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Representatives Carfagna, Stewart

Cosponsors: Representatives O'Brien, Hall, Ghanbari, Lipps, Stephens, Seitz, Stein, Koehler, Miller, J., LaRe, Ingram, Carruthers, Hoops, Baldrige, Cutrona, White, Manning, Holmes, McClain, Riedel, Ginter, Loychik, Swearingen, Richardson, Lanese, Young, T., Fraizer, Click, Edwards, Schmidt, West, Abrams, Bird, Blackshear, Boggs, Brent, Brown, Callender, Crawley, Creech, Cross, Crossman, Denson, Galonski, Grendell, Hicks-Hudson, Hillyer, Householder, Howse, Jarrells, John, Johnson, Jones, Kelly, Kick, Lampton, Leland, Lepore-Hagan, Lightbody, Liston, Miller, A., Miranda, Oelslager, Patton, Pavliga, Plummer, Robinson, Roemer, Russo, Sheehy, Smith, K., Smith, M., SobECKi, Sweeney, Sykes, Troy, Weinstein, Wilkin, Young, B., Speaker Cupp

Senators Hackett, Hottinger, Antonio, Blessing, Cirino, Craig, Dolan, Fedor, Gavarone, Hoagland, Huffman, S., Johnson, Kunze, Lang, Maharath, Manning, McColley, O'Brien, Peterson, Reineke, Rulli, Schaffer, Schuring, Sykes, Thomas, Williams, Wilson, Yuko

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
122.4033, 122.4034, 122.4035, 122.4036, 7
122.4037, 122.4040, 122.4041, 122.4043, 8
122.4044, 122.4045, 122.4046, 122.4050, 9
122.4051, 122.4053, 122.4055, 122.4060, 10
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 19
Code regarding broadband expansion, including 20
access to electric cooperative easements and 21
facilities, to make an appropriation, and to 22
declare an emergency. 23

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

Section 1. That sections 133.13 and 727.01 be amended and 24
sections 122.40, 122.401, 122.403, 122.404, 122.406, 122.407, 25
122.408, 122.4010, 122.4013, 122.4015, 122.4016, 122.4017, 26
122.4018, 122.4019, 122.4020, 122.4021, 122.4023, 122.4024, 27
122.4025, 122.4030, 122.4031, 122.4033, 122.4034, 122.4035, 28
122.4036, 122.4037, 122.4040, 122.4041, 122.4043, 122.4044, 29
122.4045, 122.4046, 122.4050, 122.4051, 122.4053, 122.4055, 30
122.4060, 122.4061, 122.4063, 122.4070, 122.4071, 122.4073, 31
122.4075, 122.4076, 122.4077, 188.01, 188.02, 188.05, 188.08, 32
188.11, 188.14, 188.17, 188.20, 188.23, 188.27, 188.30, 303.251, 33
505.881, 4926.01, 4926.03, 4926.06, 4926.09, 4926.12, 4926.15, 34
4926.18, 4926.21, 4926.24, 4926.27, 4926.30, 4926.33, 4926.36, 35
4926.39, 4926.42, 4926.43, 4926.45, 4926.48, 4926.51, 4926.54, 36
4926.57, and 4926.60 of the Revised Code be enacted to read as 37
follows: 38

Sec. 122.40. As used in sections 122.40 to 122.4077 of the 39
Revised Code: 40

(A) "Application" means an application made under section 122.4013 of the Revised Code for a program grant. 41
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(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 network and the total amount of money that the provider has determined is the maximum amount of money that is cost effective for the provider to invest in last mile construction for that network. 43
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(C) (1) "Broadband provider" means one of the following: 50

(a) A video service provider as defined in section 1332.21 of the Revised Code; 51
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(b) A provider that is capable of providing tier one or tier two broadband service and is one of the following: 53
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(i) A telecommunications service provider; 55

(ii) A satellite broadcasting service provider; 56

(iii) A wireless service provider as defined in section 4927.01 of the Revised Code. 57
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(2) "Broadband provider" does not include a governmental or quasi-governmental entity. 59
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(D) "Eligible project" means a project to provide tier two broadband service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under sections 122.4013 to 122.4046 of the Revised Code. 61
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(E) "Last mile" means the last portion of a physical broadband network that connects an eligible project to the 66
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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 one broadband service but not tier two broadband service. "Tier one area" includes an area where construction of a network to provide tier one broadband service is in progress and is scheduled to be completed within a two-year period. "Tier one area" excludes an area where construction of a network to provide tier two broadband service is in progress and is scheduled to be completed within a two-year period.

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

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

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

(2) Appointed members shall have expertise in broadband infrastructure and technology. Appointed members may not be affiliated with or employed by the broadband industry or in a position to benefit from a program grant. 126
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(3) The assignment of designees by the director of development services and the director of InnovateOhio shall be made in writing. 130
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(B) Appointed members shall serve four year terms and are eligible for reappointment. 133
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(C) Vacancies shall be filled in the same manner as provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. 135
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(D) (1) (a) Appointed members shall receive a monthly stipend as calculated under section 145.016 of the Revised Code in an amount that will qualify each member for one year of retirement service credit under the Ohio public employees retirement system for each year of the member's term. 140
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(b) Notwithstanding the requirement of section 145.58 of the Revised Code that eligibility for health care coverage provided under that section be based on years and types of service credit in accordance with rules adopted by the public employees retirement board, if the board provides health care coverage under that section, no service credit earned for service as a member of the authority shall be considered for purposes of determining eligibility for coverage under that section. 145
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(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

<u>(B) Monitor the Ohio residential broadband expansion grant</u>	212
<u>program, including by doing the following:</u>	213
<u>(1) Tracking the details for annual applications to the</u>	214
<u>program, including:</u>	215
<u>(a) The number of applications;</u>	216
<u>(b) The geographic locations of the eligible projects</u>	217
<u>listed in the applications;</u>	218
<u>(c) The broadband providers submitting applications;</u>	219
<u>(d) A description of the tier two broadband infrastructure</u>	220
<u>and technology proposed in applications;</u>	221
<u>(e) A description of any public right-of-way or public</u>	222
<u>facilities to be utilized for the projects;</u>	223
<u>(f) The speeds of the tier two broadband services under</u>	224
<u>the projects;</u>	225
<u>(g) The amount of the grant funds requested for each</u>	226
<u>project and the proportion of project funding to be provided by</u>	227
<u>the broadband provider and by other entities;</u>	228
<u>(h) The number of residential and nonresidential locations</u>	229
<u>that will have access to tier two broadband service under each</u>	230
<u>project.</u>	231
<u>(2) Tracking the program grants awarded annually,</u>	232
<u>including:</u>	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>	236
<u>and the entities or companies that submitted the application;</u>	237

<u>(d) A description of the tier two broadband infrastructure</u>	238
<u>and technology deployed in each project;</u>	239
<u>(e) A description of any public right-of-way or public</u>	240
<u>facilities utilized as part of the project;</u>	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

networks, including the ability to use digital tools safely and 265
effectively for learning, collaborating, and producing; 266

(G) Identify, examine, and report on any federal or state 267
government grant or loan program that would promote the 268
deployment of tier two broadband infrastructure and technology 269
in the state; 270

(H) Track the availability, location, rates and speeds, 271
and adoption of programs that offer tier one broadband service 272
and tier two broadband service in an affordable manner to low- 273
income consumers in this state. 274

Sec. 122.408. The broadband expansion program authority 275
shall conduct hearings to gather information necessary to 276
accomplish the duties specified under section 122.407 of the 277
Revised Code. 278

