

As Reported by the House Finance Committee

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Am. H. B. No. 2

Representatives Carfagna, Stewart

Cosponsors: Representatives O'Brien, Hall, Ghanbari, Lipps, Stephens, Seitz, Stein, Koehler, Miller, J., LaRe, Ingram, Carruthers, Hoops, Baldridge, Cutrona, White, Manning, Holmes, McClain, Riedel, Ginter, Loychik, Swearingen, Richardson, Lanese, Young, T., Fraizer, Fowler Arthur, Click, Edwards, Schmidt, West

A BILL

To amend sections 133.13 and 727.01 and to enact 1
sections 122.40, 122.401, 122.403, 122.404, 2
122.406, 122.407, 122.408, 122.4010, 122.4013, 3
122.4015, 122.4016, 122.4017, 122.4018, 4
122.4019, 122.4020, 122.4021, 122.4023, 5
122.4024, 122.4025, 122.4030, 122.4031, 6
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122.4061, 122.4063, 122.4070, 122.4071, 11
122.4073, 122.4075, 122.4076, 122.4077, 188.01, 12
188.02, 188.05, 188.08, 188.11, 188.14, 188.17, 13
188.20, 188.23, 188.27, 188.30, 303.251, 14
505.881, 4926.01, 4926.03, 4926.06, 4926.09, 15
4926.12, 4926.15, 4926.18, 4926.21, 4926.24, 16
4926.27, 4926.30, 4926.33, 4926.36, 4926.39, 17
4926.42, 4926.43, 4926.45, 4926.48, 4926.51, 18

4926.54, 4926.57, and 4926.60 of the Revised Code regarding broadband expansion, including access to electric cooperative easements and facilities, to make an appropriation, and to declare an emergency.

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

Section 1. That sections 133.13 and 727.01 be amended and sections 122.40, 122.401, 122.403, 122.404, 122.406, 122.407, 122.408, 122.4010, 122.4013, 122.4015, 122.4016, 122.4017, 122.4018, 122.4019, 122.4020, 122.4021, 122.4023, 122.4024, 122.4025, 122.4030, 122.4031, 122.4033, 122.4034, 122.4035, 122.4036, 122.4037, 122.4040, 122.4041, 122.4043, 122.4044, 122.4045, 122.4046, 122.4050, 122.4051, 122.4053, 122.4055, 122.4060, 122.4061, 122.4063, 122.4070, 122.4071, 122.4073, 122.4075, 122.4076, 122.4077, 188.01, 188.02, 188.05, 188.08, 188.11, 188.14, 188.17, 188.20, 188.23, 188.27, 188.30, 303.251, 505.881, 4926.01, 4926.03, 4926.06, 4926.09, 4926.12, 4926.15, 4926.18, 4926.21, 4926.24, 4926.27, 4926.30, 4926.33, 4926.36, 4926.39, 4926.42, 4926.43, 4926.45, 4926.48, 4926.51, 4926.54, 4926.57, and 4926.60 of the Revised Code be enacted to read as follows:

Sec. 122.40. As used in sections 122.40 to 122.4077 of the Revised Code:

(A) "Application" means an application made under section 122.4013 of the Revised Code for a program grant.

(B) "Broadband funding gap" means the difference between the total amount of money a broadband provider calculates is

necessary to construct the last mile of a specific broadband 45
network and the total amount of money that the provider has 46
determined is the maximum amount of money that is cost effective 47
for the provider to invest in last mile construction for that 48
network. 49

(C) (1) "Broadband provider" means one of the following: 50

(a) A video service provider as defined in section 1332.21 51
of the Revised Code; 52

(b) A provider that is capable of providing tier one or 53
tier two broadband service and is one of the following: 54

(i) A telecommunications service provider; 55

(ii) A satellite broadcasting service provider; 56

(iii) A wireless service provider as defined in section 57
4927.01 of the Revised Code. 58

(2) "Broadband provider" does not include a governmental 59
or quasi-governmental entity. 60

(D) "Eligible project" means a project to provide tier two 61
broadband service access to residences in an unserved area or 62
tier one area of a municipal corporation or township that is 63
eligible for funding under sections 122.4013 to 122.4046 of the 64
Revised Code. 65

(E) "Last mile" means the last portion of a physical 66
broadband network that connects an eligible project to the 67
broader network used to provide tier two broadband service, and 68
to which both of the following apply: 69

(1) It includes other network infrastructure in the last 70
portion of the network that is needed to provide tier two 71

broadband service to residences as part of an eligible project, 72
but does not include network infrastructure in any portion of 73
the network that is outside of the last portion. 74

(2) It is not required to be, or limited to, a specific 75
distance measurement of one mile or any other specific distance. 76

(F) "Ohio residential broadband expansion grant program" 77
means the program established under sections 122.40 to 122.4077 78
of the Revised Code. 79

(G) "Program grant" means money awarded under the Ohio 80
residential broadband expansion grant program to assist in 81
covering the broadband funding gap for an eligible project. 82

(H) "Satellite broadcasting service" has the same meaning 83
as in section 5739.01 of the Revised Code. 84

(I) "Telecommunications service" has the same meaning as 85
in section 1332.21 of the Revised Code. 86

(J) "Tier one broadband service" means a retail wireline 87
or wireless broadband service capable of delivering internet 88
access at speeds of at least ten but less than twenty-five 89
megabits per second downstream and at least one but less than 90
three megabits per second upstream. 91

(K) "Tier two broadband service" means a retail wireline 92
or wireless broadband service capable of delivering internet 93
access at speeds of at least twenty-five megabits per second 94
downstream and at least three megabits per second upstream. 95

(L) "Tier one area" means an area that has access to tier 96
one broadband service but not tier two broadband service. "Tier 97
one area" includes an area where construction of a network to 98
provide tier one broadband service is in progress and is 99

scheduled to be completed within a two-year period. "Tier one 100
area" excludes an area where construction of a network to 101
provide tier two broadband service is in progress and is 102
scheduled to be completed within a two-year period. 103

(M) "Unserved area" means an area without access to tier 104
one broadband service or tier two broadband service. "Unserved 105
area" excludes an area where construction of a network to 106
provide tier one broadband service or tier two broadband service 107
is in progress and is scheduled to be completed within a two- 108
year period. 109

Sec. 122.401. There is hereby established the Ohio 110
residential broadband expansion grant program within the 111
development services agency. The agency shall administer and 112
provide staff assistance for the program. The agency shall be 113
responsible for receiving and reviewing applications for program 114
grants and for sending completed applications to the broadband 115
expansion program authority for final review and award of 116
program grants. 117

Sec. 122.403. (A) (1) There is hereby created, within the 118
development services agency, the broadband expansion program 119
authority, which shall consist of the director of development 120
services or the director's designee, the director of the office 121
of InnovateOhio or the director's designee, and three other 122
members as follows: one member appointed by the president of the 123
senate, one member appointed by the speaker of the house of 124
representatives, and one member appointed by the governor. 125

(2) Appointed members shall have expertise in broadband 126
infrastructure and technology. Appointed members may not be 127
affiliated with or employed by the broadband industry or in a 128
position to benefit from a program grant. 129

(3) The assignment of designees by the director of 130
development services and the director of InnovateOhio shall be 131
made in writing. 132

(B) Appointed members shall serve four year terms and are 133
eligible for reappointment. 134

(C) Vacancies shall be filled in the same manner as 135
provided for original appointments. Any member appointed to fill 136
a vacancy occurring prior to the expiration of the term for 137
which the member's predecessor was appointed shall hold office 138
for the remainder of that term. 139

(D) (1) (a) Appointed members shall receive a monthly 140
stipend as calculated under section 145.016 of the Revised Code 141
in an amount that will qualify each member for one year of 142
retirement service credit under the Ohio public employees 143
retirement system for each year of the member's term. 144

(b) Notwithstanding the requirement of section 145.58 of 145
the Revised Code that eligibility for health care coverage 146
provided under that section be based on years and types of 147
service credit in accordance with rules adopted by the public 148
employees retirement board, if the board provides health care 149
coverage under that section, no service credit earned for 150
service as a member of the authority shall be considered for 151
purposes of determining eligibility for coverage under that 152
section. 153

(c) Members shall receive reimbursement for their 154
necessary and actual expenses incurred in performing the 155
business of the authority. The reimbursements constitute, as 156
applicable, administrative costs of the Ohio residential 157
broadband expansion grant program. 158

(2) An appointed member of the authority who is currently 159
serving as an administrative department head under section 160
121.03 of the Revised Code is not eligible to receive a stipend 161
under division (A) of this section. 162

(3) The agency shall be responsible for paying all 163
reimbursements and stipends under this section. 164

(E) The director of development services, or the 165
director's designee, shall serve as chairperson of the 166
authority. The members of the authority annually shall elect a 167
vice-chairperson from the members of the authority. Three 168
members of the authority constitute a quorum to transact and 169
vote on the business of the authority. An affirmative vote of 170
three members is necessary to approve any business, including 171
the election of the vice-chairperson. 172

(F) If the director of development services assigns a 173
designee to serve on the authority, the director of development 174
services shall appoint a professional employee of the 175
development services agency to serve as the director's designee 176
at authority meetings. In the absence of the director of 177
development services or the director's designee, the vice- 178
chairperson of the authority shall serve as chairperson of 179
authority meetings. 180

