicles designed 1806  
by the manufacturer to carry a load of not more than one ton, 1807  
watercraft, outboard motor, or aircraft, or of any tangible 1808  
personal property, other than motor vehicles designed by the 1809  
manufacturer to carry a load of more than one ton, to be used by 1810  
the lessee or renter primarily for business purposes, the tax 1811  
shall be collected by the vendor at the time the lease or rental 1812  
is consummated and shall be calculated by the vendor on the 1813  
basis of the total amount to be paid by the lessee or renter 1814  
under the lease agreement. If the total amount of the 1815  
consideration for the lease or rental includes amounts that are 1816  
not calculated at the time the lease or rental is executed, the 1817  
tax shall be calculated and collected by the vendor at the time 1818  
such amounts are billed to the lessee or renter. In the case of 1819  
an open-end lease or rental, the tax shall be calculated by the 1820  
vendor on the basis of the total amount to be paid during the 1821  
initial fixed term of the lease or rental, and for each 1822  
subsequent renewal period as it comes due. As used in this 1823  
division, "motor vehicle" has the same meaning as in section 1824  
4501.01 of the Revised Code, and "watercraft" includes an 1825  
outdrive unit attached to the watercraft. 1826

A lease with a renewal clause and a termination penalty or 1827  
similar provision that applies if the renewal clause is not 1828  
exercised is presumed to be a sham transaction. In such a case, 1829  
the tax shall be calculated and paid on the basis of the entire 1830  
length of the lease period, including any renewal periods, until 1831

the termination penalty or similar provision no longer applies. 1832  
The taxpayer shall bear the burden, by a preponderance of the 1833  
evidence, that the transaction or series of transactions is not 1834  
a sham transaction. 1835

(3) Except as provided in division (A) (2) of this section, 1836  
in the case of a sale, the price of which consists in whole or 1837  
in part of the lease or rental of tangible personal property, 1838  
the tax shall be measured by the installments of that lease or 1839  
rental. 1840

(4) In the case of a sale of a physical fitness facility 1841  
service or recreation and sports club service, the price of 1842  
which consists in whole or in part of a membership for the 1843  
receipt of the benefit of the service, the tax applicable to the 1844  
sale shall be measured by the installments thereof. 1845

(B) The tax does not apply to the following: 1846

(1) Sales to the state or any of its political 1847  
subdivisions, or to any other state or its political 1848  
subdivisions if the laws of that state exempt from taxation 1849  
sales made to this state and its political subdivisions; 1850

(2) Sales of food for human consumption off the premises 1851  
where sold; 1852

(3) Sales of food sold to students only in a cafeteria, 1853  
dormitory, fraternity, or sorority maintained in a private, 1854  
public, or parochial school, college, or university; 1855

(4) Sales of newspapers and sales or transfers of 1856  
magazines distributed as controlled circulation publications; 1857

(5) The furnishing, preparing, or serving of meals without 1858  
charge by an employer to an employee provided the employer 1859

records the meals as part compensation for services performed or 1860  
work done; 1861

(6) (a) Sales of motor fuel upon receipt, use, 1862  
distribution, or sale of which in this state a tax is imposed by 1863  
the law of this state, but this exemption shall not apply to the 1864  
sale of motor fuel on which a refund of the tax is allowable 1865  
under division (A) of section 5735.14 of the Revised Code; and 1866  
the tax commissioner may deduct the amount of tax levied by this 1867  
section applicable to the price of motor fuel when granting a 1868  
refund of motor fuel tax pursuant to division (A) of section 1869  
5735.14 of the Revised Code and shall cause the amount deducted 1870  
to be paid into the general revenue fund of this state; 1871

(b) Sales of motor fuel other than that described in 1872  
division (B) (6) (a) of this section and used for powering a 1873  
refrigeration unit on a vehicle other than one used primarily to 1874  
provide comfort to the operator or occupants of the vehicle. 1875

(7) Sales of natural gas by a natural gas company or 1876  
municipal gas utility, of water by a water-works company, or of 1877  
steam by a heating company, if in each case the thing sold is 1878  
delivered to consumers through pipes or conduits, and all sales 1879  
of communications services by a telegraph company, all terms as 1880  
defined in section 5727.01 of the Revised Code, and sales of 1881  
electricity delivered through wires; 1882

(8) Casual sales by a person, or auctioneer employed 1883  
directly by the person to conduct such sales, except as to such 1884  
sales of motor vehicles, watercraft or outboard motors required 1885  
to be titled under section 1548.06 of the Revised Code, 1886  
watercraft documented with the United States coast guard, 1887  
snowmobiles, and all-purpose vehicles as defined in section 1888  
4519.01 of the Revised Code; 1889