Sec. 122.4010. The broadband expansion program authority, 279
upon majority approval of the authority's members, shall submit 280
a written public report of its findings and recommendations to 281
the governor and the general assembly not later than the first 282
of December of each calendar year. 283

The authority shall not disclose any proprietary 284
information or trade secrets in the report. Copies of the report 285
shall be available on the development services agency's web 286
site. 287

Sec. 122.4013. A broadband provider may apply for a 288
program grant under the Ohio residential broadband expansion 289
grant program. 290

Sec. 122.4015. Program grants under the Ohio residential 291
broadband expansion grant program shall be awarded only for 292
eligible projects. 293

Sec. 122.4016. An application shall be ineligible for a 294
program grant under the Ohio residential broadband expansion 295
grant program if either of the following applies: 296

(A) It proposes to provide tier two broadband service to 297
areas where tier two broadband service is presently available. 298

(B) In the proposed area of service, construction of a 299
network to provide tier two broadband service currently is in 300
progress and one of the following applies: 301

(1) It is being constructed, without grant program 302
funding, by the broadband provider that submitted the 303
application. 304

(2) It is scheduled to be completed by another broadband 305
provider not later than two years after the date of a challenge 306
submitted under section 122.4030 of the Revised Code. 307

Sec. 122.4017. The broadband expansion program authority 308
shall award program grants under the Ohio residential broadband 309
expansion grant program using funds from the Ohio residential 310
broadband expansion grant program fund created in section 311
122.4037 of the Revised Code and other funds appropriated by the 312
general assembly. 313

Sec. 122.4018. (A) Each fiscal year, the development 314
services agency shall fund program grants until funds for that 315
fiscal year are no longer available. 316

(B) Any application pending at the end of the fiscal year 317
shall be deemed denied, but may be refiled in a subsequent 318
fiscal year provided that all information in the application is 319
still current or has been updated. 320

Sec. 122.4019. (A) (1) Each fiscal year, the development 321

services agency shall accept applications for program grants. 322

(2) To apply for a program grant, a broadband provider shall submit an application to the agency on a form prescribed by the agency and shall provide the information required under section 122.4020 of the Revised Code. The form shall include a statement informing the applicant that failure to comply with the program or to meet the required tier two broadband service proposed in the application may require the refund of all or a portion of the program grant awarded for the project. 323
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(3) Applications may be submitted in person or by certified mail or electronic mail, or uploaded to a designated agency web site for applications. 331
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(B) Applications shall be accepted during a submission period specified by the broadband expansion program authority. Each submission period shall be at least sixty but not more than ninety days. Each fiscal year there shall be not more than two submission periods. 334
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(C) The agency shall publish information from submitted applications on the agency's web site as follows: 339
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(1) Not later than five days after the close of the submission period in which the application is made, the agency shall publish, for each completed application, the list of residential addresses included with the completed applications under division (A) (1) (a) of section 122.4020 of the Revised Code. 341
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(2) Not later than thirty-five days after the close of the submission period in which the application is made, the agency shall publish all information from each completed application that it determines is not confidential under section 122.4023 of 347
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the Revised Code. 351

(D) If an application is incomplete, the agency shall 352
notify the broadband provider that submitted the application. 353
The notification shall list what information is incomplete and 354
shall describe the procedure for refiling a completed 355
application. 356

(E) The agency shall review an application determined 357
incomplete under division (D) of this section as provided in 358
sections 122.4019 to 122.4036 of the Revised Code if the 359
application is completed and refiled: 360

(1) Before the end of the submission period described 361
under division (B) of this section; or 362

(2) Not later than fourteen days after the end of the 363
submission period described under division (B) of this section, 364
if the agency, for good cause shown, has granted the broadband 365
provider an extension period of not more than fourteen days in 366
which to file the completed application. 367

(F) The agency shall deny an incomplete application if the 368
broadband provider fails to complete and refile it within the 369
applicable submission period or extension period. Applications 370
that are denied shall not be published on the agency's web site. 371

Sec. 122.4020. (A) An application for a program grant 372
under the Ohio residential broadband expansion grant program 373
shall include, at a minimum, the following information for an 374
eligible project: 375

(1) The location and description of the project, 376
including: 377

(a) The residential addresses in the unserved or tier one 378

<u>areas where tier two broadband service will be available</u>	379
<u>following completion of the project;</u>	380
<u>(b) A notarized letter of intent that the broadband</u>	381
<u>provider will provide access to tier two broadband service to</u>	382
<u>all of the residential addresses listed in the project;</u>	383
<u>(c) A notarized letter of intent by the broadband provider</u>	384
<u>that none of the funds provided by the program grant will be</u>	385
<u>used to extend or deploy facilities to any residences other than</u>	386
<u>those in the unserved or tier one areas that are part of the</u>	387
<u>project.</u>	388
<u>(2) The amount of the broadband funding gap and the amount</u>	389
<u>of state funds requested;</u>	390
<u>(3) The amount of any financial or in-kind contributions</u>	391
<u>to be used towards the broadband funding gap and identification</u>	392
<u>of the contribution sources, which may include, but are not</u>	393
<u>limited to, any combination of the following:</u>	394
<u>(a) Funds that the broadband provider is willing to</u>	395
<u>contribute to the broadband funding gap;</u>	396
<u>(b) Funds received or approved under any other federal or</u>	397
<u>state government grant or loan program;</u>	398
<u>(c) General revenue funds of a municipal corporation,</u>	399
<u>township, or county comprising the area of the eligible project;</u>	400
<u>(d) Other discretionary funds of the municipal</u>	401
<u>corporation, township, or county comprising the area of the</u>	402
<u>eligible project;</u>	403
<u>(e) Any alternate payment terms that the broadband</u>	404
<u>provider and any legislative authority in which the project is</u>	405
<u>located have negotiated and agreed to pursuant to section</u>	406

<u>122.4025 of the Revised Code;</u>	407
<u>(f) Contributions or grants from individuals,</u>	408
<u>organizations, or companies;</u>	409
<u>(g) Property tax assessments made by the municipal</u>	410
<u>corporation under Chapter 727. of the Revised Code, township</u>	411
<u>under section 505.881 of the Revised Code, or county under</u>	412
<u>section 303.251 of the Revised Code.</u>	413
<u>(4) The source and amount of any financial or in-kind</u>	414
<u>contributions received or approved for any part of the overall</u>	415
<u>eligible project cost, but not applied to the broadband funding</u>	416
<u>gap;</u>	417
<u>(5) A description of, or documentation demonstrating, the</u>	418
<u>broadband provider's managerial and technical expertise and</u>	419
<u>experience with broadband service projects;</u>	420
<u>(6) Whether the broadband provider plans to use wired,</u>	421
<u>wireless, or satellite technology to complete the project;</u>	422
<u>(7) A description of the scalability of the project;</u>	423
<u>(8) The megabit-per-second broadband download and upload</u>	424
<u>speeds planned for the project;</u>	425
<u>(9) A description of the broadband provider's customer</u>	426
<u>service capabilities, including any locally based call centers</u>	427
<u>or customer service offices;</u>	428
<u>(10) A copy of the broadband provider's general customer</u>	429
<u>service policies, including any policy to credit customers for</u>	430
<u>service outages or the provider's failure to keep scheduled</u>	431
<u>appointments for service;</u>	432
<u>(11) The length of time that the broadband provider has</u>	433

