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Representatives Carfagna, O'Brien

Cosponsors: Representatives Hillyer, Smith, R., Boggs, Cera, Hood, Kick, Koehler, Manchester, McClain, Patterson, Riedel, Seitz, Strahorn, West, Ryan, Lipps, Scherer, Greenspan, Edwards, Perales, Hoops, Green, Rogers, Ginter, Arndt, Reineke, Stein, Lepore-Hagan, Patton, Baldridge, Holmes, A., Cupp, Clites, Crossman, Fraizer, Galonski, Ghanbari, Grendell, Jones, Lanese, LaRe, Miller, J., Richardson, Robinson, Smith, K., Stephens, Swearingen, Weinstein

A BILL

To amend sections 133.13, 727.01, and 4928.17 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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188.41, 188.43, 188.44, 188.45, 188.46, 188.50, 7
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505.881, 4926.01, 4926.02, 4926.03, 4926.04, 12
4926.05, 4926.06, 4926.07, 4926.09, 4926.10, 13
4926.13, 4926.15, 4926.16, 4926.20, 4926.21, 14
4926.26, 4926.27, 4926.29, 4926.31, 4926.311, 15
4926.33, 4926.35, 4926.36, 4926.37, 4926.38, 16
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4926.54, 4926.56, 4926.58, 4926.60, 4926.63, 18
4926.64, 4926.65, 4926.70, 4926.71, 4926.72, 19
4926.85, 4926.86, 4926.88, 4926.90, 4926.91, 20

4926.92, 4926.93, and 4926.95 of the Revised 21
Code regarding broadband expansion, including 22
access to electric cooperative easements and 23
facilities and railroad rights of way, to repeal 24
sections 4926.01, 4926.03, 4926.04, 4926.05, 25
4926.06, 4926.07, 4926.09, 4926.10, 4926.13, 26
4926.15, 4926.16, 4926.20, 4926.21, 4926.26, 27
4926.27, 4926.29, 4926.31, 4926.33, 4926.35, 28
4926.36, 4926.37, 4926.38, 4926.39, and 4926.40 29
of the Revised Code on the date that is three 30
years after the act's effective date, and to 31
make an appropriation. 32

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

Section 1. That sections 133.13, 727.01, and 4928.17 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
188.44, 188.45, 188.46, 188.50, 188.51, 188.53, 188.55, 188.60, 38
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4926.03, 4926.04, 4926.05, 4926.06, 4926.07, 4926.09, 4926.10, 42
4926.13, 4926.15, 4926.16, 4926.20, 4926.21, 4926.26, 4926.27, 43
4926.29, 4926.31, 4926.311, 4926.33, 4926.35, 4926.36, 4926.37, 44
4926.38, 4926.39, 4926.40, 4926.50, 4926.51, 4926.52, 4926.54, 45
4926.56, 4926.58, 4926.60, 4926.63, 4926.64, 4926.65, 4926.70, 46
4926.71, 4926.72, 4926.85, 4926.86, 4926.88, 4926.90, 4926.91, 47

4926.92, 4926.93, and 4926.95 of the Revised Code be enacted to 48
read as follows: 49

Sec. 133.13. If the special assessments are to be paid in 50
one annual installment, the taxing authority of a subdivision 51
may issue securities in anticipation of its levy or collection 52
of special assessments to pay the costs of the subdivision's 53
broadband funding gap portion for an eligible project under 54
sections 188.01 to 188.77 of the Revised Code, lighting, 55
sprinkling, sweeping, cleaning, providing related or similar 56
services or the services described in section 727.011 of the 57
Revised Code, or of removing snow, ice, and debris from, or 58
treating the surface of, streets, alleys, and public ways and 59
places. 60

Such securities shall not be general obligations of the 61
issuing subdivision, and shall not pledge to the payment of debt 62
charges any receipts other than the special assessments 63
anticipated, except that a municipal corporation, without 64
incurring debt subject to direct or indirect debt limitations, 65
may also pledge and apply proceeds of its municipal income tax 66
to pay those debt charges. No property tax shall be levied or 67
pledged for the payment of debt charges on the securities. The 68
securities shall mature no later than the last day of December 69
of the year in which the special assessments anticipated are 70
scheduled to be collected. 71

The legislation authorizing the securities shall 72
appropriate the special assessments anticipated, and such 73
special assessments shall be deemed to be pledged and 74
appropriated, first to the payment of the debt charges on the 75
securities. After provision has been made for the payment in 76
full of those debt charges, the balance of the special 77

assessments may be appropriated and applied for the purposes for 78
which they were levied. 79

Sec. 188.01. As used in sections 188.01 to 188.77 of the 80
Revised Code: 81

(A) "Application" means an application made under section 82
188.13 of the Revised Code for a program grant. 83

(B) "Broadband funding gap" means the difference between 84
the total amount of money a broadband provider calculates is 85
necessary to construct the last mile of a specific broadband 86
network and the total amount of money that the provider has 87
determined is the maximum amount of money that is cost effective 88
for the provider to invest in last mile construction for that 89
network. 90

(C) (1) "Broadband provider" means one of the following: 91

(a) A video service provider as defined in section 1332.21 92
of the Revised Code; 93

(b) A provider that is capable of providing tier one or 94
tier two broadband service and is one of the following: 95

(i) A telecommunications service provider; 96

(ii) A satellite broadcasting service provider; 97

(iii) A wireless service provider as defined in section 98
4927.01 of the Revised Code. 99

(2) "Broadband provider" does not include a governmental 100
or quasi-governmental entity. 101

(D) "Eligible project" means a project to provide tier two 102
broadband service access to residences in an unserved area or 103
tier one area of a municipal corporation or township that is 104

eligible for funding under sections 188.13 to 188.46 of the 105
Revised Code. 106

(E) "Last mile" means the last portion of a physical 107
broadband network that connects an eligible project to the 108
broader network used to provide tier two broadband service, and 109
to which both of the following apply: 110

(1) It includes other network infrastructure in the last 111
portion of the network that is needed to provide tier two 112
broadband service to residences as part of an eligible project, 113
but does not include network infrastructure in any portion of 114
the network that is outside of the last portion. 115

(2) It is not required to be, or limited to, a specific 116
distance measurement of one mile or any other specific distance. 117

(F) "Ohio residential broadband expansion grant program" 118
means the program established under sections 188.01 to 188.77 of 119
the Revised Code. 120

(G) "Program grant" means money awarded under the Ohio 121
residential broadband expansion grant program to assist in 122
covering the broadband funding gap for an eligible project. 123

(H) "Satellite broadcasting service" has the same meaning 124
as in section 5739.01 of the Revised Code. 125

(I) "Telecommunications service" has the same meaning as 126
in section 1332.21 of the Revised Code. 127

(J) "Tier one broadband service" means a retail wireline 128
or wireless broadband service capable of delivering internet 129
access at speeds of at least ten but less than twenty-five 130
megabits per second downstream and at least one but less than 131
three megabits per second upstream. 132

(K) "Tier two broadband service" means a retail wireline 133
or wireless broadband service capable of delivering internet 134
access at speeds of at least twenty-five megabits per second 135
downstream and at least three megabits per second upstream. 136

(L) "Tier one area" means an area that has access to tier 137
one broadband service but not tier two broadband service. "Tier 138
one area" includes an area where construction of a network to 139
provide tier one broadband service is in progress and is 140
scheduled to be completed within a two-year period. "Tier one 141
area" excludes an area where construction of a network to 142
provide tier two broadband service is in progress and is 143
scheduled to be completed within a two-year period. 144

(M) "Unserved area" means an area without access to tier 145
one broadband service or tier two broadband service. "Unserved 146
area" excludes an area where construction of a network to 147
provide tier one broadband service or tier two broadband service 148
is in progress and is scheduled to be completed within a two- 149
year period. 150

Sec. 188.03. There is hereby established the Ohio 151
residential broadband expansion grant program within the 152
department of commerce. The department shall administer and 153
provide staff assistance for the program. The department shall 154
be responsible for receiving and reviewing applications for 155
program grants and for sending completed applications to the 156
broadband expansion program authority for final review and award 157
of program grants. 158

Sec. 188.05. (A) (1) There is hereby created, within the 159
department of commerce, the broadband expansion program 160
authority, which shall consist of the director of commerce or 161
the director's designee, the chief investment officer of 162

JobsOhio or the chief investment officer's designee, and three 163
other members as follows: one member appointed by the president 164
of the senate, one member appointed by the speaker of the house 165
of representatives, and one member appointed by the governor. 166

(2) Appointed members shall have expertise in broadband 167
infrastructure and technology. Appointed members may not be 168
affiliated with or employed by the broadband industry or in a 169
position to benefit from a program grant. 170

(3) The assignment of designees by the director and the 171
chief investment officer shall be made in writing. 172

(B) Appointed members shall serve four year terms and are 173
eligible for reappointment. 174

(C) Vacancies shall be filled in the same manner as 175
provided for original appointments. Any member appointed to fill 176
a vacancy occurring prior to the expiration of the term for 177
which the member's predecessor was appointed shall hold office 178
for the remainder of that term. 179

(D) (1) (a) Appointed members shall receive a monthly 180
stipend as calculated under section 145.016 of the Revised Code 181
in an amount that will qualify each member for one year of 182
retirement service credit under the Ohio public employees 183
retirement system for each year of the member's term. 184

(b) Notwithstanding the requirement of section 145.58 of 185
the Revised Code that eligibility for health care coverage 186
provided under that section be based on years and types of 187
service credit in accordance with rules adopted by the public 188
employees retirement board, if the board provides health care 189
coverage under that section, no service credit earned for 190
service as a member of the authority shall be considered for 191

purposes of determining eligibility for coverage under that 192
section. 193

(c) Members shall receive reimbursement for their 194
necessary and actual expenses incurred in performing the 195
business of the authority. The reimbursements constitute, as 196
applicable, administrative costs of the Ohio residential 197
broadband expansion grant program. 198

(2) An appointed member of the authority who is currently 199
serving as an administrative department head under section 200
121.03 of the Revised Code is not eligible to receive a stipend 201
under division (A) of this section. 202

(3) The department shall be responsible for paying all 203
reimbursements and stipends under this section. 204