(9) (a) Sales of services or tangible personal property, 1890  
other than motor vehicles, mobile homes, and manufactured homes, 1891  
by churches, organizations exempt from taxation under section 1892  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1893  
organizations operated exclusively for charitable purposes as 1894  
defined in division (B) (12) of this section, provided that the 1895  
number of days on which such tangible personal property or 1896  
services, other than items never subject to the tax, are sold 1897  
does not exceed six in any calendar year, except as otherwise 1898  
provided in division (B) (9) (b) of this section. If the number of 1899  
days on which such sales are made exceeds six in any calendar 1900  
year, the church or organization shall be considered to be 1901  
engaged in business and all subsequent sales by it shall be 1902  
subject to the tax. In counting the number of days, all sales by 1903  
groups within a church or within an organization shall be 1904  
considered to be sales of that church or organization. 1905

(b) The limitation on the number of days on which tax- 1906  
exempt sales may be made by a church or organization under 1907  
division (B) (9) (a) of this section does not apply to sales made 1908  
by student clubs and other groups of students of a primary or 1909  
secondary school, or a parent-teacher association, booster 1910  
group, or similar organization that raises money to support or 1911  
fund curricular or extracurricular activities of a primary or 1912  
secondary school. 1913

(c) Divisions (B) (9) (a) and (b) of this section do not 1914  
apply to sales by a noncommercial educational radio or 1915  
television broadcasting station. 1916

(10) Sales not within the taxing power of this state under 1917  
the Constitution or laws of the United States or the 1918  
Constitution of this state; 1919

(11) Except for transactions that are sales under division 1920  
(B) (3) (r) of section 5739.01 of the Revised Code, the 1921  
transportation of persons or property, unless the transportation 1922  
is by a private investigation and security service; 1923

(12) Sales of tangible personal property or services to 1924  
churches, to organizations exempt from taxation under section 1925  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1926  
nonprofit organizations operated exclusively for charitable 1927  
purposes in this state, no part of the net income of which 1928  
inures to the benefit of any private shareholder or individual, 1929  
and no substantial part of the activities of which consists of 1930  
carrying on propaganda or otherwise attempting to influence 1931  
legislation; sales to offices administering one or more homes 1932  
for the aged or one or more hospital facilities exempt under 1933  
section 140.08 of the Revised Code; and sales to organizations 1934  
described in division (D) of section 5709.12 of the Revised 1935  
Code. 1936

"Charitable purposes" means the relief of poverty; the 1937  
improvement of health through the alleviation of illness, 1938  
disease, or injury; the operation of an organization exclusively 1939  
for the provision of professional, laundry, printing, and 1940  
purchasing services to hospitals or charitable institutions; the 1941  
operation of a home for the aged, as defined in section 5701.13 1942  
of the Revised Code; the operation of a radio or television 1943  
broadcasting station that is licensed by the federal 1944  
communications commission as a noncommercial educational radio 1945  
or television station; the operation of a nonprofit animal 1946  
adoption service or a county humane society; the promotion of 1947  
education by an institution of learning that maintains a faculty 1948  
of qualified instructors, teaches regular continuous courses of 1949  
study, and confers a recognized diploma upon completion of a 1950

specific curriculum; the operation of a parent-teacher 1951  
association, booster group, or similar organization primarily 1952  
engaged in the promotion and support of the curricular or 1953  
extracurricular activities of a primary or secondary school; the 1954  
operation of a community or area center in which presentations 1955  
in music, dramatics, the arts, and related fields are made in 1956  
order to foster public interest and education therein; the 1957  
production of performances in music, dramatics, and the arts; or 1958  
the promotion of education by an organization engaged in 1959  
carrying on research in, or the dissemination of, scientific and 1960  
technological knowledge and information primarily for the 1961  
public. 1962

Nothing in this division shall be deemed to exempt sales 1963  
to any organization for use in the operation or carrying on of a 1964  
trade or business, or sales to a home for the aged for use in 1965  
the operation of independent living facilities as defined in 1966  
division (A) of section 5709.12 of the Revised Code. 1967

(13) Building and construction materials and services sold 1968  
to construction contractors for incorporation into a structure 1969  
or improvement to real property under a construction contract 1970  
with this state or a political subdivision of this state, or 1971  
with the United States government or any of its agencies; 1972  
building and construction materials and services sold to 1973  
construction contractors for incorporation into a structure or 1974  
improvement to real property that are accepted for ownership by 1975  
this state or any of its political subdivisions, or by the 1976  
United States government or any of its agencies at the time of 1977  
completion of the structures or improvements; building and 1978  
construction materials sold to construction contractors for 1979  
incorporation into a horticulture structure or livestock 1980  
structure for a person engaged in the business of horticulture 1981