(G) The authority is not an agency for purposes of 181
sections 101.82 to 101.87 of the Revised Code. 182

Sec. 122.404. (A) Members of the broadband expansion 183
program authority may attend meetings of the authority 184
electronically by means of electronic communication if all of 185
the following apply: 186

(1) At least three of the members attending the meeting 187

are present in person at the place where the meeting is 188
conducted. 189

(2) The means of electronic communication permits, for the 190
duration of the meeting, simultaneous communication among the 191
members attending electronically, the members attending in 192
person, and all members of the public attending in person. 193

(3) All votes taken at the meeting are to be taken by roll 194
call vote. 195

(B) Except in the case of an emergency, a member who 196
intends to attend a meeting by means of electronic communication 197
shall notify the chairperson of the member's intent not less 198
than forty-eight hours before the scheduled time of the meeting. 199

Sec. 122.406. The broadband expansion program authority 200
shall consider each application for a program grant that the 201
development services agency has reviewed and sent to it. The 202
authority shall score all applications according to the scoring 203
system established under section 122.4040 of the Revised Code 204
and award program grants based on that system according to 205
sections 122.4043 and 122.4044 of the Revised Code. 206

Sec. 122.407. The broadband expansion program authority 207
shall do the following: 208

(A) Continually examine, and propose updates to, any 209
broadband plan provided by law enacted by the general assembly 210
or executive order issued by the governor; 211

(B) Monitor the Ohio residential broadband expansion grant 212
program, including by doing the following: 213

(1) Tracking the details for annual applications to the 214
program, including: 215

<u>(a) The number of applications;</u>	216
<u>(b) The geographic locations of the eligible projects</u> <u>listed in the applications;</u>	217 218
<u>(c) The broadband providers submitting applications;</u>	219
<u>(d) A description of the tier two broadband infrastructure</u> <u>and technology proposed in applications;</u>	220 221
<u>(e) A description of any public right-of-way or public</u> <u>facilities to be utilized for the projects;</u>	222 223
<u>(f) The speeds of the tier two broadband services under</u> <u>the projects;</u>	224 225
<u>(g) The amount of the grant funds requested for each</u> <u>project and the proportion of project funding to be provided by</u> <u>the broadband provider and by other entities;</u>	226 227 228
<u>(h) The number of residential and nonresidential locations</u> <u>that will have access to tier two broadband service under each</u> <u>project.</u>	229 230 231
<u>(2) Tracking the program grants awarded annually,</u> <u>including:</u>	232 233
<u>(a) The number of program grants;</u>	234
<u>(b) The geographic location or locations of the projects;</u>	235
<u>(c) The broadband providers that received program grants</u> <u>and the entities or companies that submitted the application;</u>	236 237
<u>(d) A description of the tier two broadband infrastructure</u> <u>and technology deployed in each project;</u>	238 239
<u>(e) A description of any public right-of-way or public</u> <u>facilities utilized as part of the project;</u>	240 241

<u>(f) The speeds of the tier two broadband services enabled</u>	242
<u>by each project;</u>	243
<u>(g) The amounts of each program grant, the share of the</u>	244
<u>project funding provided by the broadband provider, and any</u>	245
<u>share of the project funding provided by other entities;</u>	246
<u>(h) The number of residential and nonresidential locations</u>	247
<u>that will have access to tier two broadband service for each</u>	248
<u>project.</u>	249
<u>(3) Listing the amount of any unencumbered program grant</u>	250
<u>funds that remain available for award under the Ohio residential</u>	251
<u>broadband expansion grant program;</u>	252
<u>(4) Adding any additional factors deemed necessary by the</u>	253
<u>authority to monitor the program.</u>	254
<u>(C) Review all progress reports and operational reports</u>	255
<u>required under section 122.4070 of the Revised Code.</u>	256
<u>(D) Review all pending county requests made pursuant to</u>	257
<u>section 122.4051 of the Revised Code for program grants.</u>	258
<u>(E) Identify any best practices for, and impediments to,</u>	259
<u>the continued expansion of tier two broadband infrastructure and</u>	260
<u>technology in the state;</u>	261
<u>(F) Coordinate and promote the availability of publicly</u>	262
<u>accessible digital literacy programs to increase fluency in the</u>	263
<u>use and security of interactive digital tools and searchable</u>	264
<u>networks, including the ability to use digital tools safely and</u>	265
<u>effectively for learning, collaborating, and producing;</u>	266
<u>(G) Identify, examine, and report on any federal or state</u>	267
<u>government grant or loan program that would promote the</u>	268
<u>deployment of tier two broadband infrastructure and technology</u>	269

<u>in the state;</u>	270
<u>(H) Track the availability, location, rates and speeds,</u>	271
<u>and adoption of programs that offer tier one broadband service</u>	272
<u>and tier two broadband service in an affordable manner to low-</u>	273
<u>income consumers in this state.</u>	274
<u>Sec. 122.408. The broadband expansion program authority</u>	275
<u>shall conduct hearings to gather information necessary to</u>	276
<u>accomplish the duties specified under section 122.407 of the</u>	277
<u>Revised Code.</u>	278
<u>Sec. 122.4010. The broadband expansion program authority,</u>	279
<u>upon majority approval of the authority's members, shall submit</u>	280
<u>a written public report of its findings and recommendations to</u>	281
<u>the governor and the general assembly not later than the first</u>	282
<u>of December of each calendar year.</u>	283
<u>The authority shall not disclose any proprietary</u>	284
<u>information or trade secrets in the report. Copies of the report</u>	285
<u>shall be available on the development services agency's web</u>	286
<u>site.</u>	287
<u>Sec. 122.4013. A broadband provider may apply for a</u>	288
<u>program grant under the Ohio residential broadband expansion</u>	289
<u>grant program.</u>	290
<u>Sec. 122.4015. Program grants under the Ohio residential</u>	291
<u>broadband expansion grant program shall be awarded only for</u>	292
<u>eligible projects.</u>	293
<u>Sec. 122.4016. An application shall be ineligible for a</u>	294
<u>program grant under the Ohio residential broadband expansion</u>	295
<u>grant program if either of the following applies:</u>	296
<u>(A) It proposes to provide tier two broadband service to</u>	297

<u>areas where tier two broadband service is presently available.</u>	298
<u>(B) In the proposed area of service, construction of a</u>	299
<u>network to provide tier two broadband service currently is in</u>	300
<u>progress and one of the following applies:</u>	301
<u>(1) It is being constructed, without grant program</u>	302
<u>funding, by the broadband provider that submitted the</u>	303
<u>application.</u>	304
<u>(2) It is scheduled to be completed by another broadband</u>	305
<u>provider not later than two years after the date of a challenge</u>	306
<u>submitted under section 122.4030 of the Revised Code.</u>	307
<u>Sec. 122.4017.</u> <u>The broadband expansion program authority</u>	308
<u>shall award program grants under the Ohio residential broadband</u>	309
<u>expansion grant program using funds appropriated by the general</u>	310
<u>assembly for this purpose.</u>	311
<u>Sec. 122.4018.</u> <u>(A) Each fiscal year, the development</u>	312
<u>services agency shall fund program grants until funds for that</u>	313
<u>fiscal year are no longer available.</u>	314
<u>(B) Any application pending at the end of the fiscal year</u>	315
<u>shall be deemed denied, but may be refiled in a subsequent</u>	316
<u>fiscal year provided that all information in the application is</u>	317
<u>still current or has been updated.</u>	318
<u>Sec. 122.4019.</u> <u>(A) (1) Each fiscal year, the development</u>	319
<u>services agency shall accept applications for program grants.</u>	320
<u>(2) To apply for a program grant, a broadband provider</u>	321
<u>shall submit an application to the agency on a form prescribed</u>	322
<u>by the agency and shall provide the information required under</u>	323
<u>section 122.4020 of the Revised Code. The form shall include a</u>	324
<u>statement informing the applicant that failure to comply with</u>	325

the program or to meet the required tier two broadband service 326
proposed in the application may require the refund of all or a 327
portion of the program grant awarded for the project. 328

(3) Applications may be submitted in person or by 329
certified mail or electronic mail, or uploaded to a designated 330
agency web site for applications. 331

(B) Applications shall be accepted during a submission 332
period specified by the broadband expansion program authority. 333
Each submission period shall be at least sixty but not more than 334
ninety days. Each fiscal year there shall be not more than two 335
submission periods. 336

(C) The agency shall publish information from submitted 337
applications on the agency's web site as follows: 338

(1) Not later than five days after the close of the 339
submission period in which the application is made, the agency 340
shall publish, for each completed application, the list of 341
residential addresses included with the completed applications 342
under division (A) (1) (a) of section 122.4020 of the Revised 343
Code. 344

(2) Not later than thirty-five days after the close of the 345
submission period in which the application is made, the agency 346
shall publish all information from each completed application 347
that it determines is not confidential under section 122.4023 of 348
the Revised Code. 349

(D) If an application is incomplete, the agency shall 350
notify the broadband provider that submitted the application. 351
The notification shall list what information is incomplete and 352
shall describe the procedure for refiling a completed 353
application. 354

(E) The agency shall review an application determined 355
incomplete under division (D) of this section as provided in 356
sections 122.4019 to 122.4036 of the Revised Code if the 357
application is completed and refiled: 358