(E) The director, or the director's designee, shall serve 205
as chairperson of the authority. The members of the authority 206
annually shall elect a vice-chairperson from the members of the 207
authority. Three members of the authority constitute a quorum to 208
transact and vote on the business of the authority. An 209
affirmative vote of three members is necessary to approve any 210
business, including the election of the vice-chairperson. 211

(F) If the director assigns a designee to serve on the 212
authority, the director shall appoint a professional employee of 213
the department of commerce to serve as the director's designee 214
at authority meetings. In the absence of the director or the 215
director's designee, the vice-chairperson of the authority shall 216
serve as chairperson of authority meetings. 217

(G) The authority is not an agency for purposes of 218
sections 101.82 to 101.87 of the Revised Code. 219

Sec. 188.06. (A) Members of the broadband expansion 220

program authority may attend meetings of the authority 221
electronically by means of electronic communication if all of 222
the following apply: 223

(1) At least three of the members attending the meeting 224
are present in person at the place where the meeting is 225
conducted. 226

(2) The means of electronic communication permits, for the 227
duration of the meeting, simultaneous communication among the 228
members attending electronically, the members attending in 229
person, and all members of the public attending in person. 230

(3) All votes taken at the meeting are to be taken by roll 231
call vote. 232

(B) Except in the case of an emergency, a member who 233
intends to attend a meeting by means of electronic communication 234
shall notify the chairperson of the member's intent not less 235
than forty-eight hours before the scheduled time of the meeting. 236

Sec. 188.07. The broadband expansion program authority 237
shall consider each application for a program grant that the 238
department of commerce has reviewed and sent to it. The 239
authority shall score all applications according to the scoring 240
system established under section 188.40 of the Revised Code and 241
award program grants based on that system according to sections 242
188.43 and 188.44 of the Revised Code. 243

Sec. 188.08. The broadband expansion program authority 244
shall do the following: 245

(A) Continually examine, and propose updates to, any 246
broadband plan provided by law enacted by the general assembly 247
or executive order issued by the governor; 248

<u>(B) Monitor the Ohio residential broadband expansion grant</u>	249
<u>program, including by doing the following;</u>	250
<u>(1) Tracking the details for annual applications to the</u>	251
<u>program, including:</u>	252
<u>(a) The number of applications;</u>	253
<u>(b) The geographic locations of the eligible projects</u>	254
<u>listed in the applications;</u>	255
<u>(c) The broadband providers submitting applications;</u>	256
<u>(d) A description of the tier two broadband infrastructure</u>	257
<u>and technology proposed in applications;</u>	258
<u>(e) A description of any public right-of-way or public</u>	259
<u>facilities to be utilized for the projects;</u>	260
<u>(f) The speeds of the tier two broadband services under</u>	261
<u>the projects;</u>	262
<u>(g) The amount of the grant funds requested for each</u>	263
<u>project and the proportion of project funding to be provided by</u>	264
<u>the broadband provider and by other entities;</u>	265
<u>(h) The number of residential and nonresidential locations</u>	266
<u>that will have access to tier two broadband service under each</u>	267
<u>project.</u>	268
<u>(2) Tracking the program grants awarded annually,</u>	269
<u>including:</u>	270
<u>(a) The number of program grants;</u>	271
<u>(b) The geographic location or locations of the projects;</u>	272
<u>(c) The broadband providers that received program grants</u>	273
<u>and the entities or companies that submitted the application;</u>	274

<u>(d) A description of the tier two broadband infrastructure</u>	275
<u>and technology deployed in each project;</u>	276
<u>(e) A description of any public right-of-way or public</u>	277
<u>facilities utilized as part of the project;</u>	278
<u>(f) The speeds of the tier two broadband services enabled</u>	279
<u>by each project;</u>	280
<u>(g) The amounts of each program grant, the share of the</u>	281
<u>project funding provided by the broadband provider, and any</u>	282
<u>share of the project funding provided by other entities;</u>	283
<u>(h) The number of residential and nonresidential locations</u>	284
<u>that will have access to tier two broadband service for each</u>	285
<u>project.</u>	286
<u>(3) Listing the amount of any unencumbered program grant</u>	287
<u>funds that remain available for award under the Ohio residential</u>	288
<u>broadband expansion grant program;</u>	289
<u>(4) Adding any additional factors deemed necessary by the</u>	290
<u>authority to monitor the program.</u>	291
<u>(C) Review all progress reports and operational reports</u>	292
<u>required under section 188.70 of the Revised Code.</u>	293
<u>(D) Review all pending county requests made pursuant to</u>	294
<u>section 188.51 of the Revised Code for program grants.</u>	295
<u>(E) Identify any best practices for, and impediments to,</u>	296
<u>the continued expansion of tier two broadband infrastructure and</u>	297
<u>technology in the state;</u>	298
<u>(F) Coordinate and promote the availability of publicly</u>	299
<u>accessible digital literacy programs to increase fluency in the</u>	300
<u>use and security of interactive digital tools and searchable</u>	301

networks, including the ability to use digital tools safely and 302
effectively for learning, collaborating, and producing; 303

(G) Identify, examine, and report on any federal or state 304
government grant or loan program that would promote the 305
deployment of tier two broadband infrastructure and technology 306
in the state; 307

(H) Track the availability, location, rates and speeds, 308
and adoption of programs that offer tier one broadband service 309
and tier two broadband service in an affordable manner to low- 310
income consumers in this state. 311

Sec. 188.09. The broadband expansion program authority 312
shall conduct hearings to gather information necessary to 313
accomplish the duties specified under section 188.08 of the 314
Revised Code. 315

Sec. 188.10. The broadband expansion program authority, 316
upon majority approval of the authority's members, shall submit 317
a written public report of its findings and recommendations to 318
the governor and the general assembly not later than the first 319
of December of each calendar year. 320

The authority shall not disclose any proprietary 321
information or trade secrets in the report. Copies of the report 322
shall be available on the department of commerce's web site. 323

Sec. 188.13. A broadband provider may apply for a program 324
grant under the Ohio residential broadband expansion grant 325
program. 326

Sec. 188.15. Program grants under the Ohio residential 327
broadband expansion grant program shall be awarded only for 328
eligible projects. 329

Sec. 188.16. An application shall be ineligible for a 330
program grant under the Ohio residential broadband expansion 331
grant program if either of the following apply: 332

(A) It proposes to provide tier two broadband service to 333
areas where tier two broadband service is presently available. 334

(B) In the proposed area of service, construction of a 335
network to provide tier two broadband service currently is in 336
progress and either of the following applies: 337

(1) It is being constructed, without grant program 338
funding, by the broadband provider that submitted the 339
application. 340

(2) It is scheduled to be completed by another broadband 341
provider not later than two years after the date of a challenge 342
submitted under section 188.30 of the Revised Code. 343

Sec. 188.17. The broadband expansion program authority 344
shall award program grants under the Ohio residential broadband 345
expansion grant program using funds from the Ohio residential 346
broadband expansion grant program fund created in section 188.37 347
of the Revised Code. 348

Sec. 188.18. (A) Each fiscal year, the department of 349
commerce shall fund program grants until funds for that fiscal 350
year are no longer available. 351

(B) Any application pending at the end of the fiscal year 352
shall be deemed denied, but may be refiled in a subsequent 353
fiscal year provided that all information in the application is 354
still current or has been updated. 355

Sec. 188.19. (A) (1) Each fiscal year, the department of 356
commerce shall accept applications for program grants. 357

(2) To apply for a program grant, a broadband provider 358
shall submit an application to the department on a form 359
prescribed by the department and shall provide the information 360
required under section 188.20 of the Revised Code. The form 361
shall include a statement informing the applicant that failure 362
to comply with the program or to meet the required tier two 363
broadband service proposed in the application may require the 364
refund of all or a portion of the program grant awarded for the 365
project. 366

(3) Applications may be submitted in person or by 367
certified mail or electronic mail, or uploaded to a designated 368
department web site for applications. 369

(B) Applications shall be accepted during a submission 370
period specified by the broadband expansion program authority. 371
Each submission period shall be at least sixty but not more than 372
ninety days. Each fiscal year there shall be not more than two 373
submission periods. 374

(C) The department shall publish information from 375
submitted applications on the department's web site as follows: 376

(1) Not later than five days after the close of the 377
submission period in which the application is made, the 378
department shall publish, for each completed application, the 379
list of residential addresses included with the completed 380
applications under division (A)(1)(a) of section 188.20 of the 381
Revised Code. 382

(2) Not later than thirty-five days after the close of the 383
submission period in which the application is made, the 384
department shall publish all information from each completed 385
application that it determines is not confidential under section 386

188.23 of the Revised Code. 387

(D) If an application is incomplete, the department shall 388
notify the broadband provider that submitted the application. 389
The notification shall list what information is incomplete and 390
shall describe the procedure for refiling a completed 391
application. 392

(E) The department shall review an application determined 393
incomplete under division (D) of this section as provided in 394
sections 188.19 to 188.36 of the Revised Code if the application 395
is completed and refiled: 396

(1) Before the end of the submission period described 397
under division (B) of this section; or 398

(2) Not later than fourteen days after the end of the 399
submission period described under division (B) of this section, 400
if the department, for good cause shown, has granted the 401
broadband provider an extension period of not more than fourteen 402
days in which to file the completed application. 403

(F) The department shall deny an incomplete application if 404
the broadband provider fails to complete and refile it within 405
the applicable submission period or extension period. 406
Applications that are denied shall not be published on the 407
department's web site. 408

Sec. 188.20. (A) An application for a program grant under 409
the Ohio residential broadband expansion grant program shall 410
include, at a minimum, the following information for an eligible 411
project: 412

