



Overview of House Bill 13 Substitute Bill Draft (-3) Version

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Changes to Residential Broadband Expansion Program

The House Bill 13 substitute bill draft both streamlines and restructures the Residential Broadband Expansion Program. Rather than requiring local governments to initiate and manage the application process, the sub bill allows broadband providers to make a direct application to the Department of Commerce for funding to overcome cost barriers. The grant application and approval timeline has also been shortened, allowing grants to be awarded and broadband to be deployed faster, while still offering providers adequate time to challenge ineligible applications. This document outlines major changes contained in the sub bill, but should not be construed as an exhaustive list of **all** changes.

1. Classification of broadband service by speed (lines 133-141)

- *As Introduced:* broadband service is defined as service capable of delivering internet access of at least 10 mbps downstream and 1 mbps upstream.
- *Sub Bill:* creates two categories of broadband service- Tier One and Tier Two.
 - Tier One Broadband: service capable of delivering internet access of at least 10 mbps downstream and 1 mbps upstream.
 - Tier Two Broadband: service capable of delivering internet access of at least 25 mbps downstream and 3 mbps upstream.

2. Classification of an eligible area (lines 142-155)

- *As Introduced:* defines an eligible area as an area lacking access to broadband service.
- *Sub Bill:* creates two categories of eligible areas- unserved and Tier One areas.
 - Unserved area: an area without access to Tier One Broadband.
 - Tier One area: an area with access to Tier One Broadband, but without access to Tier Two Broadband.

3. Organization responsible for submission of grant application (lines 330-332)

- *As Introduced:* only a municipal corporation or township is eligible to compile and submit an application for funds. This application would follow the local government's selection of a project provider resulting from an RFP.
- *Sub Bill:* only a broadband provider is eligible to compile and submit an application for funds. This application is made directly to the Dept. of Commerce.
 - Note: The sub bill creates a pathway for a board of county commissioners, on behalf of a township or municipality in their jurisdiction, to request that the Dept. of Commerce publicize the need for broadband in a specific unserved/underserved area.

4. State contribution towards the Broadband Funding Gap (lines 126-128)

The Broadband Funding Gap is defined as the difference between the total project cost and the maximum amount of money a provider has determined is cost effective to invest in a project.

- *As Introduced:* two-thirds of the funding gap amount supplied by the organization submitting the grant application; one-third of the funding gap amount supplied by the State through the awarding of a grant.

- *Sub Bill*: the entirety of the funding gap amount supplied by the State through the awarding of a grant, unless another funding source identified to cover part of the funding gap. (e.g. private funds, local government funds, federal grants). Prioritization will be given to applications that utilize other monies to offset the gap amount (lines 587-591).
 - Note: If a provider fails to complete a project as described in its application, the sub bill requires the provider to refund any contributions made by a local government toward the funding gap directly to the local government (lines 823-835).

5. Broadband Expansion Grant Program Authority (lines 156-241, 753-774)

- *As Introduced*: grant program administered by the Development Services Agency.
- *Sub Bill*: grant application process coordinated by the Department of Commerce, but grant award decisions made by the Broadband Expansion Program Authority. The Authority will be comprised of the Director of the Department of Commerce, the JobsOhio President, one Governor appointee, one Senate appointee, and one House appointee.
 - Note: The sub bill specifies that the three appointments must have expertise in broadband infrastructure or technology, but may not be directly employed by any company that could directly benefit from the awarding of grants.

6. Application submission period (lines 376-380)

- *As Introduced*: grant applications are accepted on a rolling basis.
- *Sub Bill*: grant applications are accepted during a 60-90 day application period, as determined by the Broadband Expansion Program Authority. The sub bill gives the Authority the discretion to have up to two application periods per fiscal year.
 - Note: The sub bill allows the Dept. of Commerce to grant a broadband provider an extension of up to 14 days to submit an application or revised application if “good cause shown” by the provider. (lines 405-409)

7. Publication of applications (lines 383-393)

- *As Introduced*: no provisions.
- *Sub Bill*: Grant applications will be published in two phases on the Dept. of Commerce website.
 - Phase 1: Not later than five days after the close of the submission period, a complete list of residential addresses included within each application will be published.
 - Phase 2: Not later than 35 days after the close of the submission period, each completed application will be published.

8. Proprietary information protections (lines 527-542)

- *As Introduced*: allows providers to designate information deemed to be trade secret and shield this information from becoming public.
- *Sub Bill*: requires that the Dept. of Commerce establish, through rules, a transparent process by which the Dept. works with providers to designate information as trade secret. Specifies that once information is deemed to be proprietary it will remain confidential and not be published on the Department’s website.