(1) Before the end of the submission period described 359
under division (B) of this section; or 360

(2) Not later than fourteen days after the end of the 361
submission period described under division (B) of this section, 362
if the agency, for good cause shown, has granted the broadband 363
provider an extension period of not more than fourteen days in 364
which to file the completed application. 365

(F) The agency shall deny an incomplete application if the 366
broadband provider fails to complete and refile it within the 367
applicable submission period or extension period. Applications 368
that are denied shall not be published on the agency's web site. 369

Sec. 122.4020. (A) An application for a program grant 370
under the Ohio residential broadband expansion grant program 371
shall include, at a minimum, the following information for an 372
eligible project: 373

(1) The location and description of the project, 374
including: 375

(a) The residential addresses in the unserved or tier one 376
areas where tier two broadband service will be available 377
following completion of the project; 378

(b) A notarized letter of intent that the broadband 379
provider will provide access to tier two broadband service to 380
all of the residential addresses listed in the project; 381

(c) A notarized letter of intent by the broadband provider 382

that none of the funds provided by the program grant will be 383
used to extend or deploy facilities to any residences other than 384
those in the unserved or tier one areas that are part of the 385
project. 386

(2) The amount of the broadband funding gap and the amount 387
of state funds requested; 388

(3) The amount of any financial or in-kind contributions 389
to be used towards the broadband funding gap and identification 390
of the contribution sources, which may include, but are not 391
limited to, any combination of the following: 392

(a) Funds that the broadband provider is willing to 393
contribute to the broadband funding gap; 394

(b) Funds received or approved under any other federal or 395
state government grant or loan program; 396

(c) General revenue funds of a municipal corporation, 397
township, or county comprising the area of the eligible project; 398

(d) Other discretionary funds of the municipal 399
corporation, township, or county comprising the area of the 400
eligible project; 401

(e) Any alternate payment terms that the broadband 402
provider and any legislative authority in which the project is 403
located have negotiated and agreed to pursuant to section 404
122.4025 of the Revised Code; 405

(f) Contributions or grants from individuals, 406
organizations, or companies; 407

(g) Property tax assessments made by the municipal 408
corporation under Chapter 727. of the Revised Code, township 409
under section 505.881 of the Revised Code, or county under 410

<u>section 303.251 of the Revised Code.</u>	411
<u>(4) The source and amount of any financial or in-kind contributions received or approved for any part of the overall eligible project cost, but not applied to the broadband funding gap;</u>	412 413 414 415
<u>(5) A description of, or documentation demonstrating, the broadband provider's managerial and technical expertise and experience with broadband service projects;</u>	416 417 418
<u>(6) Whether the broadband provider plans to use wired, wireless, or satellite technology to complete the project;</u>	419 420
<u>(7) A description of the scalability of the project;</u>	421
<u>(8) The megabit-per-second broadband download and upload speeds planned for the project;</u>	422 423
<u>(9) A description of the broadband provider's customer service capabilities, including any locally based call centers or customer service offices;</u>	424 425 426
<u>(10) A copy of the broadband provider's general customer service policies, including any policy to credit customers for service outages or the provider's failure to keep scheduled appointments for service;</u>	427 428 429 430
<u>(11) The length of time that the broadband provider has been operating in the state;</u>	431 432
<u>(12) Proof that the broadband provider has the financial stability to complete the project;</u>	433 434
<u>(13) A projected construction timetable, including the anticipated date of the provision of tier two broadband service access within the project;</u>	435 436 437

(14) A description of anticipated or preliminary 438
government authorizations, permits, and other approvals required 439
in connection with the project, and an estimated timetable for 440
the acquisition of such approvals; 441

(15) A notification from the broadband provider informing 442
the development services agency of any information contained in 443
the application, or within related documents submitted with it, 444
that the provider considers proprietary or a trade secret; 445

(16) A notarized statement that the broadband provider 446
accepts the condition that noncompliance with Ohio residential 447
broadband expansion grant program requirements may require the 448
provider to refund all or part of any program grant the provider 449
receives; 450

(17) A brief description of any arrangements, including 451
any subleases of infrastructure or joint ownership arrangements 452
that the broadband provider that submitted the application has 453
entered into, or plans to enter into, with another broadband 454
provider, an electric cooperative, or an electric distribution 455
utility, to enable the offering of tier two broadband service 456
under the project; 457

(18) Other relevant information that the agency determines 458
is necessary and prescribes by rule; 459

(19) Any other information the broadband provider 460
considers necessary. 461

(B) To meet the requirement to provide proof of financial 462
responsibility in the application, the broadband provider may 463
submit publicly available financial statements with its 464
application. 465

Sec. 122.4021. As a condition for receiving a program 466

grant under the Ohio residential broadband expansion grant 467
program, the broadband expansion program authority may require a 468
broadband provider that is awarded a program grant to provide a 469
performance bond, letter of credit, or other financial assurance 470
acceptable to the authority prior to the commencement of 471
construction. The bond, letter of credit, or assurance shall be 472
in the sum, and with the sureties, that the state prescribes and 473
shall be payable to the state, as applicable. 474

The bond, letter of credit, or assurance may include the 475
condition that the broadband provider will faithfully execute 476
and complete the project. 477

The purpose of the performance bond, letter of credit, or 478
other financial assurance is to assure completion of the 479
project. The bond, letter of credit, or assurance shall not be 480
required after the project is complete. 481

Sec. 122.4023. Pursuant to rules adopted under section 482
122.4077 of the Revised Code, the development services agency 483
shall evaluate the information and documents submitted by a 484
broadband provider in an application under section 122.4013 of 485
the Revised Code or by a challenging provider under section 486
122.4030 of the Revised Code. The evaluation shall determine 487
whether the information and documents are proprietary or 488
constitute a trade secret. Upon receipt of the information and 489
documents, the agency shall keep them confidential and shall not 490
publish them on the agency's web site, unless the agency finds 491
that any information or document is not proprietary or a trade 492
secret. Any information or document found not to be proprietary 493
or a trade secret under this section shall not be considered 494
confidential and shall be published on the agency web site as is 495
required for an application under division (C) (2) of section 496

122.4019 of the Revised Code. 497

Sec. 122.4024. The development services agency shall 498
establish an automatic notification process through which 499
interested parties may receive electronic mail notifications 500
when the agency publishes application and other information on 501
its web site pursuant to sections 122.40 to 122.4077 of the 502
Revised Code. 503

Sec. 122.4025. A broadband provider may enter into an 504
arrangement to designate video service provider fees remitted by 505
the broadband provider for contribution towards an eligible 506
project's broadband funding gap under the following 507
circumstances: 508

(A) The broadband provider is a video service provider 509
that, pursuant to section 1332.32 of the Revised Code, collects 510
and remits video service provider fees to one or more 511
legislative authorities in which an eligible project is located. 512

(B) The arrangement is entered into by mutual consent with 513
one or more of the legislative authorities in which the eligible 514
project is located. 515

Sec. 122.4030. (A) As used in section 122.4023 and 516
sections 122.4030 to 122.4035 of the Revised Code, "challenging 517
provider" means either of the following: 518

(1) A broadband provider that provides tier two broadband 519
service within or directly adjacent to an eligible project; 520

(2) A municipal electric utility that provides tier two 521
broadband service to an area within the eligible project that is 522
within the geographic area served by the municipal electric 523
utility. 524

(B) (1) (a) A challenging provider may challenge, in 525
writing, all or part of a completed application for a program 526
grant for the project not later than sixty-five days after the 527
close of the submission period, or an extension granted under 528
division (E) (2) of section 122.4019 of the Revised Code, in 529
which the application was made. 530

(b) The development services agency, for good cause shown, 531
may grant the broadband provider an extension of not more than 532
fourteen days in which to submit a challenge. 533

(2) The challenging provider shall provide, by certified 534
mail, a written copy of the challenge to the agency and to the 535
broadband provider that submitted the application. The copy 536
provided to the agency may include any information the 537
challenging provider considers to be proprietary or a trade 538
secret. Proprietary information or trade secrets may be redacted 539
from the copy provided to the broadband provider that submitted 540
the application. 541

(C) No challenge to an application may be accepted before 542
the completed application is published in its entirety on the 543
agency's web site pursuant to division (C) (2) of section 544
122.4019 of the Revised Code. 545

Sec. 122.4031. (A) To successfully challenge an 546
application, a challenging provider shall provide sufficient 547
evidence to the development services agency demonstrating that 548
all or part of a project under the application is ineligible for 549
a grant. The challenge shall, at minimum, include the following 550
information: 551

(1) Sufficient evidence disputing the notarized letter of 552
intent submitted with the application that the eligible project 553