or producing livestock; building materials and services sold to 1982  
a construction contractor for incorporation into a house of 1983  
public worship or religious education, or a building used 1984  
exclusively for charitable purposes under a construction 1985  
contract with an organization whose purpose is as described in 1986  
division (B) (12) of this section; building materials and 1987  
services sold to a construction contractor for incorporation 1988  
into a building under a construction contract with an 1989  
organization exempt from taxation under section 501(c) (3) of the 1990  
Internal Revenue Code of 1986 when the building is to be used 1991  
exclusively for the organization's exempt purposes; building and 1992  
construction materials sold for incorporation into the original 1993  
construction of a sports facility under section 307.696 of the 1994  
Revised Code; building and construction materials and services 1995  
sold to a construction contractor for incorporation into real 1996  
property outside this state if such materials and services, when 1997  
sold to a construction contractor in the state in which the real 1998  
property is located for incorporation into real property in that 1999  
state, would be exempt from a tax on sales levied by that state; 2000  
building and construction materials for incorporation into a 2001  
transportation facility pursuant to a public-private agreement 2002  
entered into under sections 5501.70 to 5501.83 of the Revised 2003  
Code; and, until one calendar year after the construction of a 2004  
convention center that qualifies for property tax exemption 2005  
under section 5709.084 of the Revised Code is completed, 2006  
building and construction materials and services sold to a 2007  
construction contractor for incorporation into the real property 2008  
comprising that convention center; 2009

(14) Sales of ships or vessels or rail rolling stock used 2010  
or to be used principally in interstate or foreign commerce, and 2011  
repairs, alterations, fuel, and lubricants for such ships or 2012

vessels or rail rolling stock; 2013

(15) Sales to persons primarily engaged in any of the 2014  
activities mentioned in division (B) (42) (a), (g), or (h) of this 2015  
section, to persons engaged in making retail sales, or to 2016  
persons who purchase for sale from a manufacturer tangible 2017  
personal property that was produced by the manufacturer in 2018  
accordance with specific designs provided by the purchaser, of 2019  
packages, including material, labels, and parts for packages, 2020  
and of machinery, equipment, and material for use primarily in 2021  
packaging tangible personal property produced for sale, 2022  
including any machinery, equipment, and supplies used to make 2023  
labels or packages, to prepare packages or products for 2024  
labeling, or to label packages or products, by or on the order 2025  
of the person doing the packaging, or sold at retail. "Packages" 2026  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 2027  
bindings, wrappings, and other similar devices and containers, 2028  
but does not include motor vehicles or bulk tanks, trailers, or 2029  
similar devices attached to motor vehicles. "Packaging" means 2030  
placing in a package. Division (B) (15) of this section does not 2031  
apply to persons engaged in highway transportation for hire. 2032

(16) Sales of food to persons using supplemental nutrition 2033  
assistance program benefits to purchase the food. As used in 2034  
this division, "food" has the same meaning as in 7 U.S.C. 2012 2035  
and federal regulations adopted pursuant to the Food and 2036  
Nutrition Act of 2008. 2037

(17) Sales to persons engaged in farming, agriculture, 2038  
horticulture, or floriculture, of tangible personal property for 2039  
use or consumption primarily in the production by farming, 2040  
agriculture, horticulture, or floriculture of other tangible 2041  
personal property for use or consumption primarily in the 2042

production of tangible personal property for sale by farming, 2043  
agriculture, horticulture, or floriculture; or material and 2044  
parts for incorporation into any such tangible personal property 2045  
for use or consumption in production; and of tangible personal 2046  
property for such use or consumption in the conditioning or 2047  
holding of products produced by and for such use, consumption, 2048  
or sale by persons engaged in farming, agriculture, 2049  
horticulture, or floriculture, except where such property is 2050  
incorporated into real property; 2051

(18) Sales of drugs for a human being that may be 2052  
dispensed only pursuant to a prescription; insulin as recognized 2053  
in the official United States pharmacopoeia; urine and blood 2054  
testing materials when used by diabetics or persons with 2055  
hypoglycemia to test for glucose or acetone; hypodermic syringes 2056  
and needles when used by diabetics for insulin injections; 2057  
epoetin alfa when purchased for use in the treatment of persons 2058  
with medical disease; hospital beds when purchased by hospitals, 2059  
nursing homes, or other medical facilities; and medical oxygen 2060  
and medical oxygen-dispensing equipment when purchased by 2061  
hospitals, nursing homes, or other medical facilities; 2062

(19) Sales of prosthetic devices, durable medical 2063  
equipment for home use, or mobility enhancing equipment, when 2064  
made pursuant to a prescription and when such devices or 2065  
equipment are for use by a human being. 2066

(20) Sales of emergency and fire protection vehicles and 2067  
equipment to nonprofit organizations for use solely in providing 2068  
fire protection and emergency services, including trauma care 2069  
and emergency medical services, for political subdivisions of 2070  
the state; 2071

(21) Sales of tangible personal property manufactured in 2072

this state, if sold by the manufacturer in this state to a 2073  
retailer for use in the retail business of the retailer outside 2074  
of this state and if possession is taken from the manufacturer 2075  
by the purchaser within this state for the sole purpose of 2076  
immediately removing the same from this state in a vehicle owned 2077  
by the purchaser; 2078