<u>been operating in the state;</u>	434
<u>(12) Proof that the broadband provider has the financial stability to complete the project;</u>	435
<u>(13) A projected construction timetable, including the anticipated date of the provision of tier two broadband service access within the project;</u>	437
<u>(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;</u>	440
<u>(15) A notification from the broadband provider informing the development services agency of any information contained in the application, or within related documents submitted with it, that the provider considers proprietary or a trade secret;</u>	444
<u>(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;</u>	448
<u>(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;</u>	453
<u>(18) Other relevant information that the agency determines is necessary and prescribes by rule;</u>	460

(19) Any other information the broadband provider 462
considers necessary. 463

(B) To meet the requirement to provide proof of financial 464
responsibility in the application, the broadband provider may 465
submit publicly available financial statements with its 466
application. 467

Sec. 122.4021. As a condition for receiving a program 468
grant under the Ohio residential broadband expansion grant 469
program, the broadband expansion program authority may require a 470
broadband provider that is awarded a program grant to provide a 471
performance bond, letter of credit, or other financial assurance 472
acceptable to the authority prior to the commencement of 473
construction. The bond, letter of credit, or assurance shall be 474
in the sum, and with the sureties, that the state prescribes and 475
shall be payable to the state, as applicable. 476

The bond, letter of credit, or assurance may include the 477
condition that the broadband provider will faithfully execute 478
and complete the project. 479

The purpose of the performance bond, letter of credit, or 480
other financial assurance is to assure completion of the 481
project. The bond, letter of credit, or assurance shall not be 482
required after the project is complete. 483

Sec. 122.4023. Pursuant to rules adopted under section 484
122.4077 of the Revised Code, the development services agency 485
shall evaluate the information and documents submitted by a 486
broadband provider in an application under section 122.4013 of 487
the Revised Code or by a challenging provider under section 488
122.4030 of the Revised Code. The evaluation shall determine 489
whether the information and documents are proprietary or 490

constitute a trade secret. Upon receipt of the information and 491
documents, the agency shall keep them confidential and shall not 492
publish them on the agency's web site, unless the agency finds 493
that any information or document is not proprietary or a trade 494
secret. Any information or document found not to be proprietary 495
or a trade secret under this section shall not be considered 496
confidential and shall be published on the agency web site as is 497
required for an application under division (C) (2) of section 498
122.4019 of the Revised Code. 499

Sec. 122.4024. The development services agency shall 500
establish an automatic notification process through which 501
interested parties may receive electronic mail notifications 502
when the agency publishes application and other information on 503
its web site pursuant to sections 122.40 to 122.4077 of the 504
Revised Code. 505

Sec. 122.4025. A broadband provider may enter into an 506
arrangement to designate video service provider fees remitted by 507
the broadband provider for contribution towards an eligible 508
project's broadband funding gap under the following 509
circumstances: 510

(A) The broadband provider is a video service provider 511
that, pursuant to section 1332.32 of the Revised Code, collects 512
and remits video service provider fees to one or more 513
legislative authorities in which an eligible project is located. 514

(B) The arrangement is entered into by mutual consent with 515
one or more of the legislative authorities in which the eligible 516
project is located. 517

Sec. 122.4030. (A) As used in section 122.4023 and 518
sections 122.4030 to 122.4035 of the Revised Code, "challenging 519

provider" means either of the following: 520

(1) A broadband provider that provides tier two broadband service within or directly adjacent to an eligible project; 521
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(2) A municipal electric utility that provides tier two broadband service to an area within the eligible project that is within the geographic area served by the municipal electric utility. 523
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(B) (1) (a) A challenging provider may challenge, in writing, all or part of a completed application for a program grant for the project not later than sixty-five days after the close of the submission period, or an extension granted under division (E) (2) of section 122.4019 of the Revised Code, in which the application was made. 527
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(b) The development services agency, for good cause shown, may grant the broadband provider an extension of not more than fourteen days in which to submit a challenge. 533
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(2) The challenging provider shall provide, by certified mail, a written copy of the challenge to the agency and to the broadband provider that submitted the application. The copy provided to the agency may include any information the challenging provider considers to be proprietary or a trade secret. Proprietary information or trade secrets may be redacted from the copy provided to the broadband provider that submitted the application. 536
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(C) No challenge to an application may be accepted before the completed application is published in its entirety on the agency's web site pursuant to division (C) (2) of section 122.4019 of the Revised Code. 544
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Sec. 122.4031. (A) To successfully challenge an 548

application, a challenging provider shall provide sufficient 549
evidence to the development services agency demonstrating that 550
all or part of a project under the application is ineligible for 551
a grant. The challenge shall, at minimum, include the following 552
information: 553

(1) Sufficient evidence disputing the notarized letter of 554
intent submitted with the application that the eligible project 555
contains unserved or tier one areas; 556

(2) Sufficient evidence attesting to the challenging 557
provider's existing or planned offering of tier two broadband 558
service to all or part of the eligible project, which evidence 559
shall include the following: 560

(a) With regard to existing tier two broadband service, a 561
signed, notarized statement submitted by the challenging 562
provider that sufficiently identifies the part of the eligible 563
project to which the challenging provider offers broadband 564
service; 565

(b) With regard to the planned provision of tier two 566
broadband service by a challenging provider as described in 567
division (B) of section 122.4016 of the Revised Code, both of 568
the following: 569

(i) A signed, notarized statement submitted by the 570
challenging provider that sufficiently identifies the part of 571
the eligible project to which the challenging provider will 572
offer broadband service; 573

(ii) A summary of the construction efforts that includes 574
the dates when tier two broadband construction is expected to be 575
completed and when tier two broadband service will first be 576
offered to the part of the eligible project being challenged. 577

(B) To demonstrate that all or part of a project under the 578
application is ineligible for a grant, a challenging provider 579
may present shapefile data, residential addresses, maps, or 580
similar geographic details. Census block or census tract level 581
data shall not be acceptable as evidence of ineligibility of all 582
or part of a project. 583

Sec. 122.4033. (A) Not later than thirty days after 584
receipt of a challenge under sections 122.4030 to 122.4035 of 585
the Revised Code, the broadband expansion program authority may 586
do either of the following: 587

(1) Suspend, subject to division (B) of this section, all 588
or part of the application; 589

(2) Reject the challenge, approve the application, and 590
proceed with the application process. 591

(B) The authority shall allow the broadband provider that 592
submitted the application being challenged to revise the 593
application consistent with sections 122.40 to 122.4077 of the 594
Revised Code, if the authority upholds a challenge to all or 595
part of the application. 596

(C) The authority shall notify both the broadband provider 597
that submitted the application and the challenging provider of 598
any decision made under this section by providing a copy of the 599
decision by certified mail or electronic mail. The authority 600
shall update the status of the application on the development 601
services agency web site. 602

Sec. 122.4034. (A) If the broadband expansion program 603
authority suspends all or part of an application, the broadband 604
provider that submitted the application may revise and resubmit 605
the application not later than fourteen days after receiving the 606

suspension notification sent by the authority pursuant to 607
section 122.4033 of the Revised Code. The broadband provider may 608
request, and the authority may grant for good cause shown, an 609
extension period of not more than fourteen days in which the 610
broadband provider may resubmit the application. 611

(B) When revising the application, the broadband provider 612
shall not expand the scope or impact of the original 613
application, nor shall the provider add any new residential 614
addresses to the eligible project. 615

(C) The broadband provider shall provide a copy of the 616
revised application to both the authority and the challenging 617
provider by certified mail or by electronic mail or by uploading 618
it to the development services agency's designated web site for 619
applications. The agency shall publish the revised application 620
on the agency's public web site provided that any information 621
determined to be proprietary or a trade secret under section 622
122.4023 of the Revised Code is redacted. 623