<u>contains unserved or tier one areas;</u>	554
<u>(2) Sufficient evidence attesting to the challenging</u>	555
<u>provider's existing or planned offering of tier two broadband</u>	556
<u>service to all or part of the eligible project, which evidence</u>	557
<u>shall include the following:</u>	558
<u>(a) With regard to existing tier two broadband service, a</u>	559
<u>signed, notarized statement submitted by the challenging</u>	560
<u>provider that sufficiently identifies the part of the eligible</u>	561
<u>project to which the challenging provider offers broadband</u>	562
<u>service;</u>	563
<u>(b) With regard to the planned provision of tier two</u>	564
<u>broadband service by a challenging provider as described in</u>	565
<u>division (B) of section 122.4016 of the Revised Code, both of</u>	566
<u>the following:</u>	567
<u>(i) A signed, notarized statement submitted by the</u>	568
<u>challenging provider that sufficiently identifies the part of</u>	569
<u>the eligible project to which the challenging provider will</u>	570
<u>offer broadband service;</u>	571
<u>(ii) A summary of the construction efforts that includes</u>	572
<u>the dates when tier two broadband construction is expected to be</u>	573
<u>completed and when tier two broadband service will first be</u>	574
<u>offered to the part of the eligible project being challenged.</u>	575
<u>(B) To demonstrate that all or part of a project under the</u>	576
<u>application is ineligible for a grant, a challenging provider</u>	577
<u>may present shapefile data, residential addresses, maps, or</u>	578
<u>similar geographic details. Census block or census tract level</u>	579
<u>data shall not be acceptable as evidence of ineligibility of all</u>	580
<u>or part of a project.</u>	581
<u>Sec. 122.4033. (A) Not later than thirty days after</u>	582

receipt of a challenge under sections 122.4030 to 122.4035 of 583
the Revised Code, the broadband expansion program authority may 584
do either of the following: 585

(1) Suspend, subject to division (B) of this section, all 586
or part of the application; 587

(2) Reject the challenge, approve the application, and 588
proceed with the application process. 589

(B) The authority shall allow the broadband provider that 590
submitted the application being challenged to revise the 591
application consistent with sections 122.40 to 122.4077 of the 592
Revised Code, if the authority upholds a challenge to all or 593
part of the application. 594

(C) The authority shall notify both the broadband provider 595
that submitted the application and the challenging provider of 596
any decision made under this section by providing a copy of the 597
decision by certified mail or electronic mail. The authority 598
shall update the status of the application on the development 599
services agency web site. 600

Sec. 122.4034. (A) If the broadband expansion program 601
authority suspends all or part of an application, the broadband 602
provider that submitted the application may revise and resubmit 603
the application not later than fourteen days after receiving the 604
suspension notification sent by the authority pursuant to 605
section 122.4033 of the Revised Code. The broadband provider may 606
request, and the authority may grant for good cause shown, an 607
extension period of not more than fourteen days in which the 608
broadband provider may resubmit the application. 609

(B) When revising the application, the broadband provider 610
shall not expand the scope or impact of the original 611

application, nor shall the provider add any new residential 612
addresses to the eligible project. 613

(C) The broadband provider shall provide a copy of the 614
revised application to both the authority and the challenging 615
provider by certified mail or by electronic mail or by uploading 616
it to the development services agency's designated web site for 617
applications. The agency shall publish the revised application 618
on the agency's public web site provided that any information 619
determined to be proprietary or a trade secret under section 620
122.4023 of the Revised Code is redacted. 621

(D) Any failure to respond to the notification or properly 622
revise the application to the authority's satisfaction shall be 623
considered a withdrawal of the application. 624

Sec. 122.4035. Upon receipt of a revised application under 625
section 122.4034 of the Revised Code, the broadband expansion 626
program authority shall review the revised application and 627
decide whether to accept it or uphold the challenge under 628
sections 122.4030 to 122.4035 of the Revised Code within 629
fourteen days. The authority shall provide a copy of its 630
decision to both the broadband provider that submitted the 631
revised application and the challenging provider by certified 632
mail or electronic mail and shall update the status of the 633
application on the development services agency's web site. The 634
decision shall be considered final, and further challenges to 635
the revised application are prohibited. 636

Sec. 122.4036. If the broadband expansion program 637
authority upholds a challenge to an application under sections 638
122.4030 to 122.4035 of the Revised Code and the challenging 639
provider fails to provide tier two broadband service as 640
described in the challenge, the challenging provider, after a 641

reasonable opportunity to be heard, may be required to do either 642
or both of the following, in addition to being subject to other 643
remedies available under the law: 644

(A) Pay to the development services agency the amount of 645
the original broadband funding gap described in section 122.4020 646
of the Revised Code for the application that was challenged; 647

(B) Comply with the requirements of any other penalties 648
prescribed by agency rule and imposed after consultation with 649
the authority. 650

Sec. 122.4037. Any money collected under section 122.4036 651
of the Revised Code shall be deposited into the general revenue 652
fund. 653

Sec. 122.4040. The development services agency, in 654
consultation with the broadband expansion program authority, 655
shall establish a weighted scoring system to evaluate and select 656
applications for program grants. The scoring system shall be 657
available on the agency's web site at least thirty days before 658
the beginning of the application submission period set by the 659
agency by rule. 660

Sec. 122.4041. (A) The scoring system established under 661
section 122.4040 of the Revised Code shall prioritize 662
applications, from highest to lowest weight, in the following 663
order: 664

(1) Eligible projects for unserved areas, rather than tier 665
one areas; 666

(2) Eligible projects located within distressed areas as 667
defined under section 122.19 of the Revised Code; 668

(3) Eligible projects that are receiving or have been 669

approved to receive any financial or in-kind contributions 670
towards the broadband funding gap identified in the application 671
under division (A) (3) of section 122.4020 of the Revised Code, 672
including the amounts and proportions of the contributions; 673

(4) Eligible projects for which the proposed construction 674
will utilize state rights-of-way or otherwise require attachment 675
to, or use of, public facilities or conduit to provide tier two 676
broadband service to an eligible project; 677

(5) Eligible projects based on proposed upstream and 678
downstream speeds and the scalability of the tier two broadband 679
service infrastructure proposed to be deployed to speeds higher 680
than twenty-five megabits per second downstream and three 681
megabits per second upstream; 682

(6) Eligible projects based on each of the following, in 683
equal measure, without favoring one broadband provider over 684
another: 685

(a) Demonstrated support, supported by evidence, for 686
community and economic development efforts in, or adjacent to, 687
the projects, including the provision of tier two broadband 688
service to commercial and nonresidential entities as a result 689
of, but not funded directly by, the program; 690

(b) The broadband provider's experience, technical 691
ability, and financial capability in successfully deploying and 692
providing tier two broadband service; 693

(c) The length of time the broadband provider has been 694
providing tier two broadband service in the state; 695

(d) The extent to which funding is necessary to deploy 696
tier two broadband service infrastructure in an economically 697
feasible manner to the eligible project; 698

(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; 699
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(f) If existing tier one or tier two broadband service infrastructure exists in the area of the eligible project, the extent to which the project utilizes or upgrades the existing tier one or tier two infrastructure, rather than duplicates it; 703
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(g) The eligible projects' location within Ohio opportunity zones as defined under division (A)(2) of section 122.84 of the Revised Code. 707
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(B) The development services agency 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. 710
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Sec. 122.4043. (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 development services agency. Awards shall be granted after the authority scores applications based on the scoring system under sections 122.4040 and 122.4041 of the Revised Code. 717
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(B) In awarding program grants, the authority shall consider all regulatory obligations under applicable law. The authority may not consider any of the following: 724
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(1) Proposed project conditions that require open access 727

networks or that establish a specific rate, service, or other 728
obligation not specified for the Ohio residential broadband 729
expansion grant program; 730

(2) Factors that would constrain a broadband provider that 731
receives a grant from offering or providing tier two broadband 732
service in the same manner as the service is offered by 733
broadband providers in other areas of the state without funding 734
from the Ohio residential broadband expansion grant program. 735

(C) Upon making the program grant awards, the authority 736
shall notify the broadband providers that submitted applications 737
of the award decisions. The authority shall publish the program 738
grant awards on the agency's web site. 739

Sec. 122.4044. After the broadband expansion program 740
authority awards a program grant under section 122.4043 of the 741
Revised Code, the development services agency shall disburse the 742
program grant as follows: 743

(A) A portion of the program grant, not to exceed thirty 744
per cent, shall be disbursed before construction of the project 745
begins. 746

(B) A portion of the program grant, not to exceed sixty 747
per cent, shall be disbursed through periodic payments over the 748
course of construction of the eligible project as determined by 749
the agency by rules adopted under section 122.4077 of the 750
Revised Code. 751

(C) The remaining portion shall be disbursed not later 752
than sixty days after the broadband provider notifies the 753
authority that it has completed construction of the project. 754

Sec. 122.4045. (A) The development services agency may, 755
through an independent third party, conduct speed verification 756

tests of an eligible project that receives a program grant. Such 757
tests shall occur as follows: 758

(1) After the construction is complete, but prior to the 759
final disbursement made under division (C) of section 122.4044 760
of the Revised Code to verify that tier two broadband service is 761
being offered; 762

(2) At any time during the reporting period required under 763
division (B) of section 122.4070 of the Revised Code, after 764
receiving a complaint concerning a residence that is part of the 765
eligible project. 766

(B) To evaluate compliance with tier two broadband service 767
standards, speed verification tests conducted under this section 768
shall be conducted on at least two different days and at two 769
different times on each of those days. 770

(C) The agency may withhold payments under this section 771
for failure to meet at least the minimum speeds required under 772
division (A) (8) of section 122.4020 of the Revised Code. 773
Payments may be held until such speeds are achieved. 774

Sec. 122.4046. (A) If the development services agency 775
determines that a broadband provider that has been awarded a 776
program grant under the Ohio residential broadband expansion 777
grant program has not complied with the requirements of the 778
program, the agency shall notify the provider of the 779
noncompliance. In accordance with rules adopted by the agency 780
under section 122.4077 of the Revised Code, the agency shall 781
give the provider an opportunity to explain or cure the 782
noncompliance. 783