9. Grant application components (lines 415-510)

- *As Introduced*: provides general expectations for grant application components.
- *Sub Bill*: provides more specific and robust expectations for a grant application, offering more clarity to a grant applicant and ensuring that the Authority receives all information necessary to make an informed award decision.

10. Provider challenges to a grant application (lines 560-582)

- *As Introduced*: creates two separate challenge periods.
 - First: a provider may, within five days of the issuance of an RFP, challenge the RFP on grounds of the project affecting an ineligible area.

- Second: a provider who issued a response to an RFP but was not ultimately selected to perform the project may challenge the selection on grounds of service to an ineligible area, or an inappropriate selection process.
- *Sub Bill*: streamlines the application and challenge process by creating one provider challenge period. A broadband provider will have 65 days from the close of the submission period to challenge an application on grounds of service to an ineligible area.
 - Note: The sub bill allows the Dept. of Commerce to grant a broadband provider an extension of up to 14 days to submit a challenge if “good cause shown” by the provider. (lines 567-569)

11. Resolution of provider challenge (lines 613-631)

- *As Introduced*: A challenge that is upheld by DSA would result in a restart of the RFP process.
- *Sub Bill*: Not later than 20 business days after receipt of a challenge, the Authority may do either of the following:
 - Suspend all or part of the application.
 - Reject the challenge, thereby accepting the application, and proceed with the application process.
 - Note: If a challenge is upheld, the Authority shall allow the broadband provider that submitted the application the opportunity to revise its application, with the challenged portions removed.

12. Weighted scoring system for provision of grant funds (lines 690-752)

- *As Introduced*: no provision.
- *Sub Bill*: creates a weighted system for the Authority to evaluate and award grants, with the satisfaction of the first criteria offering the highest score and each subsequent criteria offering a lower score.
 - First: service provided to unserved areas, as opposed to Tier One areas.
 - Second: service provided in areas defined as distressed areas.
 - Third: projects that are receiving or have been approved to receive any form of financial or in-kind contributions towards the Broadband Funding Gap.
 - Fourth: projects that will utilize state rights-of-way or otherwise incorporate public facilities or conduit.
 - Fifth: Proposed speeds and scalability of the broadband infrastructure.
 - Sixth: a consideration of all the following, in equal measure:
 - Provider’s experience and ability to successfully deploy broadband technology.
 - The length of time the provider has been active in the state.
 - The extent to which funding is necessary to deploy broadband in an economically feasible manner to the eligible area.
 - Ability to leverage nearby, existing broadband infrastructure to complete the project.
 - The extent to which a project utilizes or upgrades existing infrastructure, as opposed to duplicating it.
 - Whether the project provides service to an area designated as an Opportunity Zone.
 - Whether the project will indirectly facilitate provision of service to currently unserved commercial locations.
 - Seventh: Any other factors determined by the Dept. of Commerce through rulemaking to be appropriate for consideration when evaluating projects.

13. Annual project progress reports (lines 898-906)

- *As Introduced*: no provision.
- *Sub Bill*: requires a broadband provider who is awarded grant funds to account for how the funds were utilized and the outcome of the project in a progress report. Progress reports will be required annually for a four year period. The reports, at a minimum, will include:

- The number of residential and business locations that now have access to Tier Two Broadband as a result of the project.
- The speed of the service provided.
- The average price of the service.
- The number of new broadband service subscriptions attributable to the project.

14. Annual Program progress report (lines 939-960)

- *As Introduced:* no provision.
- *Sub Bill:* requires the Broadband Expansion Program Authority to complete an annual report on the status and results of the Residential Broadband Expansion Program. This report will be publicly accessible and include, at minimum, the following:
 - The number of funding applications received.
 - The number of funding applications that ultimately received grant funds.
 - The amount of broadband infrastructure constructed as a result of the grants.
 - The number of residences receiving, for the first time, Tier Two Broadband service as a result of the program.

Residential Broadband Expansion Program Funding Mechanism (lines 2625-2654)

The sub bill creates a new line item, Residential Broadband Expansion Grants, within the Department of Commerce. The director of OBM is instructed to transfer **\$20 million** cash from the Facilities Establishment Fund (Fund 7037) to the Residential Broadband Expansion Grants Fund (Fund 5WV0) for utilization during FY2021.

Additional Responsibilities of the Broadband Expansion Program Authority (lines 249-329)

In addition to the awarding of program grants, the Broadband Expansion Program Authority will be tasked with additional duties relating to the continuing evaluation of the Broadband Expansion Grant Program, and will make recommendations to the Governor and General Assembly relating to strategies for improvement of the state’s overall broadband policy.

