



## **House Bill 13 Overview**

*As Passed by the House*

*Representatives Rick Carfagna & Michael O'Brien*

### **Summary**

Currently in Ohio, approximately 1 million citizens lack access to reliable, high-speed internet. House Bill 13 represents an ambitious step towards bridging this digital divide, by enacting policies that will help facilitate broadband expansion throughout the state. This document provides an overview of the major provisions contained within HB 13, and should **not** be construed as an exhaustive list of all provisions.

### **Residential Broadband Expansion Program (lines 80-982)**

The primary purpose of House Bill 13 is to create Ohio's first Residential Broadband Expansion Program. This program would provide grants to support construction of last-mile broadband infrastructure to unserved or underserved residential areas of the state.

### **Important Definitions**

- **Broadband funding gap** (lines 84-90)
  - The broadband funding gap represents the difference between the total cost of a broadband expansion project and the maximum amount of money a provider has determined is cost effective to invest in a project.
  - The grants provided under HB 13 would cover this identified funding gap.
- **Broadband provider** (lines 91-101)
  - Any phone, cable, wireless, or satellite-based internet service provider that is capable of providing high-speed internet is defined as a broadband provider for purposes of the program, and is therefore eligible to apply for grant funds.
- **Tier One vs. Tier Two broadband service** (lines 128-136)
  - Tier One broadband is service capable of delivering internet access of at least 10 mbps downstream and 1 mbps upstream, but no more than 25 mbps downstream and 3 mbps upstream.
  - Tier Two broadband is service capable of delivering internet access of at least 25 mbps downstream and 3 mbps upstream.
- **Unserved Area vs. Tier One area** (lines 137-150)
  - An Unserved Area is an area without access to any form of broadband service (Tier One or Tier Two), and where no service is scheduled to be available within two years.
  - A Tier One Area is an area with access to Tier One broadband service but not Tier Two service, and where no Tier Two service is scheduled to be available within two years.
- **Broadband Expansion Program Authority** (lines 159-219)
  - The Broadband Expansion Program Authority will be responsible for evaluating grant applications and awarding of grant funds. The Authority will also monitor the effectiveness 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.
  - The Authority will be housed within the Department of Commerce, and will be comprised of the Director of the Department of Commerce, the President of JobsOhio, one Governor appointee, one Senate President appointee, and one House Speaker appointee.
  - Appointed members must have expertise in broadband infrastructure, but may not be affiliated with or employed in the broadband industry.

### **Grant Application Process (lines 324-553)**

- Under the program, the Department of Commerce will accept grant applications during a designated submission period. The Department may have up to two submission periods per fiscal year.
- In order to apply for grant funds, a broadband provider must submit an application to the Department of Commerce, which will include details such as:
  - Specific residential addresses within an Unserved or Tier One area that could be served by an expansion project;
  - The costs associated with expanding service to these addresses;
  - The specific technology that will be utilized to provide the service;
  - A projected construction timetable for the project;
  - The broadband funding gap identified for the project and any financial or in-kind contributions toward this funding gap;
  - The amount of state funds requested for the project.
    - Note: Any entity (public, private, or non-profit) may make a contribution towards the funding gap, thus reducing the requested grant amount.
- After the close of the submission period, the completed applications will be published on the Department of Commerce's website, with any proprietary information redacted.

### **Challenges to Grant Applications (lines 554-688)**

- After the publication of grant applications, other broadband providers may submit a challenge to a grant application.
- In order to challenge an application, a challenging broadband provider must demonstrate that the addresses contained within an application are ineligible for grant funds, due to current or planned provision of Tier Two broadband service.
- In the event of a challenge, the Authority will utilize the information provided by the challenging broadband provider to determine if all or part of a project under an application is ineligible for a grant.
- Not later than 30 days after receipt of a challenge, the Authority may do either of the following:
  - Uphold the challenge, thereby suspending 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.

### **Evaluation of Applications and Awarding of Grants (lines 689-788)**

- The Department of Commerce, in consultation with the Authority, will establish a weighted scoring system to evaluate and select applications to receive grants.
- The bill provides guidelines for this scoring system, by outlining criteria 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.

#### **Additional Program Oversight (lines 789-938)**

- HB 13 requires a broadband provider that 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.
- The Department of Commerce may conduct speed verification tests to ensure provision of Tier Two broadband by a grant recipient.
  - If the Department determines that the provider has failed to provide Tier Two service, it may require the provider to repay the state, up to the full amount of the grant.

#### **Ongoing Authority Responsibilities (lines 939-982)**

- 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, by:
  - Tracking the details for annual applications to the program;
  - Tracking the program grants awarded annually;
  - 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.
- 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.

#### **Local Government Assessments (lines 1082-1231)**

- House Bill 13 provides a County, Township, or Municipality the authority to levy a special assessment upon a residential property within their jurisdiction, for the purpose of raising funds to provide a contribution toward the broadband funding gap of an eligible project.

### **Residential Broadband Expansion Program Funding Mechanism (lines 1905-1934)**

House Bill 13 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.

### **Regulatory Changes (lines 983-1081, 1232-1810)**

House Bill 13 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)**

HB 13 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.

### **Broadband Facilitator Pilot Program (lines 1232-1628)**

HB 13 establishes a pilot program, which will allow an electric distribution utility to file to be a “broadband facilitator”.

- An EDU that files as a broadband facilitator will have the ability to construct broadband infrastructure and enter into an agreement with an internet service provider that will utilize the infrastructure to provide internet access to customers in unserved areas.
- The broadband facilitator would be eligible for rate-based recovery for the costs associated with the construction of this infrastructure- **only if a use agreement has been established with an internet service provider.**
- The pilot program is limited to unserved priority areas within the 32-county Appalachian region of Ohio.
  - Priority areas are defined as the top four counties in that region when considering the number of unserved customers in the county, the cost per customer of serving unserved areas in the county, and other factors that will be specified in rules to be adopted by the PUCO.
- The pilot project would last for three years, with a \$2.5 million cap of authorized PUCO recovery per project.

### **Access to Electric Cooperative Poles (lines 1629-1810)**

HB 13 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 County Courts of Common Pleas are granted the authority to rule on these disputes.
  - In the event a dispute is raised, the courts will utilize the FCC formula as the benchmark for evaluating the dispute.
  - Within this process, an Electric Cooperative will be given the opportunity to demonstrate that their rate should differ from a rate derived from the FCC formula, in the event that the FCC formula does not allow for full cost recovery.