(22) Sales of services provided by the state or any of its 2079  
political subdivisions, agencies, instrumentalities, 2080  
institutions, or authorities, or by governmental entities of the 2081  
state or any of its political subdivisions, agencies, 2082  
instrumentalities, institutions, or authorities; 2083

(23) Sales of motor vehicles to nonresidents of this state 2084  
under the circumstances described in division (B) of section 2085  
5739.029 of the Revised Code; 2086

(24) Sales to persons engaged in the preparation of eggs 2087  
for sale of tangible personal property used or consumed directly 2088  
in such preparation, including such tangible personal property 2089  
used for cleaning, sanitizing, preserving, grading, sorting, and 2090  
classifying by size; packages, including material and parts for 2091  
packages, and machinery, equipment, and material for use in 2092  
packaging eggs for sale; and handling and transportation 2093  
equipment and parts therefor, except motor vehicles licensed to 2094  
operate on public highways, used in intraplant or interplant 2095  
transfers or shipment of eggs in the process of preparation for 2096  
sale, when the plant or plants within or between which such 2097  
transfers or shipments occur are operated by the same person. 2098  
"Packages" includes containers, cases, baskets, flats, fillers, 2099  
filler flats, cartons, closure materials, labels, and labeling 2100  
materials, and "packaging" means placing therein. 2101

(25) (a) Sales of water to a consumer for residential use; 2102

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	2103 2104 2105 2106
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	2107 2108
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	2109 2110 2111 2112
(a) To prepare food for human consumption for sale;	2113
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	2114 2115 2116 2117
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	2118 2119
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	2120 2121
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	2122 2123 2124 2125
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	2126 2127 2128
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the	2129 2130

Revised Code; 2131

(32) The sale, lease, repair, and maintenance of, parts 2132  
for, or items attached to or incorporated in, motor vehicles 2133  
that are primarily used for transporting tangible personal 2134  
property belonging to others by a person engaged in highway 2135  
transportation for hire, except for packages and packaging used 2136  
for the transportation of tangible personal property; 2137

(33) Sales to the state headquarters of any veterans' 2138  
organization in this state that is either incorporated and 2139  
issued a charter by the congress of the United States or is 2140  
recognized by the United States veterans administration, for use 2141  
by the headquarters; 2142

(34) Sales to a telecommunications service vendor, mobile 2143  
telecommunications service vendor, internet access service 2144  
vendor, or satellite broadcasting service vendor of services or 2145  
tangible personal property and services and component parts 2146  
thereof used directly and primarily in creating, distributing, 2147  
provisioning, producing, conveying, monitoring, routing, 2148  
transmitting, receiving, switching, or recording ~~any~~ 2149  
~~interactive, one or two-way electromagnetic communications,~~ 2150  
~~including voice, image, data, and information,~~ 2151  
telecommunications service, mobile telecommunications service, 2152  
internet access service, or satellite broadcasting service 2153  
through the use of any medium, including, but not limited to, 2154  
poles, wires, cables, switching equipment, computers, and record 2155  
storage devices and media, ~~and component parts for the tangible~~ 2156  
~~personal property. The exemption provided in this division shall~~ 2157  
~~be in lieu of all other exemptions under division (B) (42) (a) or~~ 2158  
~~(n) of this section to which the vendor may otherwise be~~ 2159  
~~entitled, based upon the use of the thing purchased in providing~~ 2160

~~the telecommunications, mobile telecommunications, or satellite  
broadcasting service.~~ 2161  
2162

(35) (a) Sales where the purpose of the consumer is to use 2163  
or consume the things transferred in making retail sales and 2164  
consisting of newspaper inserts, catalogues, coupons, flyers, 2165  
gift certificates, or other advertising material that prices and 2166  
describes tangible personal property offered for retail sale. 2167

(b) Sales to direct marketing vendors of preliminary 2168  
materials such as photographs, artwork, and typesetting that 2169  
will be used in printing advertising material; and of printed 2170  
matter that offers free merchandise or chances to win sweepstake 2171  
prizes and that is mailed to potential customers with 2172  
advertising material described in division (B) (35) (a) of this 2173  
section; 2174

(c) Sales of equipment such as telephones, computers, 2175  
facsimile machines, and similar tangible personal property 2176  
primarily used to accept orders for direct marketing retail 2177  
sales. 2178

(d) Sales of automatic food vending machines that preserve 2179  
food with a shelf life of forty-five days or less by 2180  
refrigeration and dispense it to the consumer. 2181

For purposes of division (B) (35) of this section, "direct 2182  
marketing" means the method of selling where consumers order 2183  
tangible personal property by United States mail, delivery 2184  
service, or telecommunication and the vendor delivers or ships 2185  
the tangible personal property sold to the consumer from a 2186  
warehouse, catalogue distribution center, or similar fulfillment 2187  
facility by means of the United States mail, delivery service, 2188  
or common carrier. 2189