(B) After reviewing the broadband provider's explanation 784
or effort to cure the noncompliance, the following shall apply: 785

(1) The agency may require the provider to refund an amount equal to all, or a portion of, the amount of the program grant awarded to the provider, as determined by the agency. 786
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(2) The agency may require the broadband provider to refund to the appropriate municipal corporation, township, or county the entire amount of general revenue funds or other discretionary funds that it contributed toward the broadband funding gap under division (A) (3) (c) or (d) of section 122.4020 of the Revised Code. 789
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(C) Not more than thirty days after the agency's decision requiring a refund for program noncompliance or a failure to explain or cure it, the broadband provider shall pay the refund required under division (B) of this section. Payments shall be made directly to the municipal corporation, township, or county that contributed funds toward the broadband funding gap. 795
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Sec. 122.4050. Upon adoption of a resolution, a board of county commissioners may request the development services agency to solicit applications from broadband providers for program grants under the Ohio residential broadband expansion grant program for eligible projects in the municipal corporations and townships of the county. 801
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A request made by a county shall identify, to the extent possible, the residential addresses in unserved or tier one areas of the county and provide a point of contact at the county and the municipal corporations and townships in which the addresses are located. The request may include any relevant information, documents, or materials that may be helpful for an application. 807
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Sec. 122.4051. Upon receipt of a request from a board of 814

county commissioners pursuant to section 122.4050 of the Revised 815
Code, the development services agency shall solicit, on behalf 816
of the county, applications for program grants for eligible 817
projects under the Ohio residential broadband expansion grant 818
program. Not later than seven days after receipt of the request, 819
the agency shall make the request, and any accompanying 820
information submitted with the request, available for review on 821
the agency's web site. The request shall remain available on the 822
web site for a period not to exceed two years. 823

Sec. 122.4053. An application for a program grant under 824
the Ohio residential broadband expansion grant program made in 825
response to a request under section 122.4050 of the Revised Code 826
shall fully comply with all of the program requirements. Nothing 827
in sections 122.4050, 122.4051, and 122.4053 of the Revised Code 828
shall be construed as providing relief from compliance with any 829
program requirements. 830

Sec. 122.4055. The development services agency shall not 831
be responsible for any failure by a broadband provider to 832
respond to a request made by the agency pursuant to section 833
122.4051 of the Revised Code or to submit an application for a 834
program grant under the Ohio residential broadband expansion 835
grant program. 836

Sec. 122.4060. (A) An eligible project shall not proceed 837
unless the broadband expansion program authority awards a 838
program grant under section 122.4043 of the Revised Code. 839

(B) After receiving a program grant award, the broadband 840
provider shall construct and install last mile broadband 841
infrastructure to the eligible project. 842

Sec. 122.4061. Under alternate payment term arrangements 843

made under section 122.4025 of the Revised Code, unless 844
otherwise negotiated, the participating legislative authorities 845
in which the eligible project is located shall assume all 846
financial responsibility for all of the eligible project costs 847
incurred by the broadband provider prior to completion of the 848
project or the award of a program grant. 849

Sec. 122.4063. (A) Nothing in sections 122.40 to 122.4077 850
of the Revised Code entitles the state of Ohio, the development 851
services agency, the broadband expansion program authority, or 852
any other governmental entity to any ownership or other rights 853
to broadband infrastructure constructed by a broadband provider 854
pursuant to a program grant awarded to an eligible project. 855

(B) Nothing in sections 122.40 to 122.4077 of the Revised 856
Code prevents an assignment, sale, change in ownership, or other 857
similar transaction associated with broadband infrastructure 858
constructed by a broadband provider pursuant to a program grant 859
awarded to an eligible project. No assignment, sale, change in 860
ownership, or other similar transaction relieves the successor 861
of any obligation under sections 122.40 to 122.4077 of the 862
Revised Code. 863

Sec. 122.4070. (A) Each broadband provider that receives a 864
program grant shall submit to the development services agency an 865
annual progress report on the status of the deployment of the 866
broadband network described in the eligible project for which 867
the program grant award was made. 868

(B) The broadband provider shall submit an operational 869
report with the agency not later than sixty days after the 870
completion of the project and annually thereafter for a period 871
of four years. 872

Sec. 122.4071. (A) The reports required under section 873
122.4070 of the Revised Code and except as provided in section 874
122.4075 of the Revised Code, all information and documents in 875
them shall be in a format specified by the development services 876
agency and shall be publicly available on the agency's web site. 877

(B) In each report, the broadband provider shall include 878
an account of how program grant funds have been used and the 879
project's progress toward fulfilling the objectives for which 880
the program grant was awarded. The reports, at a minimum, shall 881
include the following: 882

(1) The number of residences that have access to tier two 883
broadband services as a result of the eligible project; 884

(2) The number of commercial and nonresidential entities 885
that are not funded directly by the grant program but have 886
access to tier two broadband service as a result of the eligible 887
project; 888

(3) The upstream and downstream speed of the broadband 889
service provided; 890

(4) The average price of broadband service; 891

(5) The number of broadband service subscriptions 892
attributable to the program grant. 893

Sec. 122.4073. The development services agency may set a 894
due date for the reports required under section 122.4070 of the 895
Revised Code and, for good cause shown, may grant extensions of 896
the report due dates. 897

Sec. 122.4075. Reports required under section 122.4070 of 898
the Revised Code, and all information and documents in them, 899
shall be maintained on a confidential basis by the development 900

services agency and shall not be published on the agency's web 901
site until the agency determines what information or documents 902
are not confidential pursuant to section 122.4023 of the Revised 903
Code. 904

Sec. 122.4076. (A) The broadband expansion program 905
authority shall complete an annual report for the Ohio 906
residential broadband expansion grant program. The report shall 907
evaluate the success of the program grants awarded under section 908
122.4043 of the Revised Code in making tier two broadband 909
services available to unserved and tier one areas. The report 910
shall include the following information: 911

(1) The number of applications received; 912

(2) The number of applications that received program 913
grants; 914

(3) The amount of broadband infrastructure constructed for 915
eligible projects; 916

(4) The number of residences receiving, for that year, 917
tier two broadband service for the first time under the program; 918

(5) Findings and recommendations that have been agreed to 919
by a majority of the authority members. 920

(B) The report shall be published on the development 921
services agency's web site and shall be included as part of the 922
agency's annual report filed under section 121.18 of the Revised 923
Code. The authority shall present the report annually to the 924
governor and the general assembly not later than the first of 925
December of each calendar year. 926

Sec. 122.4077. (A) The development services agency shall 927
adopt rules for the Ohio residential broadband expansion grant 928

program. The rules shall establish an application form and 929
application procedures for the program and procedures for 930
periodic program grant disbursements. 931

(B) The rules may include the following: 932

(1) Requirements for a program application in addition to 933
the requirements described in section 122.4020 of the Revised 934
Code; 935

(2) Procedures for and circumstances under which partial 936
funding of applications is permitted; 937

(3) Procedures for broadband expansion program authority 938
meetings, extension periods for applications and application 939
challenges, hearings, and opportunities for public comment. 940

(C) The agency may adopt rules and procedures to implement 941
sections 122.4051, 122.4053, and 122.4055 of the Revised Code. 942

(D) Rules adopted under this section are not subject to 943
section 121.95 of the Revised Code. 944

(E) The agency and the authority are not subject to 945
division (F) of section 121.95 of the Revised Code regarding the 946
development and adoption of rules pursuant to this section. 947

Sec. 133.13. If the special assessments are to be paid in 948
one annual installment, the taxing authority of a subdivision 949
may issue securities in anticipation of its levy or collection 950
of special assessments to pay the costs of the subdivision's 951
broadband funding gap portion for an eligible project under 952
sections 122.40 to 122.4077 of the Revised Code, lighting, 953
sprinkling, sweeping, cleaning, providing related or similar 954
services or the services described in section 727.011 of the 955
Revised Code, or of removing snow, ice, and debris from, or 956

treating the surface of, streets, alleys, and public ways and 957
places. 958

Such securities shall not be general obligations of the 959
issuing subdivision, and shall not pledge to the payment of debt 960
charges any receipts other than the special assessments 961
anticipated, except that a municipal corporation, without 962
incurring debt subject to direct or indirect debt limitations, 963
may also pledge and apply proceeds of its municipal income tax 964
to pay those debt charges. No property tax shall be levied or 965
pledged for the payment of debt charges on the securities. The 966
securities shall mature no later than the last day of December 967
of the year in which the special assessments anticipated are 968
scheduled to be collected. 969

The legislation authorizing the securities shall 970
appropriate the special assessments anticipated, and such 971
special assessments shall be deemed to be pledged and 972
appropriated, first to the payment of the debt charges on the 973
securities. After provision has been made for the payment in 974
full of those debt charges, the balance of the special 975
assessments may be appropriated and applied for the purposes for 976
which they were levied. 977