(1) The location and description of the project, 413
including: 414

(a) The residential addresses in the unserved or tier one areas where tier two broadband service will be available following completion of the project; 415
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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; 418
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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. 421
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(2) The amount of the broadband funding gap and the amount of state funds requested; 426
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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: 428
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(a) Funds that the broadband provider is willing to contribute to the broadband funding gap; 432
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(b) Funds received or approved under any other federal or state government grant or loan program; 434
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(c) General revenue funds of a municipal corporation, township, or county comprising the area of the eligible project; 436
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(d) Other discretionary funds of the municipal corporation, township, or county comprising the area of the eligible project; 438
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(e) Any alternate payment terms that the broadband provider and any legislative authority in which the project is 441
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<u>located have negotiated and agreed to pursuant to section 188.25</u>	443
<u>of the Revised Code;</u>	444
<u>(f) Contributions or grants from individuals,</u>	445
<u>organizations, or companies;</u>	446
<u>(g) Property tax assessments made by the municipal</u>	447
<u>corporation under Chapter 727. of the Revised Code, township</u>	448
<u>under section 505.881 of the Revised Code, or county under</u>	449
<u>section 303.251 of the Revised Code.</u>	450
<u>(4) The source and amount of any financial or in-kind</u>	451
<u>contributions received or approved for any part of the overall</u>	452
<u>eligible project cost, but not applied to the broadband funding</u>	453
<u>gap;</u>	454
<u>(5) A description of, or documentation demonstrating, the</u>	455
<u>broadband provider's managerial and technical expertise and</u>	456
<u>experience with broadband service projects;</u>	457
<u>(6) Whether the broadband provider plans to use wired,</u>	458
<u>wireless, or satellite technology to complete the project;</u>	459
<u>(7) A description of the scalability of the project;</u>	460
<u>(8) The megabit-per-second broadband download and upload</u>	461
<u>speeds planned for the project;</u>	462
<u>(9) A description of the broadband provider's customer</u>	463
<u>service capabilities, including any locally based call centers</u>	464
<u>or customer service offices;</u>	465
<u>(10) A copy of the broadband provider's general customer</u>	466
<u>service policies, including any policy to credit customers for</u>	467
<u>service outages or the provider's failure to keep scheduled</u>	468
<u>appointments for service;</u>	469

- (11) The length of time that the broadband provider has been operating in the state; 470
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- (12) Proof that the broadband provider has the financial stability to complete the project; 472
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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; 474
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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; 477
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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; 481
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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; 485
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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 utility, to enable the offering of tier two broadband service under the project; 490
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- (18) Other relevant information that the department determines is necessary and prescribes by rule; 497
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(19) Any other information the broadband provider 499
considers necessary. 500

(B) To meet the requirement to provide proof of financial 501
responsibility in the application, the broadband provider may 502
submit publicly available financial statements with its 503
application. 504

Sec. 188.21. As a condition for receiving a program grant 505
under the Ohio residential broadband expansion grant program, 506
the broadband expansion program authority may require a 507
broadband provider that is awarded a program grant to provide a 508
performance bond, letter of credit, or other financial assurance 509
acceptable to the authority prior to the commencement of 510
construction. The bond, letter of credit, or assurance shall be 511
in the sum, and with the sureties, that the state prescribes and 512
shall be payable to the state, as applicable. 513

The bond, letter of credit, or assurance may include the 514
condition that the broadband provider will faithfully execute 515
and complete the project. 516

The purpose of the performance bond, letter of credit, or 517
other financial assurance is to assure completion of the 518
project. The bond, letter of credit, or assurance shall not be 519
required after the project is complete. 520

Sec. 188.23. Pursuant to rules adopted under section 521
188.77 of the Revised Code, the department of commerce shall 522
evaluate the information and documents submitted by a broadband 523
provider in an application under section 188.13 of the Revised 524
Code or by a challenging broadband provider under section 188.30 525
of the Revised Code. The evaluation shall determine whether the 526
information and documents are proprietary or constitute a trade 527

secret. Upon receipt of the information and documents, the 528
department shall keep them confidential and shall not publish 529
them on the department's web site, unless the department finds 530
that any information or document is not proprietary or a trade 531
secret. Any information or document found not to be proprietary 532
or a trade secret under this section shall not be considered 533
confidential and shall be published on the department web site 534
as is required for an application under division (C) (2) of 535
section 188.19 of the Revised Code. 536

Sec. 188.24. The department of commerce shall establish an 537
automatic notification process through which interested parties 538
may receive electronic mail notifications when the department 539
publishes application and other information on its web site 540
pursuant to sections 188.01 to 188.77 of the Revised Code. 541

Sec. 188.25. A broadband provider may enter into an 542
arrangement to designate video service provider fees remitted by 543
the broadband provider for contribution towards an eligible 544
project's broadband funding gap under the following 545
circumstances: 546

(A) The broadband provider is a video service provider 547
that, pursuant to section 1332.32 of the Revised Code, collects 548
and remits video service provider fees to one or more 549
legislative authorities in which an eligible project is located. 550

(B) The arrangement is entered into by mutual consent with 551
one or more of the legislative authorities in which the eligible 552
project is located. 553

Sec. 188.30. (A) (1) (a) A broadband provider that provides 554
tier two broadband service within or directly adjacent to an 555
eligible project may challenge, in writing, all or part of a 556

completed application for a program grant for the project not 557
later than sixty-five days after the close of the submission 558
period, or an extension granted under division (E) (2) of section 559
188.19 of the Revised Code, in which the application was made. 560

(b) The department, for good cause shown, may grant the 561
broadband provider an extension of not more than fourteen days 562
in which to submit a challenge. 563

(2) The broadband provider challenging the application 564
shall provide, by certified mail, a written copy of the 565
challenge to the department and to the broadband provider that 566
submitted the application. The copy provided to the department 567
may include any information the challenging broadband provider 568
considers to be proprietary or a trade secret. Proprietary 569
information or trade secrets may be redacted from the copy 570
provided to the broadband provider that submitted the 571
application. 572

(B) No challenge to an application may be accepted before 573
the completed application is published in its entirety on the 574
department of commerce's web site pursuant to division (C) (2) of 575
section 188.19 of the Revised Code. 576

Sec. 188.31. (A) To successfully challenge an application, 577
a broadband provider shall provide sufficient evidence to the 578
department of commerce demonstrating that all or part of a 579
project under the application is ineligible for a grant. The 580
challenge shall, at minimum, include the following information: 581

(1) Sufficient evidence disputing the notarized letter of 582
intent submitted with the application that the eligible project 583
contains unserved or tier one areas; 584

(2) Sufficient evidence attesting to the challenging 585

broadband provider's existing or planned offering of tier two 586
broadband service to all or part of the eligible project, which 587
evidence shall include the following: 588

(a) With regard to existing tier two broadband service, a 589
signed, notarized statement submitted by the challenging 590
broadband provider that sufficiently identifies the part of the 591
eligible project to which the challenging broadband provider 592
offers broadband service; 593

(b) With regard to the planned provision of tier two 594
broadband service by a challenging broadband provider as 595
described in division (B) of section 188.16 of the Revised Code, 596
both of the following: 597

(i) A signed, notarized statement submitted by the 598
challenging broadband provider that sufficiently identifies the 599
part of the eligible project to which the challenging broadband 600
provider will offer broadband service; 601

(ii) A summary of the construction efforts that includes 602
the dates when tier two broadband construction is expected to be 603
completed and when tier two broadband service will first be 604
offered to the part of the eligible project being challenged. 605

(B) To demonstrate that all or part of a project under the 606
application is ineligible for a grant, a challenging broadband 607
provider may present shapefile data, residential addresses, 608
maps, or similar geographic details. Census block or census 609
tract level data shall not be acceptable as evidence of 610
ineligibility of all or part of a project. 611

Sec. 188.33. (A) Not later than thirty days after receipt 612
of a challenge under sections 188.30 to 188.35 of the Revised 613
Code, the broadband expansion program authority may do either of 614

the following: 615

(1) Suspend, subject to division (B) of this section, all 616
or part of the application; 617

(2) Reject the challenge, approve the application, and 618
proceed with the application process. 619

(B) The authority shall allow the broadband provider that 620
submitted the application being challenged to revise the 621
application consistent with sections 188.01 to 188.77 of the 622
Revised Code, if the authority upholds a challenge to all or 623
part of the application. 624

(C) The authority shall notify both the broadband provider 625
that submitted the application and the challenging broadband 626
provider of any decision made under this section by providing a 627
copy of the decision by certified mail or electronic mail. The 628
authority shall update the status of the application on the 629
department of commerce web site. 630

Sec. 188.34. (A) If the broadband expansion program 631
authority suspends all or part of an application, the broadband 632
provider that submitted the application may revise and resubmit 633
the application not later than fourteen days after receiving the 634
suspension notification sent by the authority pursuant to 635
section 188.33 of the Revised Code. The broadband provider may 636
request, and the authority may grant for good cause shown, an 637
extension period of not more than fourteen days in which the 638
broadband provider may resubmit the application. 639

(B) When revising the application, the broadband provider 640
shall not expand the scope or impact of the original 641
application, nor shall the provider add any new residential 642
addresses to the eligible project. 643

(C) The broadband provider shall provide a copy of the 644
revised application to both the authority and the challenging 645
broadband provider by certified mail or by electronic mail or by 646
uploading it to the department of commerce designated web site 647
for applications. The department shall publish the revised 648
application on the department's public web site provided that 649
any information determined to be proprietary or a trade secret 650
under section 188.23 of the Revised Code is redacted. 651

(D) Any failure to respond to the notification or properly 652
revise the application to the authority's satisfaction shall be 653
considered a withdrawal of the application. 654

Sec. 188.35. Upon receipt of a revised application under 655
section 188.34 of the Revised Code, the broadband expansion 656
program authority shall review the revised application and 657
decide whether to accept it or uphold the challenge under 658
sections 188.30 to 188.35 of the Revised Code within fourteen 659
days. The authority shall provide a copy of its decision to both 660
the broadband provider that submitted the revised application 661
and the challenging broadband provider by certified mail or 662
electronic mail and shall update the status of the application 663
on the department's web site. The decision shall be considered 664
final, and further challenges to the revised application are 665
prohibited. 666

Sec. 188.36. If the broadband expansion program authority 667
upholds a challenge to an application under sections 188.30 to 668
188.35 of the Revised Code and the challenging broadband 669
provider fails to provide tier two broadband service as 670
described in the challenge, the challenging broadband provider, 671
after a reasonable opportunity to be heard, may be required to 672
do either or both of the following, in addition to being subject 673

to other remedies available under the law: 674

(A) Pay to the department of commerce the amount of the 675
original broadband funding gap described in section 188.20 of 676
the Revised Code for the application that was challenged; 677

(B) Comply with the requirements of any other penalties 678
prescribed by rule of the department and imposed after 679
consultation with the authority. 680