(36) Sales to a person engaged in the business of 2190  
horticulture or producing livestock of materials to be 2191  
incorporated into a horticulture structure or livestock 2192  
structure; 2193

(37) Sales of personal computers, computer monitors, 2194  
computer keyboards, modems, and other peripheral computer 2195  
equipment to an individual who is licensed or certified to teach 2196  
in an elementary or a secondary school in this state for use by 2197  
that individual in preparation for teaching elementary or 2198  
secondary school students; 2199

(38) Sales of tangible personal property that is not 2200  
required to be registered or licensed under the laws of this 2201  
state to a citizen of a foreign nation that is not a citizen of 2202  
the United States, provided the property is delivered to a 2203  
person in this state that is not a related member of the 2204  
purchaser, is physically present in this state for the sole 2205  
purpose of temporary storage and package consolidation, and is 2206  
subsequently delivered to the purchaser at a delivery address in 2207  
a foreign nation. As used in division (B) (38) of this section, 2208  
"related member" has the same meaning as in section 5733.042 of 2209  
the Revised Code, and "temporary storage" means the storage of 2210  
tangible personal property for a period of not more than sixty 2211  
days. 2212

(39) Sales of used manufactured homes and used mobile 2213  
homes, as defined in section 5739.0210 of the Revised Code, made 2214  
on or after January 1, 2000; 2215

(40) Sales of tangible personal property and services to a 2216  
provider of electricity used or consumed directly and primarily 2217  
in generating, transmitting, or distributing electricity for use 2218  
by others, including property that is or is to be incorporated 2219

into and will become a part of the consumer's production, 2220  
transmission, or distribution system and that retains its 2221  
classification as tangible personal property after 2222  
incorporation; fuel or power used in the production, 2223  
transmission, or distribution of electricity; energy conversion 2224  
equipment as defined in section 5727.01 of the Revised Code; and 2225  
tangible personal property and services used in the repair and 2226  
maintenance of the production, transmission, or distribution 2227  
system, including only those motor vehicles as are specially 2228  
designed and equipped for such use. The exemption provided in 2229  
this division shall be in lieu of all other exemptions in 2230  
division (B) (42) (a) or (n) of this section to which a provider 2231  
of electricity may otherwise be entitled based on the use of the 2232  
tangible personal property or service purchased in generating, 2233  
transmitting, or distributing electricity. 2234

(41) Sales to a person providing services under division 2235  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 2236  
personal property and services used directly and primarily in 2237  
providing taxable services under that section. 2238

(42) Sales where the purpose of the purchaser is to do any 2239  
of the following: 2240

(a) To incorporate the thing transferred as a material or 2241  
a part into tangible personal property to be produced for sale 2242  
by manufacturing, assembling, processing, or refining; or to use 2243  
or consume the thing transferred directly in producing tangible 2244  
personal property for sale by mining, including, without 2245  
limitation, the extraction from the earth of all substances that 2246  
are classed geologically as minerals, or directly in the 2247  
rendition of a public utility service, except that the sales tax 2248  
levied by this section shall be collected upon all meals, 2249

drinks, and food for human consumption sold when transporting 2250  
persons. This paragraph does not exempt from "retail sale" or 2251  
"sales at retail" the sale of tangible personal property that is 2252  
to be incorporated into a structure or improvement to real 2253  
property. 2254

(b) To hold the thing transferred as security for the 2255  
performance of an obligation of the vendor; 2256

(c) To resell, hold, use, or consume the thing transferred 2257  
as evidence of a contract of insurance; 2258

(d) To use or consume the thing directly in commercial 2259  
fishing; 2260

(e) To incorporate the thing transferred as a material or 2261  
a part into, or to use or consume the thing transferred directly 2262  
in the production of, magazines distributed as controlled 2263  
circulation publications; 2264

(f) To use or consume the thing transferred in the 2265  
production and preparation in suitable condition for market and 2266  
sale of printed, imprinted, overprinted, lithographic, 2267  
multilithic, blueprinted, photostatic, or other productions or 2268  
reproductions of written or graphic matter; 2269

(g) To use the thing transferred, as described in section 2270  
5739.011 of the Revised Code, primarily in a manufacturing 2271  
operation to produce tangible personal property for sale; 2272

(h) To use the benefit of a warranty, maintenance or 2273  
service contract, or similar agreement, as described in division 2274  
(B) (7) of section 5739.01 of the Revised Code, to repair or 2275  
maintain tangible personal property, if all of the property that 2276  
is the subject of the warranty, contract, or agreement would not 2277  
be subject to the tax imposed by this section; 2278

(i) To use the thing transferred as qualified research and development equipment;	2279 2280
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.	2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293
(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B) (7) of section 5739.01 of the Revised Code;	2294 2295 2296 2297 2298 2299 2300
(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;	2301 2302
(m) To use tangible personal property to perform a service listed in division (B) (3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;	2303 2304 2305 2306 2307

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(p) To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced;

(q) To use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production.