Sec. 188.01. As used in sections 188.01 to 188.23 of the 978
Revised Code: 979

(A) "Broadband service" means any wholesale or retail 980
service that consists of, or includes the provision of, 981
connectivity to a high-speed, high-capacity transmission medium 982
that can carry signals from or to multiple sources and that 983
either provides access to the internet or provides computer 984
processing, information storage, information content or protocol 985
conversion, including any service applications or information 986

service provided over such high-speed access service. "Broadband service" includes video service, voice over internet protocol service, and internet protocol-enabled services. 987
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(B) "Electric cooperative" has the same meaning as in section 4928.01 of the Revised Code. 990
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(C) "Internet protocol-enabled services" and "voice over internet protocol service" have the same meanings as in section 4927.01 of the Revised Code. 992
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(D) "Servient estate" means the land burdened by an easement. 995
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(E) "Video programming" means any programming generally considered comparable to programming provided by a television broadcast station. 997
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(F) "Video service" means video programming services without regard to delivery technology, including internet protocol technology and video programming provided as a part of a service that enables users to access content, information, electronic mail, or other services offered over the public internet. 1000
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Sec. 188.02. An easement granted to an electric cooperative for purposes of transmitting, delivering, or otherwise providing electric power may be used, apportioned, or subleased to provide broadband service and such use, apportionment, or sublease shall not be considered an additional burden on the servient estate. 1006
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Sec. 188.05. (A) If the owner of the servient estate of an easement described in section 188.02 of the Revised Code brings an action regarding the use, apportionment, or sublease of the easement for broadband service, the court may award damages to 1012
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the owner equal to not more than the difference between the 1016
following: 1017

(1) The fair market value of the owner's interest in the 1018
property of the estate immediately before the provision of 1019
broadband service; 1020

(2) The fair market value of the owner's interest in the 1021
property of the estate immediately after the provision of 1022
broadband service. 1023

(B) Any damages awarded under division (A) of this section 1024
shall be a fixed amount that shall not continue, accumulate, or 1025
accrue. 1026

(C) The values described in division (A) of this section 1027
shall be established by the testimony of a qualified real estate 1028
appraiser. 1029

Sec. 188.08. The court may not grant injunctive relief or 1030
any other equitable relief for an action described in section 1031
188.05 of the Revised Code. 1032

Sec. 188.11. Actions described in section 188.05 of the 1033
Revised Code shall be brought within one year of any alleged 1034
damage described in that section. Any action not brought within 1035
one year will result in forfeiture of that claim. 1036

Sec. 188.14. Past, current, or future revenues or profits 1037
derived or to be derived from the use, apportionment, or 1038
sublease of an easement for broadband service are not admissible 1039
for any purpose in an action described in section 188.05 of the 1040
Revised Code. 1041

Sec. 188.17. Any court determination regarding an easement 1042
subject to an action described in section 188.05 of the Revised 1043

Code shall be considered a finding that the provision of 1044
broadband service is an allowable use or purpose under the 1045
easement as if the use or purpose was specifically stated in the 1046
terms of the easement. 1047

Sec. 188.20. A court determination described in section 1048
188.17 of the Revised Code shall be filed by the defendant in 1049
the action with the county recorder of the county in which the 1050
servient estate subject to the determination is located. The 1051
recorder shall make a notation in the official record that links 1052
the determination to the servient estate and the easement 1053
subject to the determination. 1054

Sec. 188.23. The owner of a servient estate of an easement 1055
described in section 188.02 of the Revised Code may not bring an 1056
action described in section 188.05 of the Revised Code if any of 1057
the following apply: 1058

(A) The owner, either directly or through the owner's 1059
membership in the electric cooperative or otherwise, authorized 1060
the electric cooperative's electric delivery system for the 1061
provision of broadband services. 1062

(B) The owner, or any of the previous owners of the 1063
property that makes up the servient estate, has agreed to, or 1064
granted permission for, the use of the easement to provide 1065
broadband service. 1066

(C) The facilities providing broadband service are used or 1067
are capable of being used to assist in the transmission, 1068
delivery, or use of electric service. 1069

Sec. 188.27. Sections 188.01 to 188.23 of the Revised Code 1070
shall not be construed as expanding the authority of the state, 1071
its agencies, or political subdivisions beyond the authority 1072

existing under federal law or the laws of this state. 1073

Sec. 188.30. Sections 163.01 to 163.22 of the Revised Code 1074
do not apply regarding the application of sections 188.01 to 1075
188.23 of the Revised Code. 1076

Sec. 303.251. (A) If a program grant is awarded for an 1077
eligible project under sections 122.40 to 122.4077 of the 1078
Revised Code, the board of county commissioners of the county in 1079
which the project is situated, by resolution, may levy a special 1080
assessment upon residential property within the county for the 1081
purpose of providing a contribution from the county towards the 1082
funding gap for the eligible project. Assessments under this 1083
section shall be levied only upon the residential property that 1084
is subject to the eligible project. Before adopting the 1085
resolution, the board shall send written notice to each affected 1086
property owner stating the estimated assessment for that 1087
property. If an owner objects to the stated estimated 1088
assessment, the owner shall file a written objection with the 1089
board not later than two weeks after the notice is mailed. The 1090
board shall review the written objections and may revise the 1091
estimated assessments before adopting the resolution. If the 1092
property owner objects to the final assessment for the property 1093
levied in the resolution, the owner may appeal the final 1094
assessment under Chapter 2506. of the Revised Code. 1095

(B) The assessment shall be at a rate that will produce a 1096
total assessment that is not more than the county's contribution 1097
towards the funding gap for the eligible project as described in 1098
the application under section 122.4020 of the Revised Code. The 1099
board shall certify the amount to be levied upon each affected 1100
property to the county auditor, who shall enter the amount on 1101
the tax duplicate for collection by the county treasurer in 1102

equal semiannual installments in the same manner and at the same 1103
times as the collection of taxes on real property. Assessments 1104
shall be paid by owners of the properties upon which assessments 1105
are levied. 1106

(C) The assessments, when collected, shall be paid by the 1107
county auditor by warrant on the county treasurer into a special 1108
fund in the county treasury created for the purpose of funding 1109
an eligible project for which a program grant is awarded under 1110
sections 122.40 to 122.4077 of the Revised Code and that is 1111
located in the county. The board may expend moneys from the fund 1112
only for the purposes for which the assessments were levied. 1113

Sec. 505.881. (A) If a program grant is awarded for an 1114
eligible project under sections 122.40 to 122.4077 of the 1115
Revised Code, the board of township trustees in which the 1116
project is situated, by resolution, may levy a special 1117
assessment upon residential property within the township for the 1118
purpose of providing a contribution from the township towards 1119
the broadband funding gap for the eligible project. Assessments 1120
under this section shall be levied only upon the residential 1121
property that is subject to the eligible project. Before 1122
adopting the resolution, the board shall send written notice to 1123
each affected property owner stating the estimated assessment 1124
for that property. If an owner objects to the stated estimated 1125
assessment, the owner shall file a written objection with the 1126
board not later than two weeks after the notice is mailed. The 1127
board shall review the written objection and may revise the 1128
estimated assessment before adopting the resolution. If the 1129
property owner objects to the final assessment for the property 1130
levied in the resolution, the owner may appeal the final 1131
assessment under Chapter 2506. of the Revised Code. 1132

(B) The assessment shall be at a rate that will produce a 1133
total assessment that is not more than the township's 1134
contribution towards the funding gap for the eligible project as 1135
described in the application under section 122.4020 of the 1136
Revised Code. The board shall certify the amount to be levied 1137
upon each affected property to the county auditor, who shall 1138
enter the amount on the tax duplicate for collection by the 1139
county treasurer in equal semiannual installments in the same 1140
manner and at the same times as the collection of taxes on real 1141
property. Assessments shall be paid by owners of the properties 1142
upon which assessments are levied. 1143

(C) The assessments, when collected, shall be paid by the 1144
county auditor by warrant on the county treasurer into a special 1145
fund in the township treasury created for the purpose of funding 1146
an eligible project for which a program grant is awarded under 1147
sections 122.40 to 122.4077 of the Revised Code and that is 1148
located in the township. The board may expend moneys from the 1149
fund only for the purposes for which the assessments were 1150
levied. 1151