(D) Any failure to respond to the notification or properly 624
revise the application to the authority's satisfaction shall be 625
considered a withdrawal of the application. 626

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

decision shall be considered final, and further challenges to 637
the revised application are prohibited. 638

Sec. 122.4036. If the broadband expansion program 639
authority upholds a challenge to an application under sections 640
122.4030 to 122.4035 of the Revised Code and the challenging 641
provider fails to provide tier two broadband service as 642
described in the challenge, the challenging provider, after a 643
reasonable opportunity to be heard, may be required to do either 644
or both of the following, in addition to being subject to other 645
remedies available under the law: 646

(A) Pay to the development services agency the amount of 647
the original broadband funding gap described in section 122.4020 648
of the Revised Code for the application that was challenged; 649

(B) Comply with the requirements of any other penalties 650
prescribed by agency rule and imposed after consultation with 651
the authority. 652

Sec. 122.4037. Any money collected under section 122.4036 653
of the Revised Code shall be deposited into the Ohio residential 654
broadband expansion grant program fund, which is hereby created 655
in the state treasury. All amounts in the fund, including 656
interest earned on those amounts, shall be used by the 657
development services agency exclusively for grants under 658
sections 122.40 to 122.4077 of the Revised Code. 659

Sec. 122.4040. The development services agency, in 660
consultation with the broadband expansion program authority, 661
shall establish a weighted scoring system to evaluate and select 662
applications for program grants. The scoring system shall be 663
available on the agency's web site at least thirty days before 664
the beginning of the application submission period set by the 665

agency by rule. 666

Sec. 122.4041. (A) The scoring system established under 667
section 122.4040 of the Revised Code shall prioritize 668
applications, from highest to lowest weight, in the following 669
order: 670

(1) Eligible projects for unserved areas, rather than tier 671
one areas; 672

(2) Eligible projects located within distressed areas as 673
defined under section 122.19 of the Revised Code; 674

(3) Eligible projects that are receiving or have been 675
approved to receive any financial or in-kind contributions 676
towards the broadband funding gap identified in the application 677
under division (A) (3) of section 122.4020 of the Revised Code, 678
including the amounts and proportions of the contributions; 679

(4) Eligible projects for which the proposed construction 680
will utilize state rights-of-way or otherwise require attachment 681
to, or use of, public facilities or conduit to provide tier two 682
broadband service to an eligible project; 683

(5) Eligible projects based on proposed upstream and 684
downstream speeds and the scalability of the tier two broadband 685
service infrastructure proposed to be deployed to speeds higher 686
than twenty-five megabits per second downstream and three 687
megabits per second upstream; 688

(6) Eligible projects based on each of the following, in 689
equal measure, without favoring one broadband provider over 690
another: 691

(a) Demonstrated support, supported by evidence, for 692
community and economic development efforts in, or adjacent to, 693

the projects, including the provision of tier two broadband service to commercial and nonresidential entities as a result of, but not funded directly by, the program; 694
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(b) The broadband provider's experience, technical ability, and financial capability in successfully deploying and providing tier two broadband service; 697
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(c) The length of time the broadband provider has been providing tier two broadband service in the state; 700
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(d) The extent to which funding is necessary to deploy tier two broadband service infrastructure in an economically feasible manner to the eligible project; 702
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(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; 705
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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; 709
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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. 713
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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. 716
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Sec. 122.4043. (A) The broadband expansion program 723
authority shall award program grants under the Ohio residential 724
broadband expansion grant program after reviewing applications 725
sent to the authority by the development services agency. Awards 726
shall be granted after the authority scores applications based 727
on the scoring system under sections 122.4040 and 122.4041 of 728
the Revised Code. 729

(B) In awarding program grants, the authority shall 730
consider all regulatory obligations under applicable law. The 731
authority may not consider any of the following: 732

(1) Proposed project conditions that require open access 733
networks or that establish a specific rate, service, or other 734
obligation not specified for the Ohio residential broadband 735
expansion grant program; 736

(2) Factors that would constrain a broadband provider that 737
receives a grant from offering or providing tier two broadband 738
service in the same manner as the service is offered by 739
broadband providers in other areas of the state without funding 740
from the Ohio residential broadband expansion grant program. 741

(C) Upon making the program grant awards, the authority 742
shall notify the broadband providers that submitted applications 743
of the award decisions. The authority shall publish the program 744
grant awards on the agency's web site. 745

Sec. 122.4044. After the broadband expansion program 746
authority awards a program grant under section 122.4043 of the 747
Revised Code, the development services agency shall disburse the 748
program grant as follows: 749

(A) A portion of the program grant, not to exceed thirty 750
per cent, shall be disbursed before construction of the project 751

begins. 752

(B) A portion of the program grant, not to exceed sixty per cent, shall be disbursed through periodic payments over the course of construction of the eligible project as determined by the agency by rules adopted under section 122.4077 of the Revised Code. 753
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(C) The remaining portion shall be disbursed not later than sixty days after the broadband provider notifies the authority that it has completed construction of the project. 758
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Sec. 122.4045. (A) The development services agency may, through an independent third party, conduct speed verification tests of an eligible project that receives a program grant. Such tests shall occur as follows: 761
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(1) After the construction is complete, but prior to the final disbursement made under division (C) of section 122.4044 of the Revised Code to verify that tier two broadband service is being offered; 765
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(2) At any time during the reporting period required under division (B) of section 122.4070 of the Revised Code, after receiving a complaint concerning a residence that is part of the eligible project. 769
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(B) To evaluate compliance with tier two broadband service standards, speed verification tests conducted under this section shall be conducted on at least two different days and at two different times on each of those days. 773
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(C) The agency may withhold payments under this section for failure to meet at least the minimum speeds required under division (A) (8) of section 122.4020 of the Revised Code. Payments may be held until such speeds are achieved. 777
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Sec. 122.4046. (A) If the development services agency 781
determines that a broadband provider that has been awarded a 782
program grant under the Ohio residential broadband expansion 783
grant program has not complied with the requirements of the 784
program, the agency shall notify the provider of the 785
noncompliance. In accordance with rules adopted by the agency 786
under section 122.4077 of the Revised Code, the agency shall 787
give the provider an opportunity to explain or cure the 788
noncompliance. 789

(B) After reviewing the broadband provider's explanation 790
or effort to cure the noncompliance, the following shall apply: 791

(1) The agency may require the provider to refund an 792
amount equal to all, or a portion of, the amount of the program 793
grant awarded to the provider, as determined by the agency. 794

(2) The agency may require the broadband provider to 795
refund to the appropriate municipal corporation, township, or 796
county the entire amount of general revenue funds or other 797
discretionary funds that it contributed toward the broadband 798
funding gap under division (A) (3) (c) or (d) of section 122.4020 799
of the Revised Code. 800

(C) Not more than thirty days after the agency's decision 801
requiring a refund for program noncompliance or a failure to 802
explain or cure it, the broadband provider shall pay the refund 803
required under division (B) of this section. Payments shall be 804
made directly to the municipal corporation, township, or county 805
that contributed funds toward the broadband funding gap. 806

Sec. 122.4050. Upon adoption of a resolution, a board of 807
county commissioners may request the development services agency 808
to solicit applications from broadband providers for program 809

grants under the Ohio residential broadband expansion grant 810
program for eligible projects in the municipal corporations and 811
townships of the county. 812