Sec. 188.37. Any money collected under section 188.36 of 681
the Revised Code and funds appropriated for the Ohio residential 682
broadband expansion grant program shall be deposited into the 683
Ohio residential broadband expansion grant program fund, which 684
is hereby created in the state treasury. All amounts in the 685
fund, including interest earned on those amounts, shall be used 686
by the department of commerce exclusively for grants under 687
sections 188.01 to 188.77 of the Revised Code. 688

Sec. 188.40. The department of commerce, in consultation 689
with the broadband expansion program authority, shall establish 690
a weighted scoring system to evaluate and select applications 691
for program grants. The scoring system shall be available on the 692
department's web site at least thirty days before the beginning 693
of the application submission period set by the department by 694
rule. 695

Sec. 188.41. (A) The scoring system established under 696
section 188.40 of the Revised Code shall prioritize 697
applications, from highest to lowest weight, in the following 698
order: 699

(1) Eligible projects for unserved areas, rather than tier 700
one areas; 701

(2) Eligible projects located within distressed areas as 702

defined under section 122.19 of the Revised Code; 703

(3) Eligible projects that are receiving or have been 704
approved to receive any financial or in-kind contributions 705
towards the broadband funding gap identified in the application 706
under division (A)(3) of section 188.20 of the Revised Code, 707
including the amounts and proportions of the contributions; 708

(4) Eligible projects for which the proposed construction 709
will utilize state rights-of-way or otherwise require attachment 710
to, or use of, public facilities or conduit to provide tier two 711
broadband service to an eligible project; 712

(5) Eligible projects based on proposed upstream and 713
downstream speeds and the scalability of the tier two broadband 714
service infrastructure proposed to be deployed to speeds higher 715
than twenty-five megabits per second downstream and three 716
megabits per second upstream; 717

(6) Eligible projects based on each of the following, in 718
equal measure, without favoring one broadband provider over 719
another: 720

(a) Demonstrated support, supported by evidence, for 721
community and economic development efforts in, or adjacent to, 722
the projects, including the provision of tier two broadband 723
service to commercial and nonresidential entities as a result 724
of, but not funded directly by, the program; 725

(b) The broadband provider's experience, technical 726
ability, and financial capability in successfully deploying and 727
providing tier two broadband service; 728

(c) The length of time the broadband provider has been 729
providing tier two broadband service in the state; 730

(d) The extent to which funding is necessary to deploy tier two broadband service infrastructure in an economically feasible manner to the eligible project; 731
732
733

(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; 734
735
736
737

(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; 738
739
740
741

(g) The eligible projects' location within Ohio opportunity zones as defined under division (A)(2) of section 122.84 of the Revised Code. 742
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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. 745
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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. 752
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(B) In awarding program grants, the authority shall consider all regulatory obligations under applicable law. The 758
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authority may not consider any of the following: 760

(1) Proposed project conditions that require open access 761
networks or that establish a specific rate, service, or other 762
obligation not specified for the Ohio residential broadband 763
expansion grant program; 764

(2) Factors that would constrain a broadband provider that 765
receives a grant from offering or providing tier two broadband 766
service in the same manner as the service is offered by 767
broadband providers in other areas of the state without funding 768
from the Ohio residential broadband expansion grant program. 769

(C) Upon making the program grant awards, the authority 770
shall notify the broadband providers that submitted applications 771
of the award decisions. The authority shall publish the program 772
grant awards on the department of commerce's web site. 773

Sec. 188.44. After the broadband expansion program 774
authority awards a program grant under section 188.43 of the 775
Revised Code, the department of commerce shall disburse the 776
program grant as follows: 777

(A) A portion of the program grant, not to exceed thirty 778
per cent, shall be disbursed before construction of the project 779
begins. 780

(B) A portion of the program grant, not to exceed sixty 781
per cent, shall be disbursed through periodic payments over the 782
course of construction of the eligible project as determined by 783
the department by rules adopted under section 188.77 of the 784
Revised Code. 785

(C) The remaining portion shall be disbursed not later 786
than sixty days after the broadband provider notifies the 787
authority that it has completed construction of the project. 788

Sec. 188.45. (A) The department of commerce may, through 789
an independent third party, conduct speed verification tests of 790
an eligible project that receives a program grant. Such tests 791
shall occur as follows: 792

(1) After the construction is complete, but prior to the 793
final disbursement made under division (C) of section 188.44 of 794
the Revised Code to verify that tier two broadband service is 795
being offered; 796

(2) At any time during the reporting period required under 797
division (B) of section 188.70 of the Revised Code, after 798
receiving a complaint concerning a residence that is part of the 799
eligible project. 800

(B) To evaluate compliance with tier two broadband service 801
standards, speed verification tests conducted under this section 802
shall be conducted on at least two different days and at two 803
different times on each of those days. 804

(C) The department may withhold payments under this 805
section for failure to meet at least the minimum speeds required 806
under division (A) (8) of section 188.20 of the Revised Code. 807
Payments may be held until such speeds are achieved. 808

Sec. 188.46. (A) If the department of commerce determines 809
that a broadband provider that has been awarded a program grant 810
under the Ohio residential broadband expansion grant program has 811
not complied with the requirements of the program, the 812
department shall notify the provider of the noncompliance. In 813
accordance with rules adopted by the department under section 814
188.77 of the Revised Code, the department shall give the 815
provider an opportunity to explain or cure the noncompliance. 816

(B) After reviewing the broadband provider's explanation 817

or effort to cure the noncompliance, the following shall apply: 818

(1) The department may require the provider to refund an 819
amount equal to all, or a portion of, the amount of the program 820
grant awarded to the provider, as determined by the department. 821

(2) The department may require the broadband provider to 822
refund to the appropriate municipal corporation, township, or 823
county the entire amount of general revenue funds or other 824
discretionary funds that it contributed toward the broadband 825
funding gap under division (A) (3) (c) or (d) of section 188.20 of 826
the Revised Code. 827

(C) Not more than thirty days after the department's 828
decision requiring a refund for program noncompliance or a 829
failure to explain or cure it, the broadband provider shall pay 830
the refund required under division (B) of this section. Payments 831
shall be made directly to the municipal corporation, township, 832
or county that contributed funds toward the broadband funding 833
gap. 834

Sec. 188.50. Upon adoption of a resolution, a board of 835
county commissioners may request the department of commerce to 836
solicit applications from broadband providers for program grants 837
under the Ohio residential broadband expansion grant program for 838
eligible projects in the municipal corporations and townships of 839
the county. 840

A request made by a county shall identify, to the extent 841
possible, the residential addresses in unserved or tier one 842
areas of the county and provide a point of contact at the county 843
and the municipal corporations and townships in which the 844
addresses are located. The request may include any relevant 845
information, documents, or materials that may be helpful for an 846

application. 847

Sec. 188.51. Upon receipt of a request from a board of 848
county commissioners pursuant to section 188.50 of the Revised 849
Code, the department of commerce shall solicit, on behalf of the 850
county, applications for program grants for eligible projects 851
under the Ohio residential broadband expansion grant program. 852
Not later than seven days after receipt of the request, the 853
department shall make the request, and any accompanying 854
information submitted with the request, available for review on 855
the department's web site. The request shall remain available on 856
the web site for a period not to exceed two years. 857

Sec. 188.53. An application for a program grant under the 858
Ohio residential broadband expansion grant program made in 859
response to a request under section 188.50 of the Revised Code 860
shall fully comply with all of the program requirements. Nothing 861
in sections 188.50, 188.51, and 188.53 of the Revised Code shall 862
be construed as providing relief from compliance with any 863
program requirements. 864

Sec. 188.55. The department of commerce shall not be 865
responsible for any failure by a broadband provider to respond 866
to a request made by the department pursuant to section 188.51 867
of the Revised Code or to submit an application for a program 868
grant under the Ohio residential broadband expansion grant 869
program. 870

Sec. 188.60. (A) An eligible project shall not proceed 871
unless the broadband expansion program authority awards a 872
program grant under section 188.43 of the Revised Code. 873

(B) After receiving a program grant award, the broadband 874
provider shall construct and install last mile broadband 875

infrastructure to the eligible project. 876

Sec. 188.61. Under alternate payment term arrangements 877
made under section 188.25 of the Revised Code, unless otherwise 878
negotiated, the participating legislative authorities in which 879
the eligible project is located shall assume all financial 880
responsibility for all of the eligible project costs incurred by 881
the broadband provider prior to completion of the project or the 882
award of a program grant. 883

Sec. 188.63. (A) Nothing in sections 188.01 to 188.77 of 884
the Revised Code entitles the state of Ohio, the department of 885
commerce, the broadband expansion program authority, or any 886
other governmental entity to any ownership or other rights to 887
broadband infrastructure constructed by a broadband provider 888
pursuant to a program grant awarded to an eligible project. 889

(B) Nothing in sections 188.01 to 188.77 of the Revised 890
Code prevents an assignment, sale, change in ownership, or other 891
similar transaction associated with broadband infrastructure 892
constructed by a broadband provider pursuant to a program grant 893
awarded to an eligible project. No assignment, sale, change in 894
ownership, or other similar transaction relieves the successor 895
of any obligation under sections 188.01 to 188.77 of the Revised 896
Code. 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 the 932

Revised Code, and all information and documents in them, shall 933
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 937
Code. 938

Sec. 188.76. (A) The broadband expansion program authority 939
shall complete an annual report for the Ohio residential 940
broadband expansion grant program. The report shall evaluate the 941
success of the program grants awarded under section 188.43 of 942
the Revised Code in making tier two broadband services available 943
to unserved and tier one areas. The report shall include the 944
following information: 945

(1) The number of applications received; 946

(2) The number of applications that received program 947
grants; 948

(3) The amount of broadband infrastructure constructed for 949
eligible projects; 950

(4) The number of residences receiving, for that year, 951
tier two broadband service for the first time under the program; 952

(5) Findings and recommendations that have been agreed to 953
by a majority of the authority members. 954

(B) The report shall be published on the department of 955
commerce's web site and shall be included as part of its annual 956
report filed under section 121.18 of the Revised Code. The 957
authority shall present the report annually to the governor and 958
the general assembly not later than the first of December of 959
each calendar year. 960