Sec. 727.01. Each municipal corporation shall have special 1152
power to levy and collect special assessments. The legislative 1153
authority of a municipal corporation may assess upon the 1154
abutting, adjacent, and contiguous, or other specially 1155
benefited, lots or lands in the municipal corporation, any part 1156
of the cost connected with the improvement of any street, alley, 1157
dock, wharf, pier, public road, place, boulevard, parkway, or 1158
park entrance or an easement of the municipal corporation 1159
available for the purpose of the improvement to be made in it by 1160
grading, draining, curbing, paving, repaving, repairing, 1161
treating the surface with substances designed to lay the dust on 1162
it or preserve it, constructing sidewalks, piers, wharves, 1163

docks, retaining walls, sewers, sewage disposal works and 1164
treatment plants, sewage pumping stations, water treatment 1165
plants, water pumping stations, reservoirs, and water storage 1166
tanks or standpipes, together with the facilities and 1167
appurtenances necessary and proper therefor, drains, storm-water 1168
retention basins, watercourses, water mains, or laying of water 1169
pipe, or the lighting, sprinkling, sweeping, or cleaning 1170
thereof, or removing snow therefrom, any part of the cost and 1171
expense of planting, maintaining, and removing shade trees 1172
thereupon; any part of the cost of a voluntary action, as 1173
defined in section 3746.01 of the Revised Code, undertaken 1174
pursuant to Chapter 3746. of the Revised Code by a special 1175
improvement district created under Chapter 1710. of the Revised 1176
Code, including the cost of acquiring property with respect to 1177
which the voluntary action is undertaken; any part of the cost 1178
and expense of constructing, maintaining, repairing, cleaning, 1179
and enclosing ditches; any part of the cost and expense of 1180
operating, maintaining, and replacing heating and cooling 1181
facilities for enclosed pedestrian canopies and malls; any part 1182
of the cost and expense of acquiring and improving parking 1183
facilities and structures for off-street parking of motor 1184
vehicles or of acquiring land and improving it by clearing, 1185
grading, draining, paving, lighting, erecting, constructing, and 1186
equipping it for parking facilities and structures for off- 1187
street parking of motor vehicles, to the extent authorized by 1188
section 717.05 of the Revised Code, but only if no special 1189
assessment made for the purpose of developing off-street parking 1190
facilities and structures is levied against any land being used 1191
solely for off-street parking or against any land used solely 1192
for single or two-family dwellings; any part of the cost and 1193
expense of operating and maintaining the off-street parking 1194
facilities and structures; and any part of the cost connected 1195

with changing the channel of, or narrowing, widening, dredging, 1196
deepening, or improving, any stream or watercourse, and for 1197
constructing or improving any levees or boulevards on any stream 1198
or watercourse, or along or about any stream or watercourse, 1199
together with any retaining wall, riprap protection, bulkhead, 1200
culverts, approaches, flood gates, waterways, or drains 1201
incidental to any stream or watercourse, or for making any other 1202
improvement of any river or lake front, whether it is privately 1203
or publicly owned, which the legislative authority declares 1204
conducive to the public health, convenience, or welfare. If a 1205
program grant is awarded for an eligible project under sections 1206
122.40 to 122.4077 of the Revised Code, a municipal corporation 1207
may levy, against dwellings that are subject to the project, a 1208
special assessment for the purpose of providing a contribution 1209
from the municipal corporation towards the funding gap for the 1210
project. The assessment shall be at a rate that will produce a 1211
total assessment that is not more than the municipal 1212
corporation's contribution towards the funding gap for the 1213
eligible project as described in the application under section 1214
122.4020 of the Revised Code. In addition, a municipal 1215
corporation may levy a special assessment for public improvement 1216
or public services plans of a district formed under Chapter 1217
1710. of the Revised Code, as provided in that chapter. Except 1218
as otherwise provided in Chapter 1710. of the Revised Code, 1219
special assessments may be levied by any of the following 1220
methods: 1221

(A) By a percentage of the tax value of the property 1222
assessed; 1223

(B) In proportion to the benefits that may result from the 1224
improvement; 1225

(C) By the front foot of the property bounding and 1226
abutting upon the improvement. 1227

Sec. 4926.01. As used in sections 4926.01 to 4926.60 of 1228
the Revised Code: 1229

"Attachment" means any wire, wireless facility, cable, 1230
antennae facility, or apparatus for the transmission of text, 1231
signs, signals, pictures, sounds, or other forms of information 1232
installed by or on behalf of a provider upon any pole owned or 1233
controlled, in whole or in part, by one or more electric 1234
cooperatives. 1235

"Broadband provider" has the same meaning as in section 1236
122.40 of the Revised Code. 1237

"Electric cooperative" has the same meaning as in section 1238
4928.01 of the Revised Code. 1239

"Incremental cost" means pole attachment costs incurred by 1240
an electric cooperative for providing long-run service. 1241

"Make-ready work" means, as determined by the nature of 1242
the work required, "make-ready," "complex make-ready," or 1243
"simple make-ready" as those terms are defined in 47 C.F.R. 1244
1.1402. 1245

"Provider" means a broadband provider, telecommunications 1246
service provider, video service provider, or wireless service 1247
provider. 1248

"Telecommunications service provider" means a provider of 1249
"telecommunications service" as defined in section 4927.01 of 1250
the Revised Code. 1251

"Video service provider" has the same meaning as in 1252
section 1332.21 of the Revised Code. 1253

"Wireless service provider" has the same meaning as in 1254
section 4927.01 of the Revised Code. 1255

Sec. 4926.03. On the request of a provider, an electric 1256
cooperative shall grant the provider nondiscriminatory access to 1257
the cooperative's poles under just and reasonable rates, terms, 1258
and conditions for their attachments in accordance with sections 1259
4926.06 to 4926.36 of the Revised Code. 1260

Sec. 4926.06. A provider requesting access to an electric 1261
cooperative's poles shall submit the request in writing, and the 1262
cooperative shall review the request under a uniformly applied, 1263
efficient, and transparent process. 1264

Sec. 4926.09. An electric cooperative may require a 1265
provider to execute an agreement for a pole attachment under 1266
nondiscriminatory, just, and reasonable rates, terms, and 1267
conditions in accordance with sections 4926.06 to 4926.36 of the 1268
Revised Code if the cooperative requires all other attaching 1269
parties to execute such an agreement. 1270

Sec. 4926.12. After receiving a request for access, an 1271
electric cooperative shall grant or deny access within the time 1272
frame established by the federal communications commission, 1273
unless, pursuant to section 4926.57 of the Revised Code, a court 1274
of common pleas determines a different time frame for granting 1275
or denying access. 1276

Sec. 4926.15. An electric cooperative may deny a provider 1277
access to its poles for either of the following reasons if the 1278
reasons are applied on a nondiscriminatory basis: 1279

(A) Insufficient capacity; 1280

(B) Safety, reliability, or generally applicable 1281
engineering standards. 1282

Sec. 4926.18. If an electric cooperative denies an access request submitted under section 4926.15 of the Revised Code, the cooperative must confirm the denial in writing. The denial shall be specific and shall include all relevant evidence and information supporting the denial and an explanation of how that evidence and information relates to the factors described in section 4926.15 of the Revised Code on which the denial is based. 1283
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Sec. 4926.21. (A) A provider and an electric cooperative shall comply with the process for make-ready work under 47 U.S.C. 224 and the federal communications commission orders and regulations implementing that section, unless, pursuant to section 4926.57 of the Revised Code, a court of common pleas establishes a different process for make-ready work. 1291
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(B) The cooperative shall provide a good-faith estimate for any make-ready work, which shall include pole replacement if necessary. All make-ready costs shall be based on the cooperative's actual costs not recovered through the annual recurring attachment rate. The cooperative shall provide detailed documentation of the actual costs. 1297
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(C) A cooperative that charges an annual recurring attachment fee shall establish the fee in accordance with the cable pole attachment rate formula established in 47 U.S.C. 224(d) and commission orders and regulations implementing that formula, unless, pursuant to section 4926.57 of the Revised Code, a court of common pleas establishes a different attachment fee. 1303
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Sec. 4926.24. The attachment of facilities on the poles of an electric cooperative by a provider shall comply with the following: 1310
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(A) The most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative; 1313
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(B) The national electric safety code adopted by the institute of electrical and electronics engineers in effect on the date of the attachment. 1315
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Sec. 4926.27. Nothing in sections 4926.01 to 4926.60 of the Revised Code affects a provider or other attaching party's obligation to obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment. 1318
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Sec. 4926.30. If an electric cooperative's pole facility is modified, a party with a preexisting attachment to the modified facility is considered to directly benefit from a modification if, after receiving notification of the modification, the party adds to or modifies its attachment. 1323
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Sec. 4926.33. (A) If an electric cooperative's pole facility is modified, all parties that obtain access to the facility as a result of the modification and all parties that directly benefit from the modification shall share proportionately in the cost of the modification. 1328
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(B) If a party makes an attachment to the facility after the completion of the modification, the party shall share proportionately in the costs of the modification if that modification rendered the added attachment possible. 1333
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Sec. 4926.36. Unless a modification by an electric cooperative is necessary for an electric service that uses smart grid or other technology, a party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if the rearrangement or 1337
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replacement is necessary because of another party's request for 1342
an additional attachment or a modification of an existing 1343
attachment. 1344

Sec. 4926.39. Subject to the venue requirements of 1345
section 4926.43 of the Revised Code, an electric cooperative or 1346
a provider may file a complaint regarding pole attachment 1347
disputes with respect to sections 4926.01 to 4926.60 of the 1348
Revised Code with the court of commons pleas of the county in 1349
which the cooperative's Ohio headquarters is located. 1350

Sec. 4926.42. Subject to the venue requirements of section 1351
4926.43 of the Revised Code, the court of common pleas of the 1352
county in which an electric cooperative's Ohio headquarters is 1353
located has jurisdiction to hear complaints and to grant 1354
remedies with respect to sections 4926.01 to 4926.60 of the 1355
Revised Code regarding attachment disputes for which a complaint 1356
is filed. 1357

Sec. 4926.43. A hearing regarding a complaint filed under 1358
section 4926.39 of the Revised Code is a special statutory 1359
proceeding under division (C) of Civil Rule 1 of the Rules of 1360
Civil Procedure. Any civil proceeding under section 4926.39 of 1361
the Revised Code shall be conducted in accordance with the Rules 1362
of Civil Procedure, except that a complaint regarding pole 1363
attachment disputes with respect to sections 4926.01 to 4926.60 1364
of the Revised Code is not subject to general venue provisions 1365
in Civil Rule 3 of the Rules of Civil Procedure. To that extent 1366
only, such proceedings shall be deemed a special statutory 1367
proceeding under division (C) (8) of Civil Rule 1 of the Rules of 1368
Civil Procedure. 1369