A request made by a county shall identify, to the extent 813
possible, the residential addresses in unserved or tier one 814
areas of the county and provide a point of contact at the county 815
and the municipal corporations and townships in which the 816
addresses are located. The request may include any relevant 817
information, documents, or materials that may be helpful for an 818
application. 819

Sec. 122.4051. Upon receipt of a request from a board of 820
county commissioners pursuant to section 122.4050 of the Revised 821
Code, the development services agency shall solicit, on behalf 822
of the county, applications for program grants for eligible 823
projects under the Ohio residential broadband expansion grant 824
program. Not later than seven days after receipt of the request, 825
the agency shall make the request, and any accompanying 826
information submitted with the request, available for review on 827
the agency's web site. The request shall remain available on the 828
web site for a period not to exceed two years. 829

Sec. 122.4053. An application for a program grant under 830
the Ohio residential broadband expansion grant program made in 831
response to a request under section 122.4050 of the Revised Code 832
shall fully comply with all of the program requirements. Nothing 833
in sections 122.4050, 122.4051, and 122.4053 of the Revised Code 834
shall be construed as providing relief from compliance with any 835
program requirements. 836

Sec. 122.4055. The development services agency shall not 837
be responsible for any failure by a broadband provider to 838
respond to a request made by the agency pursuant to section 839

122.4051 of the Revised Code or to submit an application for a 840
program grant under the Ohio residential broadband expansion 841
grant program. 842

Sec. 122.4060. (A) An eligible project shall not proceed 843
unless the broadband expansion program authority awards a 844
program grant under section 122.4043 of the Revised Code. 845

(B) After receiving a program grant award, the broadband 846
provider shall construct and install last mile broadband 847
infrastructure to the eligible project. 848

Sec. 122.4061. Under alternate payment term arrangements 849
made under section 122.4025 of the Revised Code, unless 850
otherwise negotiated, the participating legislative authorities 851
in which the eligible project is located shall assume all 852
financial responsibility for all of the eligible project costs 853
incurred by the broadband provider prior to completion of the 854
project or the award of a program grant. 855

Sec. 122.4063. (A) Nothing in sections 122.40 to 122.4077 856
of the Revised Code entitles the state of Ohio, the development 857
services agency, the broadband expansion program authority, or 858
any other governmental entity to any ownership or other rights 859
to broadband infrastructure constructed by a broadband provider 860
pursuant to a program grant awarded to an eligible project. 861

(B) Nothing in sections 122.40 to 122.4077 of the Revised 862
Code prevents an assignment, sale, change in ownership, or other 863
similar transaction associated with broadband infrastructure 864
constructed by a broadband provider pursuant to a program grant 865
awarded to an eligible project. No assignment, sale, change in 866
ownership, or other similar transaction relieves the successor 867
of any obligation under sections 122.40 to 122.4077 of the 868

Revised Code. 869

Sec. 122.4070. (A) Each broadband provider that receives a 870
program grant shall submit to the development services agency an 871
annual progress report on the status of the deployment of the 872
broadband network described in the eligible project for which 873
the program grant award was made. 874

(B) The broadband provider shall submit an operational 875
report with the agency not later than sixty days after the 876
completion of the project and annually thereafter for a period 877
of four years. 878

Sec. 122.4071. (A) The reports required under section 879
122.4070 of the Revised Code and except as provided in section 880
122.4075 of the Revised Code, all information and documents in 881
them shall be in a format specified by the development services 882
agency and shall be publicly available on the agency's web site. 883

(B) In each report, the broadband provider shall include 884
an account of how program grant funds have been used and the 885
project's progress toward fulfilling the objectives for which 886
the program grant was awarded. The reports, at a minimum, shall 887
include the following: 888

(1) The number of residences that have access to tier two 889
broadband services as a result of the eligible project; 890

(2) The number of commercial and nonresidential entities 891
that are not funded directly by the grant program but have 892
access to tier two broadband service as a result of the eligible 893
project; 894

(3) The upstream and downstream speed of the broadband 895
service provided; 896

<u>(4) The average price of broadband service;</u>	897
<u>(5) The number of broadband service subscriptions</u>	898
<u>attributable to the program grant.</u>	899
<u>Sec. 122.4073.</u> <u>The development services agency may set a</u>	900
<u>due date for the reports required under section 122.4070 of the</u>	901
<u>Revised Code and, for good cause shown, may grant extensions of</u>	902
<u>the report due dates.</u>	903
<u>Sec. 122.4075.</u> <u>Reports required under section 122.4070 of</u>	904
<u>the Revised Code, and all information and documents in them,</u>	905
<u>shall be maintained on a confidential basis by the development</u>	906
<u>services agency and shall not be published on the agency's web</u>	907
<u>site until the agency determines what information or documents</u>	908
<u>are not confidential pursuant to section 122.4023 of the Revised</u>	909
<u>Code.</u>	910
<u>Sec. 122.4076.</u> <u>(A) The broadband expansion program</u>	911
<u>authority shall complete an annual report for the Ohio</u>	912
<u>residential broadband expansion grant program. The report shall</u>	913
<u>evaluate the success of the program grants awarded under section</u>	914
<u>122.4043 of the Revised Code in making tier two broadband</u>	915
<u>services available to unserved and tier one areas. The report</u>	916
<u>shall include the following information:</u>	917
<u>(1) The number of applications received;</u>	918
<u>(2) The number of applications that received program</u>	919
<u>grants;</u>	920
<u>(3) The amount of broadband infrastructure constructed for</u>	921
<u>eligible projects;</u>	922
<u>(4) The number of residences receiving, for that year,</u>	923
<u>tier two broadband service for the first time under the program;</u>	924

(5) Findings and recommendations that have been agreed to 925
by a majority of the authority members. 926

(B) The report shall be published on the development 927
services agency's web site and shall be included as part of the 928
agency's annual report filed under section 121.18 of the Revised 929
Code. The authority shall present the report annually to the 930
governor and the general assembly not later than the first of 931
December of each calendar year. 932

Sec. 122.4077. (A) The development services agency shall 933
adopt rules for the Ohio residential broadband expansion grant 934
program. The rules shall establish an application form and 935
application procedures for the program and procedures for 936
periodic program grant disbursements. 937

(B) The rules may include the following: 938

(1) Requirements for a program application in addition to 939
the requirements described in section 122.4020 of the Revised 940
Code; 941

(2) Procedures for and circumstances under which partial 942
funding of applications is permitted; 943

(3) Procedures for broadband expansion program authority 944
meetings, extension periods for applications and application 945
challenges, hearings, and opportunities for public comment. 946

(C) The agency may adopt rules and procedures to implement 947
sections 122.4051, 122.4053, and 122.4055 of the Revised Code. 948

(D) Rules adopted under this section are not subject to 949
section 121.95 of the Revised Code. 950

(E) The agency and the authority are not subject to 951
division (F) of section 121.95 of the Revised Code regarding the 952

development and adoption of rules pursuant to this section. 953

Sec. 133.13. If the special assessments are to be paid in 954
one annual installment, the taxing authority of a subdivision 955
may issue securities in anticipation of its levy or collection 956
of special assessments to pay the costs of the subdivision's 957
broadband funding gap portion for an eligible project under 958
sections 122.40 to 122.4077 of the Revised Code, lighting, 959
sprinkling, sweeping, cleaning, providing related or similar 960
services or the services described in section 727.011 of the 961
Revised Code, or of removing snow, ice, and debris from, or 962
treating the surface of, streets, alleys, and public ways and 963
places. 964