Sec. 188.77. (A) The department of commerce shall adopt 961
rules for the Ohio residential broadband expansion grant 962
program. The rules shall establish an application form and 963
application procedures for the program and procedures for 964
periodic program grant disbursements. 965

(B) The rules may include the following: 966

(1) Requirements for a program application in addition to 967
the requirements described in section 188.20 of the Revised 968
Code; 969

(2) Procedures for and circumstances under which partial 970
funding of applications is permitted; 971

(3) Procedures for broadband expansion program authority 972
meetings, extension periods for applications and application 973
challenges, hearings, and opportunities for public comment. 974

(C) The department may adopt rules and procedures to 975
implement sections 188.51, 188.53, and 188.55 of the Revised 976
Code. 977

(D) Rules adopted under this section are not subject to 978
section 121.95 of the Revised Code. 979

(E) The department and the authority are not subject to 980
division (F) of section 121.95 of the Revised Code regarding the 981
development and adoption of rules pursuant to this section. 982

Sec. 188.80. As used in sections 188.80 to 188.91 of the 983
Revised Code: 984

(A) "Broadband service" means any wholesale or retail 985
service that consists of, or includes the provision of, 986
connectivity to a high-speed, high-capacity transmission medium 987
that can carry signals from or to multiple sources and that 988

<u>either provides access to the internet or provides computer</u>	989
<u>processing, information storage, information content or protocol</u>	990
<u>conversion, including any service applications or information</u>	991
<u>service provided over such high-speed access service. "Broadband</u>	992
<u>service" includes video service, voice over internet protocol</u>	993
<u>service, and internet protocol-enabled services.</u>	994
<u>(B) "Electric cooperative" has the same meaning as in</u>	995
<u>section 4928.01 of the Revised Code.</u>	996
<u>(C) "Internet protocol-enabled services" and "voice over</u>	997
<u>internet protocol service" have the same meanings as in section</u>	998
<u>4927.01 of the Revised Code.</u>	999
<u>(D) "Servient estate" means the land burdened by an</u>	1000
<u>easement.</u>	1001
<u>(E) "Video programming" means any programming generally</u>	1002
<u>considered comparable to programming provided by a television</u>	1003
<u>broadcast station.</u>	1004
<u>(F) "Video service" means video programming services</u>	1005
<u>without regard to delivery technology, including internet</u>	1006
<u>protocol technology and video programming provided as a part of</u>	1007
<u>a service that enables users to access content, information,</u>	1008
<u>electronic mail, or other services offered over the public</u>	1009
<u>internet.</u>	1010
<u>Sec. 188.81. An easement granted to an electric</u>	1011
<u>cooperative for purposes of transmitting, delivering, or</u>	1012
<u>otherwise providing electric power may be used, apportioned, or</u>	1013
<u>subleased to provide broadband service and such use,</u>	1014
<u>apportionment, or sublease shall not be considered an additional</u>	1015
<u>burden on the servient estate.</u>	1016
<u>Sec. 188.83. (A) If the owner of the servient estate of an</u>	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 sections 4926.01 to 4926.40 of 1232
the Revised Code: 1233

(A) "Broadband facilitator" means an electric distribution 1234
utility that applies to construct, and constructs, broadband 1235
infrastructure to serve priority unserved areas but does not 1236
offer or provide broadband service to retail customers. 1237

(B) "Broadband infrastructure" means any equipment, 1238
facilities, electronics, property, and technology deployments 1239
that are used for the purpose of providing access to and 1240
transmitting broadband service. 1241

(C) (1) "Broadband provider" means an entity capable of 1242
providing broadband service that is one of the following: 1243

(a) A video service provider as defined in section 1332.21 1244
of the Revised Code; 1245

(b) A telecommunications service provider; 1246

(c) A satellite broadcasting service provider; 1247

(d) A wireless service provider as defined in section 1248
4927.01 of the Revised Code. 1249

(2) "Broadband provider" excludes a governmental entity, 1250
quasi-governmental entity, an electric distribution utility, a 1251
broadband facilitator, and any affiliate of an electric 1252
distribution utility or a broadband facilitator. 1253

(D) "Broadband service" means high-speed internet access 1254
service capable of providing a minimum download speed of twenty- 1255
five megabits per second and a minimum upload speed of three 1256

megabits per second upstream. 1257

(E) "Certified territory" has the same meaning as in 1258
section 4933.81 of the Revised Code. 1259

(F) "Electric cooperative" and "electric distribution 1260
utility" have the same meanings as in section 4928.01 of the 1261
Revised Code. 1262

(G) "Eligible project" means a project to offer or provide 1263
broadband service to retail customers in a priority unserved 1264
area. 1265

(H) "Last mile" means the portion of a physical broadband 1266
network, other than the broadband facilitator's broadband 1267
infrastructure, that connects an eligible project to the broader 1268
network used to provide broadband service. "Last mile" includes 1269
other network infrastructure such as pole attachments and make- 1270
ready work needed to provide broadband service to retail 1271
customers as part of an eligible project. 1272

(I) "Last mile investment costs" means investment costs 1273
approved under section 4926.20 of the Revised Code for pole 1274
attachments and make-ready work. 1275

(J) "Make-ready work" means, as determined by the nature 1276
of the work required, "make-ready," "complex make-ready," or 1277
"simple make-ready" as those terms are defined in 47 C.F.R. 1278
1.1402. 1279

(K) "Net cost" means costs for broadband infrastructure, 1280
including, but not limited to, a carrying charge on capital 1281
investments that reflects a broadband facilitator's weighted 1282
average cost of capital, depreciation, amortization, accretion, 1283
tax and expenses, plus operation and maintenance expenses, less 1284
any income generated by leasing broadband infrastructure 1285

constructed under sections 4926.01 to 4926.40 of the Revised 1286
Code. 1287

(L) "Priority unserved area" means an unserved area in one 1288
of the thirty-two counties within the Appalachian region of Ohio 1289
that ranks in the top four Ohio counties when considering the 1290
number of unserved customers in the county, the cost per 1291
customer of serving unserved areas in the county, and other 1292
factors as specified in rules adopted by the public utilities 1293
commission pursuant to section 4926.40 of the Revised Code. 1294

(M) "Satellite broadcasting service" has the same meaning 1295
as in section 5739.01 of the Revised Code. 1296

(N) "Telecommunications service" has the same meaning as 1297
in section 1332.21 of the Revised Code. 1298

(O) "Unserved area" means any area of the state in which 1299
internet access service capable of providing a minimum download 1300
speed of ten megabits per second and a minimum upload speed of 1301
one megabit per second is not available to potential retail 1302
customers located in the area. 1303

Sec. 4926.02. It is the public policy of the state to: 1304

(A) Facilitate the provision of broadband infrastructure 1305
under just and reasonable rates, terms, and conditions; 1306

(B) Facilitate the provision of broadband service in 1307
priority unserved areas in the state; 1308

(C) Provide access to broadband service to priority 1309
unserved areas of the state by facilitating the construction of 1310
broadband infrastructure; 1311

(D) Not unduly favor or advantage any broadband provider. 1312

Sec. 4926.03. (A) Subject to sections 4926.04 to 4926.40 1313
of the Revised Code, a broadband facilitator may construct 1314
broadband infrastructure in priority unserved areas that are 1315
located inside of its certified territory or in the territory of 1316
an electric cooperative or a municipal electric utility under an 1317
agreement under section 4926.04 of the Revised Code. 1318

(B) Nothing in sections 4926.01 to 4926.40 of the Revised 1319
Code authorizes a broadband facilitator to construct, own, or 1320
operate broadband infrastructure to provide broadband service to 1321
retail customers or to provide services as an internet service 1322
provider or telecommunications service provider. 1323

Sec. 4926.04. (A) As part of its capacity as a broadband 1324
facilitator, an electric distribution facility may enter into an 1325
agreement with an electric cooperative or municipal electric 1326
utility to construct broadband infrastructure in a priority 1327
unserved area if the geographic area is served by the 1328
cooperative or municipal electric utility and the geographic 1329
area is adjacent to the electric distribution utility's 1330
certified territory. An agreement pursuant to this section shall 1331
be based on mutually accepted commercial terms and shall provide 1332
for the full and timely recovery of the facilitator's net costs 1333
associated with the construction of the infrastructure. 1334

(B) A cooperative or municipal electric utility shall 1335
provide compensation to the facilitator as specified in the 1336
terms of the agreement. 1337

(C) The electric distribution utility in its capacity as a 1338
broadband facilitator shall file a copy of the agreement with 1339
the public utilities commission for review and approval as part 1340
of an application under section 4926.07 of the Revised Code. 1341

Sec. 4926.05. A broadband facilitator shall establish a 1342
written policy for constructing broadband infrastructure 1343
pursuant to sections 4926.04 to 4926.40 of the Revised Code. The 1344
policy shall be available to the public and shall include the 1345
following: 1346

(A) Procedures for executing agreements entered under 1347
section 4926.04 of the Revised Code; 1348

(B) The method for the full and timely recovery of the 1349
facilitator's net costs associated with the construction of the 1350
infrastructure; 1351

(C) Procedures for a nondiscriminatory competitive 1352
selection process to select a qualified broadband provider as 1353
part of the application process in sections 4926.10 and 4926.13 1354
of the Revised Code; 1355

(D) A nondiscriminatory procedure for other providers to 1356
request interconnection access to the infrastructure; 1357

(E) A list of any just and reasonable charges associated 1358
with granting or leasing interconnection access and the 1359
standards upon which those charges are calculated. 1360

Sec. 4926.06. (A) A broadband facilitator that constructs 1361
broadband infrastructure pursuant to sections 4926.04 to 4926.40 1362
of the Revised Code shall establish a nondiscriminatory 1363
competitive selection process that at a minimum meets the 1364
following requirements: 1365

(1) The facilitator shall submit a request for proposals 1366
to select at least one broadband provider capable of completing 1367
the last mile to an eligible project; 1368

(2) If no providers respond to the request for proposals 1369

submitted under division (A) of this section, the facilitator 1370
may submit a second request for proposals that includes proposed 1371
funding for up to fifty per cent of the last mile investment 1372
associated with completing the last mile for an eligible 1373
project. 1374