Authority Responsibilities (lines 249-317):

- Continually examine, and propose updates to, any broadband plan provided by law enacted by the general assembly or executive order issued by the governor.
- Monitor the Ohio residential broadband expansion grant program, including by doing the following:
 - Tracking the details for annual applications to the program, including:
 - The number of applications.
 - The geographic locations of the eligible projects listed in the applications.
 - The providers submitting applications.
 - A description of the tier two broadband infrastructure and technology proposed in applications.
 - A description of any public right-of-way or public facilities to be utilized for the projects.
 - The speeds of the tier two broadband services under the projects.
 - The amount of the grant funds requested for each project and the proportion of project funding to be provided by the broadband provider and by other entities.
 - The number of residential and nonresidential locations that will have access to tier two broadband service under each project;
 - Tracking the program grants awarded annually, including:
 - The number of program grants.
 - The geographic location or locations of the projects.
 - The broadband providers that received program grants and the entities or companies that submitted the application.

- A description of the tier two broadband infrastructure and technology deployed in each project.
- A description of any public right-of-way or public facilities utilized as part of the project.
- The speeds of the tier two broadband services enabled by each project.
- 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.
- The number of residential and nonresidential locations that will have access to tier two broadband service for each project.
- Listing the amount of any unencumbered program grant funds that remain available for award under the Ohio residential broadband expansion grant program;
- Including any additional factors deemed necessary by the Authority to monitor the program.
- Review all progress reports and operational reports submitted by ISPs, with any proprietary information or trade secrets redacted.
- Review all pending county requests made for grant funds.
- Identify any best practices for, and impediments to, the continued expansion of tier two broadband infrastructure and technology in the state.
- Coordinate and promote the availability of publicly accessible digital literacy programs to increase fluency in the use and security of interactive digital tools and searchable networks, including the ability to use digital tools safely and effectively for learning, collaborating, and producing.
- Identify, examine, and report on any federal or state government grant or loan program that would promote the deployment of tier two broadband infrastructure and technology in the state.
- Track the availability, location, rates and speeds, and adoption of programs that offer tier one broadband service and tier two broadband service in an affordable manner to low income consumers in this state.

Authority Hearings & Report (lines 318-329)

- The Authority will be required to host public hearings, during which representatives of the broadband industry, as well as members of the public, may share information relating to the responsibilities listed above.
- The Authority will compile its findings into a report provided to the General Assembly, no later than December 1 of each calendar year.

Regulatory Changes (lines 983-1081, 1232-1787, 2143-2162)

The sub bill also contains several regulatory changes that will, once enacted, help facilitate increased broadband expansion throughout the state.

Sharing of Electric Cooperative Easements (lines 983-1081)

The sub bill allows a broadband provider to share, or “piggyback” onto, an existing easement held by an electric cooperative.

- Eliminates any ambiguity over whether broadband providers must apply for a separate easement, even if the provider intends to utilize infrastructure owned by an electric cooperative that has already obtained an easement for the infrastructure. This easement sharing will help providers expand their network more efficiently by removing a time consuming step in the expansion process.

Access to Electric Cooperative Poles (lines 1232-1436)

The sub bill requires electric cooperatives to grant broadband providers nondiscriminatory access to the cooperative’s electric poles.

- This access will be granted upon completion of the process outlined in the sub bill, which allows Electric Cooperatives to determine “just and reasonable rates, terms, and conditions” for attachment.
- An Electric Cooperative may deny a provider access to the poles if an attachment is deemed unsafe or would compromise the safety or reliability of the poles.
- In the event that a dispute arises between a broadband provider and electric cooperative, the Public Utilities Commission of Ohio is granted the authority to rule on these disputes.

Streamlined Railroad Crossing Process (1437-1787)

The sub bill simplifies the process by which a broadband provider requests permission to install broadband infrastructure over, under, or across a railroad right of way.

- Currently, obtaining clearance to cross a railroad can add significant time and cost to a broadband expansion project due to application costs and processes that can vary from one railroad company to another.
- Language in the sub bill would streamline this process by setting standardized crossing fees and establishing a uniform crossing application process.
- In the event that a dispute arises between a broadband provider and railroad company, the Public Utilities Commission of Ohio is granted the authority to rule on these disputes.

Exemption of Materials Used for Broadband Expansion from Sales Tax (lines 2143-2162)

The sub bill modernizes an existing section of ORC, which exempts any parts used by a broadband provider for the purpose of transmission of service from state sales tax.