Such securities shall not be general obligations of the 965
issuing subdivision, and shall not pledge to the payment of debt 966
charges any receipts other than the special assessments 967
anticipated, except that a municipal corporation, without 968
incurring debt subject to direct or indirect debt limitations, 969
may also pledge and apply proceeds of its municipal income tax 970
to pay those debt charges. No property tax shall be levied or 971
pledged for the payment of debt charges on the securities. The 972
securities shall mature no later than the last day of December 973
of the year in which the special assessments anticipated are 974
scheduled to be collected. 975

The legislation authorizing the securities shall 976
appropriate the special assessments anticipated, and such 977
special assessments shall be deemed to be pledged and 978
appropriated, first to the payment of the debt charges on the 979
securities. After provision has been made for the payment in 980
full of those debt charges, the balance of the special 981
assessments may be appropriated and applied for the purposes for 982

which they were levied.	983
<u>Sec. 188.01. As used in sections 188.01 to 188.23 of the</u>	984
<u>Revised Code:</u>	985
<u>(A) "Broadband service" means any wholesale or retail</u>	986
<u>service that consists of, or includes the provision of,</u>	987
<u>connectivity to a high-speed, high-capacity transmission medium</u>	988
<u>that can carry signals from or to multiple sources and that</u>	989
<u>either provides access to the internet or provides computer</u>	990
<u>processing, information storage, information content or protocol</u>	991
<u>conversion, including any service applications or information</u>	992
<u>service provided over such high-speed access service. "Broadband</u>	993
<u>service" includes video service, voice over internet protocol</u>	994
<u>service, and internet protocol-enabled services.</u>	995
<u>(B) "Electric cooperative" has the same meaning as in</u>	996
<u>section 4928.01 of the Revised Code.</u>	997
<u>(C) "Internet protocol-enabled services" and "voice over</u>	998
<u>internet protocol service" have the same meanings as in section</u>	999
<u>4927.01 of the Revised Code.</u>	1000
<u>(D) "Servient estate" means the land burdened by an</u>	1001
<u>easement.</u>	1002
<u>(E) "Video programming" means any programming generally</u>	1003
<u>considered comparable to programming provided by a television</u>	1004
<u>broadcast station.</u>	1005
<u>(F) "Video service" means video programming services</u>	1006
<u>without regard to delivery technology, including internet</u>	1007
<u>protocol technology and video programming provided as a part of</u>	1008
<u>a service that enables users to access content, information,</u>	1009
<u>electronic mail, or other services offered over the public</u>	1010
<u>internet.</u>	1011

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. 1012
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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 the owner equal to not more than the difference between the following: 1018
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(1) The fair market value of the owner's interest in the property of the estate immediately before the provision of broadband service; 1024
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(2) The fair market value of the owner's interest in the property of the estate immediately after the provision of broadband service. 1027
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(B) Any damages awarded under division (A) of this section shall be a fixed amount that shall not continue, accumulate, or accrue. 1030
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(C) The values described in division (A) of this section shall be established by the testimony of a qualified real estate appraiser. 1033
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Sec. 188.08. The court may not grant injunctive relief or any other equitable relief for an action described in section 188.05 of the Revised Code. 1036
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Sec. 188.11. Actions described in section 188.05 of the Revised Code shall be brought within one year of any alleged 1039
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damage described in that section. Any action not brought within 1041
one year will result in forfeiture of that claim. 1042

Sec. 188.14. Past, current, or future revenues or profits 1043
derived or to be derived from the use, apportionment, or 1044
sublease of an easement for broadband service are not admissible 1045
for any purpose in an action described in section 188.05 of the 1046
Revised Code. 1047

Sec. 188.17. Any court determination regarding an easement 1048
subject to an action described in section 188.05 of the Revised 1049
Code shall be considered a finding that the provision of 1050
broadband service is an allowable use or purpose under the 1051
easement as if the use or purpose was specifically stated in the 1052
terms of the easement. 1053

Sec. 188.20. A court determination described in section 1054
188.17 of the Revised Code shall be filed by the defendant in 1055
the action with the county recorder of the county in which the 1056
servient estate subject to the determination is located. The 1057
recorder shall make a notation in the official record that links 1058
the determination to the servient estate and the easement 1059
subject to the determination. 1060

Sec. 188.23. The owner of a servient estate of an easement 1061
described in section 188.02 of the Revised Code may not bring an 1062
action described in section 188.05 of the Revised Code if any of 1063
the following apply: 1064

(A) The owner, either directly or through the owner's 1065
membership in the electric cooperative or otherwise, authorized 1066
the electric cooperative's electric delivery system for the 1067
provision of broadband services. 1068

(B) The owner, or any of the previous owners of the 1069

property that makes up the servient estate, has agreed to, or 1070
granted permission for, the use of the easement to provide 1071
broadband service. 1072

(C) The facilities providing broadband service are used or 1073
are capable of being used to assist in the transmission, 1074
delivery, or use of electric service. 1075

Sec. 188.27. Sections 188.01 to 188.23 of the Revised Code 1076
shall not be construed as expanding the authority of the state, 1077
its agencies, or political subdivisions beyond the authority 1078
existing under federal law or the laws of this state. 1079

Sec. 188.30. Sections 163.01 to 163.22 of the Revised Code 1080
do not apply regarding the application of sections 188.01 to 1081
188.23 of the Revised Code. 1082

Sec. 303.251. (A) If a program grant is awarded for an 1083
eligible project under sections 122.40 to 122.4077 of the 1084
Revised Code, the board of county commissioners of the county in 1085
which the project is situated, by resolution, may levy a special 1086
assessment upon residential property within the county for the 1087
purpose of providing a contribution from the county towards the 1088
funding gap for the eligible project. Assessments under this 1089
section shall be levied only upon the residential property that 1090
is subject to the eligible project. Before adopting the 1091
resolution, the board shall send written notice to each affected 1092
property owner stating the estimated assessment for that 1093
property. If an owner objects to the stated estimated 1094
assessment, the owner shall file a written objection with the 1095
board not later than two weeks after the notice is mailed. The 1096
board shall review the written objections and may revise the 1097
estimated assessments before adopting the resolution. If the 1098
property owner objects to the final assessment for the property 1099

levied in the resolution, the owner may appeal the final 1100
assessment under Chapter 2506. of the Revised Code. 1101

(B) The assessment shall be at a rate that will produce a 1102
total assessment that is not more than the county's contribution 1103
towards the funding gap for the eligible project as described in 1104
the application under section 122.4020 of the Revised Code. The 1105
board shall certify the amount to be levied upon each affected 1106
property to the county auditor, who shall enter the amount on 1107
the tax duplicate for collection by the county treasurer in 1108
equal semiannual installments in the same manner and at the same 1109
times as the collection of taxes on real property. Assessments 1110
shall be paid by owners of the properties upon which assessments 1111
are levied. 1112

(C) The assessments, when collected, shall be paid by the 1113
county auditor by warrant on the county treasurer into a special 1114
fund in the county treasury created for the purpose of funding 1115
an eligible project for which a program grant is awarded under 1116
sections 122.40 to 122.4077 of the Revised Code and that is 1117
located in the county. The board may expend moneys from the fund 1118
only for the purposes for which the assessments were levied. 1119