As used in division (B) (42) (q) of this section, "production" means operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth.

(i) For the purposes of division (B) (42) (q) of this	2337
section, the "thing transferred" includes, but is not limited	2338
to, any of the following:	2339
(I) Services provided in the construction of permanent	2340
access roads, services provided in the construction of the well	2341
site, and services provided in the construction of temporary	2342
impoundments;	2343
(II) Equipment and rigging used for the specific purpose	2344
of creating with integrity a wellbore pathway to underground	2345
reservoirs;	2346
(III) Drilling and workover services used to work within a	2347
subsurface wellbore, and tangible personal property directly	2348
used in providing such services;	2349
(IV) Casing, tubulars, and float and centralizing	2350
equipment;	2351
(V) Trailers to which production equipment is attached;	2352
(VI) Well completion services, including cementing of	2353
casing, and tangible personal property directly used in	2354
providing such services;	2355
(VII) Wireline evaluation, mud logging, and perforation	2356
services, and tangible personal property directly used in	2357
providing such services;	2358
(VIII) Reservoir stimulation, hydraulic fracturing, and	2359
acidizing services, and tangible personal property directly used	2360
in providing such services, including all material pumped	2361
downhole;	2362
(IX) Pressure pumping equipment;	2363

(X) Artificial lift systems equipment;	2364
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	2365 2366 2367
(XII) Tangible personal property directly used to control production equipment.	2368 2369
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	2370 2371 2372
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	2373 2374 2375
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	2376 2377 2378
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	2379 2380 2381
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	2382 2383 2384 2385
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	2386 2387 2388 2389
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	2390 2391

(VII) Well site fencing, lighting, or security systems;	2392
(VIII) Communication devices or services;	2393
(IX) Office supplies;	2394
(X) Trailers used as offices or lodging;	2395
(XI) Motor vehicles of any kind;	2396
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	2397 2398
(XIII) Tangible personal property used primarily as a safety device;	2399 2400
(XIV) Data collection or monitoring devices;	2401
(XV) Access ladders, stairs, or platforms attached to storage tanks.	2402 2403
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	2404 2405 2406 2407 2408
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section.	2409 2410 2411 2412
As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.	2413 2414 2415
(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents	2416 2417 2418

or wax, to the consumer for the consumer's use on the premises 2419  
in washing, cleaning, or waxing a motor vehicle, provided no 2420  
other personal property or personal service is provided as part 2421  
of the transaction. 2422

(44) Sales of replacement and modification parts for 2423  
engines, airframes, instruments, and interiors in, and paint 2424  
for, aircraft used primarily in a fractional aircraft ownership 2425  
program, and sales of services for the repair, modification, and 2426  
maintenance of such aircraft, and machinery, equipment, and 2427  
supplies primarily used to provide those services. 2428

(45) Sales of telecommunications service that is used 2429  
directly and primarily to perform the functions of a call 2430  
center. As used in this division, "call center" means any 2431  
physical location where telephone calls are placed or received 2432  
in high volume for the purpose of making sales, marketing, 2433  
customer service, technical support, or other specialized 2434  
business activity, and that employs at least fifty individuals 2435  
that engage in call center activities on a full-time basis, or 2436  
sufficient individuals to fill fifty full-time equivalent 2437  
positions. 2438

(46) Sales by a telecommunications service vendor of 900 2439  
service to a subscriber. This division does not apply to 2440  
information services, as defined in division (FF) of section 2441  
5739.01 of the Revised Code. 2442

(47) Sales of value-added non-voice data service. This 2443  
division does not apply to any similar service that is not 2444  
otherwise a telecommunications service. 2445

(48) (a) Sales of machinery, equipment, and software to a 2446  
qualified direct selling entity for use in a warehouse or 2447

distribution center primarily for storing, transporting, or 2448  
otherwise handling inventory that is held for sale to 2449  
independent salespersons who operate as direct sellers and that 2450  
is held primarily for distribution outside this state; 2451

(b) As used in division (B) (48) (a) of this section: 2452

(i) "Direct seller" means a person selling consumer 2453  
products to individuals for personal or household use and not 2454  
from a fixed retail location, including selling such product at 2455  
in-home product demonstrations, parties, and other one-on-one 2456  
selling. 2457

(ii) "Qualified direct selling entity" means an entity 2458  
selling to direct sellers at the time the entity enters into a 2459  
tax credit agreement with the tax credit authority pursuant to 2460  
section 122.17 of the Revised Code, provided that the agreement 2461  
was entered into on or after January 1, 2007. Neither 2462  
contingencies relevant to the granting of, nor later 2463  
developments with respect to, the tax credit shall impair the 2464  
status of the qualified direct selling entity under division (B) 2465  
(48) of this section after execution of the tax credit agreement 2466  
by the tax credit authority. 2467