(3) A provider participating in the competitive selection 1375
process under this section demonstrates all of the following: 1376

(a) Extensive experience, technical ability, and financial 1377
capability to successfully deploy broadband service in the 1378
priority unserved area; 1379

(b) The length of time the provider has been providing 1380
broadband service in the state; 1381

(c) The ability of the provider to leverage nearby or 1382
adjacent broadband infrastructure to facilitate the completion 1383
of the last mile of the eligible project. 1384

(B) The public utilities commission shall review the 1385
competitive selection process as part of an application under 1386
section 4926.07 of the Revised Code. The commission shall 1387
confirm that the process was conducted prudently and achieved a 1388
reasonable competitive result. 1389

Sec. 4926.07. (A) A broadband facilitator shall file an 1390
application with the public utilities commission for approval of 1391
broadband infrastructure construction before constructing the 1392
infrastructure in a priority unserved area of the facilitator's 1393
certified territory. 1394

(B) A facilitator shall not file an application under this 1395
section unless the facilitator has selected at least one 1396
broadband provider to complete the last mile for the 1397
infrastructure described in the application. 1398

Sec. 4926.09. An application filed under section 4926.07 1399
of the Revised Code shall be filed on a form prescribed by the 1400
public utilities commission. 1401

Sec. 4926.10. An application filed by a broadband 1402
facilitator under section 4926.07 of the Revised Code shall 1403
include all of the following: 1404

(A) The location and a detailed description of the 1405
priority unserved area in which the broadband infrastructure 1406
will be constructed; 1407

(B) The number of new customers that are expected to have 1408
access to broadband service after the infrastructure is 1409
constructed; 1410

(C) The incremental benefits, including any economic 1411
development benefits, that are attributable to the construction 1412
of the infrastructure; 1413

(D) The estimated cost of the infrastructure; 1414

(E) The estimated time to construct the infrastructure; 1415

(F) Whether the application includes proposed funding for 1416
last mile investment pursuant to a competitive selection process 1417
for a broadband provider held under division (A)(2) of section 1418
4926.06 of the Revised Code; 1419

(G) Any information the facilitator received from the 1420
provider selected under the competitive selection process 1421
pursuant to section 4926.06 of the Revised Code and any updates 1422
to that information. 1423

(H) A copy of the agreement entered into by the 1424
facilitator and at least one provider following a competitive 1425
selection process held under section 4926.06 of the Revised Code 1426

and in which the provider commits to completing the last mile 1427
related to the eligible project and offering retail broadband 1428
service in the priority unserved area within eighteen months 1429
after the infrastructure is constructed; 1430

(I) A copy of the facilitator's policy established under 1431
section 4926.05 of the Revised Code; 1432

(J) A copy of any agreement entered into under section 1433
4926.04 of the Revised Code. 1434

Sec. 4926.13. (A) The public utilities commission may 1435
approve an application filed under section 4926.07 of the 1436
Revised Code if, upon review of the application and determining 1437
the application is complete, the commission does all of the 1438
following: 1439

(1) Finds that the area in which the broadband facilitator 1440
proposes to construct broadband infrastructure qualifies as a 1441
priority unserved area; 1442

(2) Determines that the application is not in violation of 1443
section 4926.15 of the Revised Code; 1444

(3) Finds, after reviewing the facilitator's estimated 1445
costs to construct the infrastructure, that the costs are just 1446
and reasonable; 1447

(4) Finds, after reviewing the facilitator's estimated 1448
benefits or conducting its own review, that there are 1449
incremental benefits, including economic development benefits, 1450
attributable to the construction of the infrastructure; 1451

(5) Finds that the infrastructure does not duplicate or 1452
overlap with infrastructure previously approved under this 1453
section. 1454

(6) Finds that the infrastructure does not duplicate or 1455
overlap with federal funding under the connect America funds or 1456
the rural digital opportunity fund; 1457

(7) Determines whether the facilitator's competitive 1458
selection process under section 4926.06 of the Revised Code was 1459
conducted prudently and achieved a reasonable, competitive 1460
result. 1461

(B) An application approved under this section shall be in 1462
the form of an order of the commission, which order shall 1463
supersede any conflicting or otherwise applicable tariff or 1464
schedule for broadband infrastructure or last mile investments 1465
in a previous order. 1466

(C) The commission shall deny the application if any of 1467
the following apply: 1468

(1) The application is incomplete. 1469

(2) The commission is unable to make the findings and 1470
determinations required under this section. 1471

(3) The commission determines that the capital investment 1472
associated with the eligible project described in the 1473
application exceeds two million five hundred thousand dollars, 1474
provided that the capital investment does not include the 1475
facilitator's operation and maintenance expenses associated with 1476
the capital investment in the infrastructure, total future 1477
revenue requirement collections of the facilitator under section 1478
4926.21 of the Revised Code, or last mile funding for a 1479
broadband provider. 1480

Sec. 4926.15. No broadband facilitator may construct 1481
broadband infrastructure in a geographic area in which a 1482
broadband provider has been awarded a program grant under the 1483

Ohio residential broadband expansion grant program under 1484
sections 188.40 to 188.44 of the Revised Code unless the 1485
provider that receives the program grant does not construct the 1486
project for which the program grant was awarded. 1487

Sec. 4926.16. Within one hundred eighty days after a 1488
broadband facilitator submits an application to the public 1489
utilities commission under section 4926.07 of the Revised Code, 1490
the commission shall approve or deny the application. 1491

Sec. 4926.20. (A) Except as provided in division (B) of 1492
this section and pursuant to an application approved under 1493
section 4926.13 of the Revised Code, the public utilities 1494
commission shall approve a rate mechanism that allows an 1495
electric distribution utility to fully and timely recover the 1496
following from its retail electric service customers: 1497

(1) The net costs incurred by a broadband facilitator to 1498
construct, own, and maintain broadband infrastructure, which 1499
shall reflect a credit for any revenues recovered pursuant to an 1500
agreement under section 4926.04 of the Revised Code; 1501

(2) Up to fifty per cent of any last mile investment costs 1502
as approved in the application. 1503

(B) The commission shall not approve the rate mechanism 1504
described in division (A) of this section if the commission 1505
determines that the mechanism will result in a double recovery 1506
of any costs by the electric distribution utility. If the 1507
commission disapproves a rate mechanism pursuant to this 1508
division, the commission may subsequently approve a revised rate 1509
mechanism if the double recovery is cured. 1510

Sec. 4926.21. A rate mechanism approved by the public 1511
utilities commission under section 4926.20 of the Revised Code 1512

shall do the following: 1513

(A) Fully and timely recover net costs related to 1514
broadband infrastructure, if the costs are prudently incurred, 1515
which shall reflect a credit for any revenues recovered pursuant 1516
to an agreement under section 4926.04 of the Revised Code; 1517

(B) Fully and timely recover last mile investment costs as 1518
specified by the commission; 1519

(C) Fully and timely recover the costs described in 1520
division (A) and (B) of this section, authorize a monthly 1521
charge, including deferrals, that does not exceed one dollar per 1522
customer per month for residential customers and does not exceed 1523
five dollars and fifty cents per customer per month for 1524
nonresidential customers. 1525

Sec. 4926.26. An existing rate mechanism previously 1526
authorized by the public utilities commission may be used as the 1527
mechanism under section 4926.20 of the Revised Code, if the 1528
existing mechanism will continue to exist for the full term of 1529
the cost recovery for broadband infrastructure and any last mile 1530
investment costs. The commission shall determine whether the 1531
existing rate mechanism is suitable for the infrastructure cost 1532
recovery. A surcharge previously approved for an electric 1533
distribution utility under division (B)(2)(h) of section 1534
4928.143 of the Revised Code may be considered a suitable rate 1535
mechanism under this section. 1536

Sec. 4926.27. If the public utilities commission, under 1537
section 4926.26 of the Revised Code, authorizes the use of an 1538
existing rate mechanism, and that mechanism subsequently expires 1539
or is terminated before the broadband infrastructure costs or 1540
last mile investment costs approved under section 4926.20 of the 1541

Revised Code, if any, are fully recovered, the commission, in a 1542
timely manner, shall establish a new rate mechanism under 1543
section 4926.20 of the Revised Code to ensure uninterrupted full 1544
and timely recovery of those approved infrastructure costs and 1545
last mile investment costs. 1546

Sec. 4926.29. (A) The public utilities commission annually 1547
shall review and update the rates charged under a rate mechanism 1548
established under section 4926.20 of the Revised Code until an 1549
electric distribution utility's approved net costs and any 1550
approved last mile investment costs are fully recovered. 1551

(B) In the annual rate review, the commission shall 1552
include the approved broadband infrastructure net costs and any 1553
approved last mile investment costs for the year under review. 1554

Sec. 4926.31. Recovery of approved costs related to 1555
broadband infrastructure and any approved last mile investment 1556
costs under sections 4926.20 to 4926.29 of the Revised Code are 1557
not subject to Chapter 4909. of the Revised Code or the earnings 1558
test under division (F) of section 4928.143 of the Revised Code. 1559

Sec. 4926.311. A broadband facilitator that constructs 1560
broadband infrastructure pursuant to an application approved 1561
under section 4926.13 of the Revised Code shall not, after the 1562
infrastructure is constructed, sell or transfer the 1563
infrastructure to an affiliate of an electric distribution 1564
utility. 1565

Sec. 4926.33. An electric distribution utility acting as a 1566
broadband facilitator with an application approved under section 1567
4926.13 of the Revised Code for an eligible project shall 1568
request or receive from a telecommunications service provider or 1569
a video service provider a reduced per pole rental rate, with 1570

the reduced rate to be determined by the public utilities 1571
commission, for attachments to any pole in a county where an 1572
eligible project is approved for a priority unserved area. The 1573
electric distribution utility acting as a facilitator shall 1574
fully and timely recover through an approved rate mechanism the 1575
revenue difference between the reduced pole rental tariff rate 1576
approved by the commission and the rate that would otherwise 1577
apply to such attachments, either in a pending or future rate 1578
proceeding under section 4909.18 of the Revised Code or another 1579
appropriate rate proceeding as determined by the commission. The 1580
electric distribution utility acting as a facilitator shall 1581
apply to the commission for any amendment to its pole attachment 1582
tariff necessary to implement this section. 1583