Sec. 505.881. (A) If a program grant is awarded for an 1120
eligible project under sections 122.40 to 122.4077 of the 1121
Revised Code, the board of township trustees in which the 1122
project is situated, by resolution, may levy a special 1123
assessment upon residential property within the township for the 1124
purpose of providing a contribution from the township towards 1125
the broadband funding gap for the eligible project. Assessments 1126
under this section shall be levied only upon the residential 1127
property that is subject to the eligible project. Before 1128
adopting the resolution, the board shall send written notice to 1129

each affected property owner stating the estimated assessment 1130
for that property. If an owner objects to the stated estimated 1131
assessment, the owner shall file a written objection with the 1132
board not later than two weeks after the notice is mailed. The 1133
board shall review the written objection and may revise the 1134
estimated assessment before adopting the resolution. If the 1135
property owner objects to the final assessment for the property 1136
levied in the resolution, the owner may appeal the final 1137
assessment under Chapter 2506. of the Revised Code. 1138

(B) The assessment shall be at a rate that will produce a 1139
total assessment that is not more than the township's 1140
contribution towards the funding gap for the eligible project as 1141
described in the application under section 122.4020 of the 1142
Revised Code. The board shall certify the amount to be levied 1143
upon each affected property to the county auditor, who shall 1144
enter the amount on the tax duplicate for collection by the 1145
county treasurer in equal semiannual installments in the same 1146
manner and at the same times as the collection of taxes on real 1147
property. Assessments shall be paid by owners of the properties 1148
upon which assessments are levied. 1149

(C) The assessments, when collected, shall be paid by the 1150
county auditor by warrant on the county treasurer into a special 1151
fund in the township treasury created for the purpose of funding 1152
an eligible project for which a program grant is awarded under 1153
sections 122.40 to 122.4077 of the Revised Code and that is 1154
located in the township. The board may expend moneys from the 1155
fund only for the purposes for which the assessments were 1156
levied. 1157

Sec. 727.01. Each municipal corporation shall have special 1158
power to levy and collect special assessments. The legislative 1159

authority of a municipal corporation may assess upon the 1160
abutting, adjacent, and contiguous, or other specially 1161
benefited, lots or lands in the municipal corporation, any part 1162
of the cost connected with the improvement of any street, alley, 1163
dock, wharf, pier, public road, place, boulevard, parkway, or 1164
park entrance or an easement of the municipal corporation 1165
available for the purpose of the improvement to be made in it by 1166
grading, draining, curbing, paving, repaving, repairing, 1167
treating the surface with substances designed to lay the dust on 1168
it or preserve it, constructing sidewalks, piers, wharves, 1169
docks, retaining walls, sewers, sewage disposal works and 1170
treatment plants, sewage pumping stations, water treatment 1171
plants, water pumping stations, reservoirs, and water storage 1172
tanks or standpipes, together with the facilities and 1173
appurtenances necessary and proper therefor, drains, storm-water 1174
retention basins, watercourses, water mains, or laying of water 1175
pipe, or the lighting, sprinkling, sweeping, or cleaning 1176
thereof, or removing snow therefrom, any part of the cost and 1177
expense of planting, maintaining, and removing shade trees 1178
thereupon; any part of the cost of a voluntary action, as 1179
defined in section 3746.01 of the Revised Code, undertaken 1180
pursuant to Chapter 3746. of the Revised Code by a special 1181
improvement district created under Chapter 1710. of the Revised 1182
Code, including the cost of acquiring property with respect to 1183
which the voluntary action is undertaken; any part of the cost 1184
and expense of constructing, maintaining, repairing, cleaning, 1185
and enclosing ditches; any part of the cost and expense of 1186
operating, maintaining, and replacing heating and cooling 1187
facilities for enclosed pedestrian canopies and malls; any part 1188
of the cost and expense of acquiring and improving parking 1189
facilities and structures for off-street parking of motor 1190
vehicles or of acquiring land and improving it by clearing, 1191

grading, draining, paving, lighting, erecting, constructing, and 1192
equipping it for parking facilities and structures for off- 1193
street parking of motor vehicles, to the extent authorized by 1194
section 717.05 of the Revised Code, but only if no special 1195
assessment made for the purpose of developing off-street parking 1196
facilities and structures is levied against any land being used 1197
solely for off-street parking or against any land used solely 1198
for single or two-family dwellings; any part of the cost and 1199
expense of operating and maintaining the off-street parking 1200
facilities and structures; and any part of the cost connected 1201
with changing the channel of, or narrowing, widening, dredging, 1202
deepening, or improving, any stream or watercourse, and for 1203
constructing or improving any levees or boulevards on any stream 1204
or watercourse, or along or about any stream or watercourse, 1205
together with any retaining wall, riprap protection, bulkhead, 1206
culverts, approaches, flood gates, waterways, or drains 1207
incidental to any stream or watercourse, or for making any other 1208
improvement of any river or lake front, whether it is privately 1209
or publicly owned, which the legislative authority declares 1210
conducive to the public health, convenience, or welfare. If a 1211
program grant is awarded for an eligible project under sections 1212
122.40 to 122.4077 of the Revised Code, a municipal corporation 1213
may levy, against dwellings that are subject to the project, a 1214
special assessment for the purpose of providing a contribution 1215
from the municipal corporation towards the funding gap for the 1216
project. The assessment shall be at a rate that will produce a 1217
total assessment that is not more than the municipal 1218
corporation's contribution towards the funding gap for the 1219
eligible project as described in the application under section 1220
122.4020 of the Revised Code. In addition, a municipal 1221
corporation may levy a special assessment for public improvement 1222
or public services plans of a district formed under Chapter 1223

1710. of the Revised Code, as provided in that chapter. Except 1224
as otherwise provided in Chapter 1710. of the Revised Code, 1225
special assessments may be levied by any of the following 1226
methods: 1227

(A) By a percentage of the tax value of the property 1228
assessed; 1229

(B) In proportion to the benefits that may result from the 1230
improvement; 1231

(C) By the front foot of the property bounding and 1232
abutting upon the improvement. 1233

Sec. 4926.01. As used in sections 4926.01 to 4926.60 of 1234
the Revised Code: 1235

"Attachment" means any wire, wireless facility, cable, 1236
antennae facility, or apparatus for the transmission of text, 1237
signs, signals, pictures, sounds, or other forms of information 1238
installed by or on behalf of a provider upon any pole owned or 1239
controlled, in whole or in part, by one or more electric 1240
cooperatives. 1241

"Broadband provider" has the same meaning as in section 1242
122.40 of the Revised Code. 1243

"Electric cooperative" has the same meaning as in section 1244
4928.01 of the Revised Code. 1245

"Incremental cost" means pole attachment costs incurred by 1246
an electric cooperative for providing long-run service. 1247

"Make-ready work" means, as determined by the nature of 1248
the work required, "make-ready," "complex make-ready," or 1249
"simple make-ready" as those terms are defined in 47 C.F.R. 1250
1.1402. 1251

"Provider" means a broadband provider, telecommunications service provider, video service provider, or wireless service provider. 1252
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"Telecommunications service provider" means a provider of "telecommunications service" as defined in section 4927.01 of the Revised Code. 1255
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"Video service provider" has the same meaning as in section 1332.21 of the Revised Code. 1258
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"Wireless service provider" has the same meaning as in section 4927.01 of the Revised Code. 1260
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Sec. 4926.03. On the request of a provider, an electric cooperative shall grant the provider nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions for their attachments in accordance with sections 4926.06 to 4926.36 of the Revised Code. 1262
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Sec. 4926.06. A provider requesting access to an electric cooperative's poles shall submit the request in writing, and the cooperative shall review the request under a uniformly applied, efficient, and transparent process. 1267
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Sec. 4926.09. An electric cooperative may require a provider to execute an agreement for a pole attachment under nondiscriminatory, just, and reasonable rates, terms, and conditions in accordance with sections 4926.06 to 4926.36 of the Revised Code if the cooperative requires all other attaching parties to execute such an agreement. 1271
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Sec. 4926.12. After receiving a request for access, an electric cooperative shall grant or deny access within the time frame established by the federal communications commission, unless, pursuant to section 4926.57 of the Revised Code, a court 1277
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of common pleas determines a different time frame for granting 1281
or denying access. 1282