(c) Division (B) (48) of this section is limited to 2468  
machinery, equipment, and software first stored, used, or 2469  
consumed in this state within the period commencing June 24, 2470  
2008, and ending on the date that is five years after that date. 2471

(49) Sales of materials, parts, equipment, or engines used 2472  
in the repair or maintenance of aircraft or avionics systems of 2473  
such aircraft, and sales of repair, remodeling, replacement, or 2474  
maintenance services in this state performed on aircraft or on 2475  
an aircraft's avionics, engine, or component materials or parts. 2476

As used in division (B) (49) of this section, "aircraft" means 2477  
aircraft of more than six thousand pounds maximum certified 2478  
takeoff weight or used exclusively in general aviation. 2479

(50) Sales of full flight simulators that are used for 2480  
pilot or flight-crew training, sales of repair or replacement 2481  
parts or components, and sales of repair or maintenance services 2482  
for such full flight simulators. "Full flight simulator" means a 2483  
replica of a specific type, or make, model, and series of 2484  
aircraft cockpit. It includes the assemblage of equipment and 2485  
computer programs necessary to represent aircraft operations in 2486  
ground and flight conditions, a visual system providing an out- 2487  
of-the-cockpit view, and a system that provides cues at least 2488  
equivalent to those of a three-degree-of-freedom motion system, 2489  
and has the full range of capabilities of the systems installed 2490  
in the device as described in appendices A and B of part 60 of 2491  
chapter 1 of title 14 of the Code of Federal Regulations. 2492

(51) Any transfer or lease of tangible personal property 2493  
between the state and JobsOhio in accordance with section 2494  
4313.02 of the Revised Code. 2495

(52) (a) Sales to a qualifying corporation. 2496

(b) As used in division (B) (52) of this section: 2497

(i) "Qualifying corporation" means a nonprofit corporation 2498  
organized in this state that leases from an eligible county 2499  
land, buildings, structures, fixtures, and improvements to the 2500  
land that are part of or used in a public recreational facility 2501  
used by a major league professional athletic team or a class A 2502  
to class AAA minor league affiliate of a major league 2503  
professional athletic team for a significant portion of the 2504  
team's home schedule, provided the following apply: 2505

(I) The facility is leased from the eligible county 2506  
pursuant to a lease that requires substantially all of the 2507  
revenue from the operation of the business or activity conducted 2508  
by the nonprofit corporation at the facility in excess of 2509  
operating costs, capital expenditures, and reserves to be paid 2510  
to the eligible county at least once per calendar year. 2511

(II) Upon dissolution and liquidation of the nonprofit 2512  
corporation, all of its net assets are distributable to the 2513  
board of commissioners of the eligible county from which the 2514  
corporation leases the facility. 2515

(ii) "Eligible county" has the same meaning as in section 2516  
307.695 of the Revised Code. 2517

(53) Sales to or by a cable service provider, video 2518  
service provider, or radio or television broadcast station 2519  
regulated by the federal government of cable service or 2520  
programming, video service or programming, audio service or 2521  
programming, or electronically transferred digital audiovisual 2522  
or audio work. As used in division (B) (53) of this section, 2523  
"cable service" and "cable service provider" have the same 2524  
meanings as in section 1332.01 of the Revised Code, and "video 2525  
service," "video service provider," and "video programming" have 2526  
the same meanings as in section 1332.21 of the Revised Code. 2527

(54) Sales of a digital audio work electronically 2528  
transferred for delivery through use of a machine, such as a 2529  
juke box, that does all of the following: 2530

(a) Accepts direct payments to operate; 2531

(b) Automatically plays a selected digital audio work for 2532  
a single play upon receipt of a payment described in division 2533  
(B) (54) (a) of this section; 2534

(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	2535 2536
(55) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:	2537 2538 2539
(i) An item of clothing, the price of which is seventy-five dollars or less;	2540 2541
(ii) An item of school supplies, the price of which is twenty dollars or less;	2542 2543
(iii) An item of school instructional material, the price of which is twenty dollars or less.	2544 2545
(b) As used in division (B) (55) of this section:	2546
(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies including, but	2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563

not limited to, knitting needles, patterns, pins, scissors, 2564  
sewing machines, sewing needles, tape measures, and thimbles; 2565  
and sewing materials that become part of "clothing" including, 2566  
but not limited to, buttons, fabric, lace, thread, yarn, and 2567  
zippers. 2568