Sec. 4926.35. A broadband provider may request 1584
interconnection access to broadband infrastructure constructed 1585
by a broadband facilitator pursuant to an application approved 1586
under section 4926.13 of the Revised Code. 1587

Sec. 4926.36. (A) Not later than thirty days after receipt 1588
of a request for interconnection access to broadband 1589
infrastructure constructed pursuant to an application approved 1590
under section 4926.13 of the Revised Code, a broadband 1591
facilitator shall grant access to the broadband provider. Access 1592
may be granted only if the provider commits in writing to 1593
offering broadband service. In the agreement, the facilitator 1594
may condition the provider's access based on either of the 1595
following: 1596

(1) Infrastructure space availability; 1597

(2) The provider's compliance with applicable engineering 1598
and construction standards and administrative procedures; 1599

(B) A broadband facilitator that constructs broadband 1600
infrastructure pursuant to sections 4926.04 to 4926.40 of the 1601
Revised Code shall not charge any broadband provider for 1602
interconnecting with the broadband infrastructure for the 1603
purpose of either deploying last mile facilities to offer 1604
broadband service to unserved retail customers or transmitting 1605
the broadband service in the priority unserved area of an 1606
eligible project. 1607

Sec. 4926.37. The thirty-day period described in section 1608
4926.36 of the Revised Code does not apply if a broadband 1609
facilitator, including the facilitator's representative or 1610
agent, has more than one hundred interconnection requests 1611
pending at the time that the request is made. 1612

Sec. 4926.38. A broadband facilitator may suspend 1613
broadband interconnection access granted to a broadband provider 1614
that defaults on payment of the facilitator's charges. 1615

Sec. 4926.39. A broadband provider shall not be 1616
responsible for costs of any kind, including pole replacement, 1617
transfer, or relocation or make-ready costs, if the broadband 1618
facilitator requests or requires payment for such costs in order 1619
to make room for or otherwise permit broadband infrastructure 1620
construction pursuant to an application approved under section 1621
4926.13 of the Revised Code. Any pole replaced in order to 1622
construct the broadband infrastructure shall remain the property 1623
of the owner of the pole that was replaced. 1624

Sec. 4926.40. Not later than one hundred twenty days after 1625
the effective date of this section, the public utilities 1626
commission shall adopt rules to implement sections 4926.01 to 1627
4926.40 of the Revised Code. 1628

Sec. 4926.50. As used in sections 4926.50 to 4926.95 of 1629
the Revised Code: 1630

"Attachment" means any wire, wireless facility, cable, 1631
antennae facility, or apparatus for the transmission of text, 1632
signs, signals, pictures, sounds, or other forms of information 1633
installed by or on behalf of a provider upon any pole owned or 1634
controlled, in whole or in part, by one or more electric 1635
cooperatives. 1636

"Broadband provider" has the same meaning as in section 1637
188.01 of the Revised Code. 1638

"Electric cooperative" has the same meaning as in section 1639
4928.01 of the Revised Code. 1640

"Incremental cost" means pole attachment costs incurred by 1641
an electric cooperative for providing long-run service. 1642

"Make-ready work" has the same meaning as in section 1643
4926.01 of the Revised Code. 1644

"Provider" means a broadband provider, telecommunications 1645
service provider, video service provider, or wireless service 1646
provider. 1647

"Telecommunications service provider" means a provider of 1648
"telecommunications service" as defined in section 4927.01 of 1649
the Revised Code. 1650

"Video service provider" has the same meaning as in 1651
section 1332.21 of the Revised Code. 1652

"Wireless service provider" has the same meaning as in 1653
section 4927.01 of the Revised Code. 1654

Sec. 4926.51. On the request of a provider, an electric 1655

cooperative shall grant the provider nondiscriminatory access to 1656
the cooperative's poles under just and reasonable rates, terms, 1657
and conditions for their attachments in accordance with sections 1658
4926.52 to 4926.72 of the Revised Code. 1659

Sec. 4926.52. A provider requesting access to an electric 1660
cooperative's poles shall submit the request in writing, and the 1661
cooperative shall review the request under a uniformly applied, 1662
efficient, and transparent process. 1663

Sec. 4926.54. An electric cooperative may require a 1664
provider to execute an agreement for a pole attachment under 1665
nondiscriminatory, just, and reasonable rates, terms, and 1666
conditions in accordance with sections 4926.52 to 4926.72 of the 1667
Revised Code if the cooperative requires all other attaching 1668
parties to execute such an agreement. 1669

Sec. 4926.56. After receiving a request for access, an 1670
electric cooperative shall grant or deny access within the time 1671
frame established by the federal communications commission. 1672

Sec. 4926.58. An electric cooperative may deny a provider 1673
access to its poles for either of the following reasons if the 1674
reasons are applied on a nondiscriminatory basis: 1675

(A) Insufficient capacity; 1676

(B) Safety, reliability, or generally applicable 1677
engineering standards. 1678

Sec. 4926.60. If an electric cooperative denies an access 1679
request submitted under section 4926.58 of the Revised Code, the 1680
cooperative must confirm the denial in writing. The denial shall 1681
be specific and shall include all relevant evidence and 1682
information supporting the denial and an explanation of how that 1683
evidence and information relates to the factors described in 1684

section 4926.58 of the Revised Code on which the denial is 1685
based. 1686

Sec. 4926.63. (A) A provider and an electric cooperative 1687
shall comply with the process for make-ready work under 47 1688
U.S.C. 224 and the federal communications commission orders and 1689
regulations implementing that section. 1690

(B) The cooperative shall provide a good-faith estimate 1691
for any make-ready work, which shall include pole replacement if 1692
necessary. All make-ready costs shall be based on the 1693
cooperative's actual costs not recovered through the annual 1694
recurring attachment rate. The cooperative shall provide 1695
detailed documentation of the actual costs. 1696

(C) A cooperative that charges an annual recurring 1697
attachment fee shall establish the fee in accordance with the 1698
cable pole attachment rate formula established in 47 U.S.C. 1699
224(d) and commission orders and regulations implementing that 1700
formula. 1701

Sec. 4926.64. The attachment of facilities on the poles of 1702
an electric cooperative by a provider shall comply with the 1703
following: 1704

(A) The most recent, applicable, nondiscriminatory safety 1705
and reliability standards adopted by the cooperative; 1706

(B) The national electric safety code adopted by the 1707
institute of electrical and electronics engineers in effect on 1708
the date of the attachment. 1709

Sec. 4926.65. Nothing in sections 4926.50 to 4926.95 of 1710
the Revised Code affects a provider or other attaching party's 1711
obligation to obtain any necessary authorization before 1712
occupying public ways or private rights-of-way with its 1713

attachment. 1714

Sec. 4926.70. If an electric cooperative's pole facility 1715
is modified, a party with a preexisting attachment to the 1716
modified facility is considered to directly benefit from a 1717
modification if, after receiving notification of the 1718
modification, the party adds to or modifies its attachment. 1719

Sec. 4926.71. (A) If an electric cooperative's pole 1720
facility is modified, all parties that obtain access to the 1721
facility as a result of the modification and all parties that 1722
directly benefit from the modification shall share 1723
proportionately in the cost of the modification. 1724

(B) If a party makes an attachment to the facility after 1725
the completion of the modification, the party shall share 1726
proportionately in the costs of the modification if that 1727
modification rendered the added attachment possible. 1728

Sec. 4926.72. Unless a modification by an electric 1729
cooperative is necessary for an electric service that uses smart 1730
grid or other technology, a party with a preexisting attachment 1731
to a pole is not required to bear any of the costs of 1732
rearranging or replacing its attachment if the rearrangement or 1733
replacement is necessary because of another party's request for 1734
an additional attachment or a modification of an existing 1735
attachment. 1736

Sec. 4926.85. An electric cooperative or a provider may 1737
file a complaint regarding pole attachment disputes with respect 1738
to sections 4926.50 to 4926.95 of the Revised Code with the 1739
court of commons pleas of the county in which the cooperative's 1740
Ohio headquarters is located. 1741

Sec. 4926.86. The court of common pleas of the county in 1742

which an electric cooperative's Ohio headquarters is located has 1743
jurisdiction to hear complaints and to grant remedies with 1744
respect to sections 4926.50 to 4926.95 of the Revised Code 1745
regarding attachment disputes for which a complaint is filed. 1746

Sec. 4926.88. Before a court of common pleas may order any 1747
remedy under section 4926.93 of the Revised Code regarding a 1748
pole attachment complaint filed with respect to section 4926.50 1749
to 4926.95 of the Revised Code, the court shall determine, and a 1750
complainant shall establish, by a preponderance of the evidence, 1751
both of the following: 1752

(A) Whether any rate, term, or condition complained of is 1753
not just and reasonable or a denial of access was unlawful. 1754

(B) Whether one of the following occurs on or after the 1755
effective date of this section: 1756

(1) Any rate, term, or condition described in the 1757
complaint is contained in a new pole attachment agreement or in 1758
a previously existing pole attachment agreement that is amended, 1759
renewed, or replaced by executing a new agreement; 1760

(2) There has been an unreasonable denial of access or 1761
unreasonable refusal to enter into a new, amended, renewed, or 1762
replacement pole attachment agreement. 1763

Sec. 4926.90. (A) The complainant under section 4926.85 of 1764
the Revised Code has the burden of establishing a prima facie 1765
case that the rate, term, or condition complained of is not just 1766
and reasonable or that the denial of access was unlawful. 1767

(B) In a case involving a denial of access, the electric 1768
cooperative has the burden of establishing, by a preponderance 1769
of the evidence, that the denial was lawful, once a prima facie 1770
case is established by the complainant. 1771

Sec. 4926.91. In a complaint filed under section 4926.85 1772
of the Revised Code, if an electric cooperative claims that the 1773
proposed rate is lower than its incremental costs, the 1774
cooperative has the burden of establishing, by a preponderance 1775
of the evidence, its incremental costs. 1776

Sec. 4926.92. In a complaint filed under section 4926.85 1777
of the Revised Code, there is a rebuttable presumption that the 1778
charged rate is just and reasonable, if the electric cooperative 1779
can show that its charged rate does not exceed an annual 1780
recurring attachment rate calculated in accordance with the 1781
cable pole attachment rate formula in 47 U.S.C. 224(d) and 1782
federal communications commission orders and regulations 1783
implementing that formula. 1784