Venue for such a proceeding shall lie only in the county 1370
in which the cooperative's Ohio headquarters is located, 1371

provided that at least some portion of the attachment will occur 1372
in that county. In the event that the cooperative's Ohio 1373
headquarters is not located in a county in which some portion of 1374
the attachment will occur, or that more than one cooperative is 1375
a party, venue shall lie only in the county in which the largest 1376
physical portion of the attachment will occur. 1377

Court orders relative to venue are final orders pursuant 1378
to division (B) (2) of section 2505.02 of the Revised Code. 1379
Orders not specifically relating to venue are reviewable on 1380
appeal in the same manner as judgments in any civil action. 1381

Land acquisition actions pursuant to Chapter 163. of the 1382
Revised Code are not affected by this section and shall be heard 1383
in a venue as provided in that chapter or Civil Rule 3 of the 1384
Rules of Civil Procedure. 1385

Sec. 4926.45. Before a court of common pleas may order any 1386
remedy under section 4926.57 of the Revised Code regarding a 1387
pole attachment complaint filed with respect to sections 4926.01 1388
to 4926.60 of the Revised Code, the court shall determine, and a 1389
complainant shall establish, by a preponderance of the evidence, 1390
each of the following: 1391

(A) That any rate, term, or condition complained of is not 1392
just and reasonable or a denial of access was unlawful. 1393

(B) If the complaint concerns any rate, term, or 1394
condition, that such rate, term, or condition is contained in, 1395
or demanded by either party as a condition to entering into, 1396
either: 1397

(1) A new pole attachment agreement; or 1398

(2) An amendment, renewal, or replacement of an existing 1399
agreement that may be terminated, amended, renewed, or replaced 1400

on or after the effective date of this section; 1401

(C) If the complaint concerns any rate, term, or 1402
condition, that the provider and the electric cooperative first 1403
attempted to negotiate regarding the terms of a new, amended, 1404
renewed, or replaced agreement for a period of at least forty- 1405
five days prior to filing the complaint. 1406

Sec. 4926.48. (A) The complainant under section 4926.39 of 1407
the Revised Code has the burden of establishing a prima facie 1408
case that the rate, term, or condition complained of is not just 1409
and reasonable or that the denial of access was unlawful. 1410

(B) In a case involving a denial of access, the electric 1411
cooperative has the burden of establishing, by a preponderance 1412
of the evidence, that the denial was lawful, once a prima facie 1413
case is established by the complainant. 1414

Sec. 4926.51. In a complaint filed under section 4926.39 1415
of the Revised Code, if an electric cooperative claims that the 1416
proposed rate is lower than its incremental costs, the 1417
cooperative has the burden of establishing, by a preponderance 1418
of the evidence, its incremental costs. 1419

Sec. 4926.54. In a complaint filed under section 4926.39 1420
of the Revised Code, there is a rebuttable presumption that each 1421
of the following is just and reasonable: 1422

(A) The time frame to grant or deny access, if it is 1423
within the time frame established by the federal communications 1424
commission; 1425

(B) The process for make-ready work, if it is in 1426
accordance with the process for make-ready work under 47 U.S.C. 1427
224 and the federal communications commission orders and 1428
regulations implementing that section; 1429

(C) The charged rate, if the electric cooperative can show 1430
that its charged rate does not exceed an annual recurring 1431
attachment rate calculated in accordance with the cable pole 1432
attachment rate formula in 47 U.S.C. 224(d) and federal 1433
communications commission orders and regulations implementing 1434
that formula. 1435

Sec. 4926.57. (A) If, pursuant to a complaint filed under 1436
section 4926.39 of the Revised Code, a court of common pleas 1437
determines that any rate, term, or condition described in the 1438
complaint is not just and reasonable, it may do, but is not 1439
limited to doing, any of the following: 1440

(1) Terminate the rate, term, or condition and prescribe a 1441
just and reasonable rate, term, or condition; 1442

(2) Require entry into a pole attachment agreement on just 1443
and reasonable rates, terms, and conditions; 1444

(3) Require access to poles as provided under sections 1445
4926.06 to 4926.36 of the Revised Code; 1446

(4) Substitute in the pole attachment agreement the just 1447
and reasonable rate, term, or condition established by the 1448
court; 1449

(5) Order a refund or payment, as appropriate. 1450

(B) A refund or payment ordered under this section may not 1451
exceed the difference between the actual amount paid under the 1452
unjust and unreasonable rate, term, or condition and the amount 1453
that would have been paid under the rate, term, or condition 1454
established by the court for the period described in the 1455
complaint, provided that the period during which refunds or 1456
payments are made does not exceed two years. 1457

Sec. 4926.60. A court of common pleas determination 1458
resolving a complaint under sections 4926.39 to 4926.57 of the 1459
Revised Code shall be issued in the form of a final appealable 1460
order. 1461

Section 2. That existing sections 133.13 and 727.01 of the 1462
Revised Code are hereby repealed. 1463

Section 3. All items in Section 4 of this act are hereby 1464
appropriated as designated out of any moneys in the state 1465
treasury to the credit of the designated fund. For all operating 1466
appropriations made in that section, those in the first column 1467
are for fiscal year 2020 and those in the second column are for 1468
fiscal year 2021. The operating appropriations made in Section 4 1469
of this act are in addition to any other operating 1470
appropriations made for the FY 2020-FY 2021 biennium. 1471

Section 4. 1472

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	1	2	3	4	5
A					DEV DEVELOPMENT SERVICES AGENCY
B					General Revenue Fund
C	GRF	195651	Residential Broadband Expansion Grants	\$0	\$20,000,000
D	TOTAL		GRF General Revenue Fund	\$0	\$20,000,000
E	TOTAL		ALL BUDGET FUND GROUPS	\$0	\$20,000,000

RESIDENTIAL BROADBAND EXPANSION GRANTS 1474

The foregoing appropriation item 195651, Residential
Broadband Expansion Grants, shall be used for grants under the
Ohio Residential Broadband Expansion Grant Program established
in section 122.401 of the Revised Code.

Any unexpended and unencumbered portion of the foregoing
appropriation item 195651, Residential Broadband Expansion
Grants, at the end of fiscal year 2021 is hereby reappropriated
for the same purpose in fiscal year 2022.

Section 5. Within the limits set forth in this act, the
Director of Budget and Management shall establish accounts
indicating the source and amount of funds for each appropriation
made in Section 4 of this act, and shall determine the form and
manner in which appropriation accounts shall be maintained.
Expenditures from operating appropriations contained in Section
4 of this act shall be accounted for as though made in H.B. 166
of the 133rd General Assembly.

The operating appropriations made in Section 4 of this act
are subject to all provisions of H.B. 166 of the 133rd General
Assembly that are generally applicable to such appropriations.

Section 6. All items in Section 7 of this act are hereby
appropriated as designated out of any moneys in the state
treasury to the credit of the designated fund. For all operating
appropriations made in Section 7 of this act, those in the first
column are for fiscal year 2022 and those in the second column
are for fiscal year 2023. The operating appropriations made in
Section 7 of this act are in addition to any other operating
appropriations made for the FY 2022-FY 2023 biennium.

Section 7.

1503

	1	2	3	4	5
A		DEV DEVELOPMENT SERVICES AGENCY			
B	General Revenue Fund				
C	GRF	195651	Residential Broadband Expansion Grants	\$170,000,000	\$20,000,000
D	TOTAL General Revenue Fund			\$170,000,000	\$20,000,000
E	TOTAL ALL BUDGET FUND GROUPS			\$170,000,000	\$20,000,000

RESIDENTIAL BROADBAND EXPANSION GRANTS 1504

The foregoing appropriation item 195651, Residential 1505
Broadband Expansion Grants, shall be used for grants under the 1506
Ohio Residential Broadband Expansion Grant Program established 1507
in section 122.401 of the Revised Code. 1508

Any unexpended and unencumbered portion of the foregoing 1509
appropriation item 195651, Residential Broadband Expansion 1510
Grants, at the end of fiscal year 2022 is hereby reappropriated 1511
for the same purpose in fiscal year 2023. 1512

Section 8. Within the limits set forth in this act, the 1513
Director of Budget and Management shall establish accounts 1514
indicating the source and amount of funds for each appropriation 1515
made in Section 7 of this act, and shall determine the form and 1516
manner in which appropriation accounts shall be maintained. 1517
Expenditures from operating appropriations contained in Section 1518
7 of this act shall be accounted for as though made in the main 1519

operating appropriations act of the 134th General Assembly. The 1520
operating appropriations made in Section 7 of this act are 1521
subject to all provisions of the main operating appropriations 1522
act of the 134th General Assembly that are generally applicable 1523
to such appropriations. 1524

Section 9. This act is hereby declared to be an emergency 1525
measure necessary for the immediate preservation of the public 1526
peace, health, and safety. The reason for such necessity is that 1527
the lack of broadband access in the state is an ongoing issue 1528
that has become more urgent during the COVID-19 pandemic and 1529
requires additional broadband infrastructure to be deployed at 1530
the earliest possible date. Therefore, this act shall go into 1531
immediate effect. 1532