(ii) "School supplies" means items commonly used by a 2569  
student in a course of study. "School supplies" includes only 2570  
the following items: binders; book bags; calculators; cellophane 2571  
tape; blackboard chalk; compasses; composition books; crayons; 2572  
erasers; folders, expandable, pocket, plastic, and manila; glue, 2573  
paste, and paste sticks; highlighters; index cards; index card 2574  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 2575  
loose-leaf ruled notebook paper, copy paper, graph paper, 2576  
tracing paper, manila paper, colored paper, poster board, and 2577  
construction paper; pencil boxes and other school supply boxes; 2578  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 2579  
and writing tablets. "School supplies" does not include any item 2580  
purchased for use in a trade or business. 2581

(iii) "School instructional material" means written 2582  
material commonly used by a student in a course of study as a 2583  
reference and to learn the subject being taught. "School 2584  
instructional material" includes only the following items: 2585  
reference books, reference maps and globes, textbooks, and 2586  
workbooks. "School instructional material" does not include any 2587  
material purchased for use in a trade or business. 2588

(C) For the purpose of the proper administration of this 2589  
chapter, and to prevent the evasion of the tax, it is presumed 2590  
that all sales made in this state are subject to the tax until 2591  
the contrary is established. 2592

(D) The levy of this tax on retail sales of recreation and 2593

sports club service shall not prevent a municipal corporation 2594  
from levying any tax on recreation and sports club dues or on 2595  
any income generated by recreation and sports club dues. 2596

(E) The tax collected by the vendor from the consumer 2597  
under this chapter is not part of the price, but is a tax 2598  
collection for the benefit of the state, and of counties levying 2599  
an additional sales tax pursuant to section 5739.021 or 5739.026 2600  
of the Revised Code and of transit authorities levying an 2601  
additional sales tax pursuant to section 5739.023 of the Revised 2602  
Code. Except for the discount authorized under section 5739.12 2603  
of the Revised Code and the effects of any rounding pursuant to 2604  
section 5703.055 of the Revised Code, no person other than the 2605  
state or such a county or transit authority shall derive any 2606  
benefit from the collection or payment of the tax levied by this 2607  
section or section 5739.021, 5739.023, or 5739.026 of the 2608  
Revised Code. 2609

**Section 2.** That existing sections 133.13, 727.01, and 2610  
5739.02 of the Revised Code are hereby repealed. 2611

**Section 3.** The amendment by this act of section 5739.02 of 2612  
the Revised Code is a remedial measure intended to clarify 2613  
existing law and applies on and after the effective date of this 2614  
act and to any of the following: 2615

(A) Claims for refunds submitted for periods ending before 2616  
that date, subject to the four-year limitation prescribed in 2617  
division (D) of section 5739.07 of the Revised Code for filing 2618  
such claims; 2619

(B) Proceedings and cases pending on that date related to 2620  
either a petition for reassessment under section 5739.13 of the 2621  
Revised Code or an appeal of such a reassessment; 2622

(C) Transactions subject to an audit by the Department of 2623  
Taxation pending on that date. 2624

**Section 4.** All items in this section are hereby 2625  
appropriated as designated out of any moneys in the state 2626  
treasury to the credit of the designated fund. For all 2627  
appropriations made in this act, those in the first column are 2628  
for fiscal year 2020 and those in the second column are for 2629  
fiscal year 2021. The appropriations made in this act are in 2630  
addition to any other appropriations made for the FY 2020-FY 2631  
2021 biennium. 2632

2633

1	2	3	4	5
A	COM DEPARTMENT OF COMMERCE			
B	Facilities Establishment Fund Group			
C	5WV0 800411	Residential Broadband Expansion Grants	\$ 0	\$ 20,000,000
D	TOTAL FCE Facilities Establishment Fund Group		\$ 0	\$ 20,000,000
E	TOTAL ALL BUDGET FUND GROUPS		\$ 0	\$ 20,000,000

RESIDENTIAL BROADBAND EXPANSION GRANTS 2634

Notwithstanding Chapter 166. of the Revised Code, the 2635  
foregoing appropriation item 800411, Residential Broadband 2636  
Expansion Grants, shall be used for grants under the Ohio 2637  
Residential Broadband Expansion Grant Program established in 2638

section 188.03 of the Revised Code. 2639

On July 1, 2020, or as soon as possible thereafter, the 2640  
Director of Budget and Management shall transfer \$20,000,000 2641  
cash from the Facilities Establishment Fund (Fund 7037) to the 2642  
Ohio Residential Broadband Expansion Grant Program Fund (Fund 2643  
5WV0). 2644

**Section 5.** Within the limits set forth in this act, the 2645  
Director of Budget and Management shall establish accounts 2646  
indicating the source and amount of funds for each appropriation 2647  
made in this act, and shall determine the form and manner in 2648  
which appropriation accounts shall be maintained. Expenditures 2649  
from appropriations contained in this act shall be accounted for 2650  
as though made in H.B. 166 of the 133rd General Assembly. 2651

The appropriations made in this act are subject to all 2652  
provisions of H.B. 166 of the 133rd General Assembly that are 2653  
generally applicable to such appropriations. 2654