Sec. 4926.93. (A) If, pursuant to a complaint filed under 1785
section 4926.85 of the Revised Code, a court of common pleas 1786
determines that any rate, term, or condition described in the 1787
complaint is not just and reasonable, it may do, but is not 1788
limited to doing, any of the following: 1789

(1) Terminate the rate, term, or condition and prescribe a 1790
just and reasonable rate, term, or condition; 1791

(2) Require entry into a pole attachment agreement on just 1792
and reasonable rates, terms, and conditions; 1793

(3) Require access to poles as provided under sections 1794
4926.52 to 4926.72 of the Revised Code; 1795

(4) Substitute in the pole attachment agreement the just 1796
and reasonable rate, term, or condition established by the 1797
court; 1798

(5) Order a refund or payment, as appropriate. 1799

(B) A refund or payment ordered under this section may not 1800
exceed the difference between the actual amount paid under the 1801
unjust and unreasonable rate, term, or condition and the amount 1802
that would have been paid under the rate, term, or condition 1803
established by the court for the period described in the 1804
complaint, provided that the period during which refunds or 1805
payments are made does not exceed two years. 1806

Sec. 4926.95. A court of common pleas determination 1807
resolving a complaint under sections 4926.85 to 4926.93 of the 1808
Revised Code shall be issued in the form of a final appealable 1809
order. 1810

Sec. 4928.17. (A) Except as otherwise provided in sections 1811
4928.142 or 4928.143 or 4928.31 to 4928.40 of the Revised Code 1812
and beginning on the starting date of competitive retail 1813
electric service, no electric utility shall engage in this 1814
state, either directly or through an affiliate, in the 1815
businesses of supplying a noncompetitive retail electric service 1816
and supplying a competitive retail electric service, or in the 1817
businesses of supplying a noncompetitive retail electric service 1818
and supplying a product or service other than retail electric 1819
service, unless the utility implements and operates under a 1820
corporate separation plan that is approved by the public 1821
utilities commission under this section, is consistent with the 1822
policy specified in section 4928.02 of the Revised Code, and 1823
achieves all of the following: 1824

(1) The plan provides, at minimum, for the provision of 1825
the competitive retail electric service or the nonelectric 1826
product or service through a fully separated affiliate of the 1827
utility, and the plan includes separate accounting requirements, 1828
the code of conduct as ordered by the commission pursuant to a 1829

rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.

(2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.

(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training, without compensation based upon fully loaded embedded costs charged to the affiliate; and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference. Notwithstanding any other division of this section, a utility's obligation under division (A) (3) of this section shall be effective January 1, 2000.

(B) The commission may approve, modify and approve, or disapprove a corporate separation plan filed with the commission under division (A) of this section. As part of the code of conduct required under division (A) (1) of this section, the commission shall adopt rules pursuant to division (A) of section 4928.06 of the Revised Code regarding corporate separation and

procedures for plan filing and approval. The rules shall include 1860
limitations on affiliate practices solely for the purpose of 1861
maintaining a separation of the affiliate's business from the 1862
business of the utility to prevent unfair competitive advantage 1863
by virtue of that relationship. The rules also shall include an 1864
opportunity for any person having a real and substantial 1865
interest in the corporate separation plan to file specific 1866
objections to the plan and propose specific responses to issues 1867
raised in the objections, which objections and responses the 1868
commission shall address in its final order. Prior to commission 1869
approval of the plan, the commission shall afford a hearing upon 1870
those aspects of the plan that the commission determines 1871
reasonably require a hearing. The commission may reject and 1872
require refiling of a substantially inadequate plan under this 1873
section. 1874

(C) The commission shall issue an order approving or 1875
modifying and approving a corporate separation plan under this 1876
section, to be effective on the date specified in the order, 1877
only upon findings that the plan reasonably complies with the 1878
requirements of division (A) of this section and will provide 1879
for ongoing compliance with the policy specified in section 1880
4928.02 of the Revised Code. However, for good cause shown, the 1881
commission may issue an order approving or modifying and 1882
approving a corporate separation plan under this section that 1883
does not comply with division (A)(1) of this section but 1884
complies with such functional separation requirements as the 1885
commission authorizes to apply for an interim period prescribed 1886
in the order, upon a finding that such alternative plan will 1887
provide for ongoing compliance with the policy specified in 1888
section 4928.02 of the Revised Code. 1889

(D) Any party may seek an amendment to a corporate 1890

separation plan approved under this section, and the commission, 1891
pursuant to a request from any party or on its own initiative, 1892
may order as it considers necessary the filing of an amended 1893
corporate separation plan to reflect changed circumstances. 1894

(E) No electric distribution utility shall sell or 1895
transfer any generating asset it wholly or partly owns at any 1896
time without obtaining prior commission approval. 1897

(F) Notwithstanding any other provision of this section, 1898
broadband infrastructure constructed under sections 4926.01 to 1899
4926.40 of the Revised Code shall qualify as noncompetitive 1900
retail electric service under division (B) of section 4928.01 of 1901
the Revised Code. 1902

Section 2. That existing sections 133.13, 727.01, and 1903
4928.17 of the Revised Code are hereby repealed. 1904

Section 3. All items in this section are hereby 1905
appropriated as designated out of any moneys in the state 1906
treasury to the credit of the designated fund. For all 1907
appropriations made in this act, those in the first column are 1908
for fiscal year 2020 and those in the second column are for 1909
fiscal year 2021. The appropriations made in this act are in 1910
addition to any other appropriations made for the FY 2020-FY 1911
2021 biennium. 1912

1913

1 2 3 4 5

A COM DEPARTMENT OF COMMERCE

B Facilities Establishment Fund Group

C 5WV0 800411 Residential Broadband	\$	0	\$	20,000,000
Expansion Grants				
D TOTAL FCE Facilities Establishment Fund	\$	0	\$	20,000,000
Group				
E TOTAL ALL BUDGET FUND GROUPS	\$	0	\$	20,000,000

RESIDENTIAL BROADBAND EXPANSION GRANTS 1914

Notwithstanding Chapter 166. of the Revised Code, the 1915
foregoing appropriation item 800411, Residential Broadband 1916
Expansion Grants, shall be used for grants under the Ohio 1917
Residential Broadband Expansion Grant Program established in 1918
section 188.03 of the Revised Code. 1919

On July 1, 2020, or as soon as possible thereafter, the 1920
Director of Budget and Management shall transfer \$20,000,000 1921
cash from the Facilities Establishment Fund (Fund 7037) to the 1922
Ohio Residential Broadband Expansion Grant Program Fund (Fund 1923
5WV0). 1924

Section 4. Within the limits set forth in this act, the 1925
Director of Budget and Management shall establish accounts 1926
indicating the source and amount of funds for each appropriation 1927
made in this act, and shall determine the form and manner in 1928
which appropriation accounts shall be maintained. Expenditures 1929
from appropriations contained in this act shall be accounted for 1930
as though made in H.B. 166 of the 133rd General Assembly. 1931

The appropriations made in this act are subject to all 1932
provisions of H.B. 166 of the 133rd General Assembly that are 1933
generally applicable to such appropriations. 1934

Section 5. That sections 4926.01, 4926.03, 4926.04, 1935

4926.05, 4926.06, 4926.07, 4926.09, 4926.10, 4926.13, 4926.15, 1936
4926.16, 4926.20, 4926.21, 4926.26, 4926.27, 4926.29, 4926.31, 1937
4926.33, 4926.35, 4926.36, 4926.37, 4926.38, 4926.39, and 1938
4926.40 of the Revised Code are hereby repealed, effective on 1939
the date that is three years after the effective date of this 1940
act. 1941

Section 6. Any net costs or last mile investment costs 1942
that the Public Utilities Commission approves for recovery by an 1943
electric distribution utility under section 4926.20 of the 1944
Revised Code but that has not yet been recovered by the electric 1945
distribution utility as of the effective date of the repeal of 1946
sections 4926.20 to 4926.31 of the Revised Code by this act may 1947
continue to be recovered according to the provisions of sections 1948
4926.20 to 4926.31 of the Revised Code as those sections existed 1949
before their repeal. 1950

Section 7. (A) Not later than the date that is three and 1951
one-half years after the effective date of this act, each 1952
electric distribution utility that has had an application 1953
approved under section 4926.13 of the Revised Code shall file a 1954
report with the public utilities commission that includes all of 1955
the following: 1956

(1) The number of applications the electric distribution 1957
utility filed with the public utilities commission pursuant to 1958
section 4926.07 of the Revised Code during the three-year period 1959
after the effective date of this act; 1960

(2) A description identifying the priority unserved areas 1961
in the electric distribution utility's certified territory; 1962

(3) A summary of each application approved by the public 1963
utilities commission under section 4926.13 of the Revised Code 1964

that includes a description of each priority unserved area, the 1965
construction status of the project, and the broadband 1966
facilitator's costs for the project; 1967

(4) The number of broadband providers with which the 1968
broadband facilitator contracted to complete the last mile; 1969

(5) The total net costs for the electric distribution 1970
utility as approved by the public utilities commission; 1971

(6) The total last mile investment costs for the electric 1972
distribution utility as approved by the public utilities 1973
commission; 1974

(7) The percentage of total net costs and last mile 1975
investment costs recovered through the rate mechanisms approved 1976
by the public utilities commission pursuant to section 4926.20 1977
of the Revised Code; 1978

(8) The number of new retail customers with access to 1979
broadband service at the time of the report as a result of the 1980
approved construction applications. 1981

(B) (1) The commission shall submit the reports to the 1982
Speaker of the House of Representatives, the President of the 1983
Senate, and the standing committees of the House of 1984
Representatives and the Senate that primarily deal with 1985
broadband issues. The commission also shall submit the report to 1986
the Broadband Ohio Office and to the Broadband Expansion Program 1987
Authority to assist the Authority in its duties under section 1988
188.08 of the Revised Code. 1989

(2) To meet the requirements of division (B) (1) of this 1990
section, the commission may combine into one report the reports 1991
filed under this section by different electric distribution 1992
utilities provided that the electric distribution utility 1993

reports are included in their entirety.

1994