Sec. 4926.15. An electric cooperative may deny a provider 1283
access to its poles for either of the following reasons if the 1284
reasons are applied on a nondiscriminatory basis: 1285

(A) Insufficient capacity; 1286

(B) Safety, reliability, or generally applicable 1287
engineering standards. 1288

Sec. 4926.18. If an electric cooperative denies an access 1289
request submitted under section 4926.15 of the Revised Code, the 1290
cooperative must confirm the denial in writing. The denial shall 1291
be specific and shall include all relevant evidence and 1292
information supporting the denial and an explanation of how that 1293
evidence and information relates to the factors described in 1294
section 4926.15 of the Revised Code on which the denial is 1295
based. 1296

Sec. 4926.21. (A) A provider and an electric cooperative 1297
shall comply with the process for make-ready work under 47 1298
U.S.C. 224 and the federal communications commission orders and 1299
regulations implementing that section, unless, pursuant to 1300
section 4926.57 of the Revised Code, a court of common pleas 1301
establishes a different process for make-ready work. 1302

(B) The cooperative shall provide a good-faith estimate 1303
for any make-ready work, which shall include pole replacement if 1304
necessary. All make-ready costs shall be based on the 1305
cooperative's actual costs not recovered through the annual 1306
recurring attachment rate. The cooperative shall provide 1307
detailed documentation of the actual costs. 1308

(C) A cooperative that charges an annual recurring 1309

attachment fee shall establish the fee in accordance with the 1310
cable pole attachment rate formula established in 47 U.S.C. 1311
224(d) and commission orders and regulations implementing that 1312
formula, unless, pursuant to section 4926.57 of the Revised 1313
Code, a court of common pleas establishes a different attachment 1314
fee. 1315

Sec. 4926.24. The attachment of facilities on the poles of 1316
an electric cooperative by a provider shall comply with the 1317
following: 1318

(A) The most recent, applicable, nondiscriminatory safety 1319
and reliability standards adopted by the cooperative; 1320

(B) The national electric safety code adopted by the 1321
institute of electrical and electronics engineers in effect on 1322
the date of the attachment. 1323

Sec. 4926.27. Nothing in sections 4926.01 to 4926.60 of 1324
the Revised Code affects a provider or other attaching party's 1325
obligation to obtain any necessary authorization before 1326
occupying public ways or private rights-of-way with its 1327
attachment. 1328

Sec. 4926.30. If an electric cooperative's pole facility 1329
is modified, a party with a preexisting attachment to the 1330
modified facility is considered to directly benefit from a 1331
modification if, after receiving notification of the 1332
modification, the party adds to or modifies its attachment. 1333

Sec. 4926.33. (A) If an electric cooperative's pole 1334
facility is modified, all parties that obtain access to the 1335
facility as a result of the modification and all parties that 1336
directly benefit from the modification shall share 1337
proportionately in the cost of the modification. 1338

(B) If a party makes an attachment to the facility after 1339
the completion of the modification, the party shall share 1340
proportionately in the costs of the modification if that 1341
modification rendered the added attachment possible. 1342

Sec. 4926.36. Unless a modification by an electric 1343
cooperative is necessary for an electric service that uses smart 1344
grid or other technology, a party with a preexisting attachment 1345
to a pole is not required to bear any of the costs of 1346
rearranging or replacing its attachment if the rearrangement or 1347
replacement is necessary because of another party's request for 1348
an additional attachment or a modification of an existing 1349
attachment. 1350

Sec. 4926.39. Subject to the venue requirements of 1351
section 4926.43 of the Revised Code, an electric cooperative or 1352
a provider may file a complaint regarding pole attachment 1353
disputes with respect to sections 4926.01 to 4926.60 of the 1354
Revised Code with the court of commons pleas of the county in 1355
which the cooperative's Ohio headquarters is located. 1356

Sec. 4926.42. Subject to the venue requirements of section 1357
4926.43 of the Revised Code, the court of common pleas of the 1358
county in which an electric cooperative's Ohio headquarters is 1359
located has jurisdiction to hear complaints and to grant 1360
remedies with respect to sections 4926.01 to 4926.60 of the 1361
Revised Code regarding attachment disputes for which a complaint 1362
is filed. 1363

Sec. 4926.43. A hearing regarding a complaint filed under 1364
section 4926.39 of the Revised Code is a special statutory 1365
proceeding under division (C) of Civil Rule 1 of the Rules of 1366
Civil Procedure. Any civil proceeding under section 4926.39 of 1367
the Revised Code shall be conducted in accordance with the Rules 1368

of Civil Procedure, except that a complaint regarding pole attachment disputes with respect to sections 4926.01 to 4926.60 of the Revised Code is not subject to general venue provisions in Civil Rule 3 of the Rules of Civil Procedure. To that extent only, such proceedings shall be deemed a special statutory proceeding under division (C) (8) of Civil Rule 1 of the Rules of Civil Procedure. 1369
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Venue for such a proceeding shall lie only in the county in which the cooperative's Ohio headquarters is located, provided that at least some portion of the attachment will occur in that county. In the event that the cooperative's Ohio headquarters is not located in a county in which some portion of the attachment will occur, or that more than one cooperative is a party, venue shall lie only in the county in which the largest physical portion of the attachment will occur. 1376
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Court orders relative to venue are final orders pursuant to division (B) (2) of section 2505.02 of the Revised Code. Orders not specifically relating to venue are reviewable on appeal in the same manner as judgments in any civil action. 1384
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Land acquisition actions pursuant to Chapter 163. of the Revised Code are not affected by this section and shall be heard in a venue as provided in that chapter or Civil Rule 3 of the Rules of Civil Procedure. 1388
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Sec. 4926.45. Before a court of common pleas may order any remedy under section 4926.57 of the Revised Code regarding a pole attachment complaint filed with respect to sections 4926.01 to 4926.60 of the Revised Code, the court shall determine, and a complainant shall establish, by a preponderance of the evidence, each of the following: 1392
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(A) That any rate, term, or condition complained of is not 1398
just and reasonable or a denial of access was unlawful. 1399

(B) If the complaint concerns any rate, term, or 1400
condition, that such rate, term, or condition is contained in, 1401
or demanded by either party as a condition to entering into, 1402
either: 1403

(1) A new pole attachment agreement; or 1404

(2) An amendment, renewal, or replacement of an existing 1405
agreement that may be terminated, amended, renewed, or replaced 1406
on or after the effective date of this section; 1407

(C) If the complaint concerns any rate, term, or 1408
condition, that the provider and the electric cooperative first 1409
attempted to negotiate regarding the terms of a new, amended, 1410
renewed, or replaced agreement for a period of at least forty- 1411
five days prior to filing the complaint. 1412

Sec. 4926.48. (A) The complainant under section 4926.39 of 1413
the Revised Code has the burden of establishing a prima facie 1414
case that the rate, term, or condition complained of is not just 1415
and reasonable or that the denial of access was unlawful. 1416

(B) In a case involving a denial of access, the electric 1417
cooperative has the burden of establishing, by a preponderance 1418
of the evidence, that the denial was lawful, once a prima facie 1419
case is established by the complainant. 1420

Sec. 4926.51. In a complaint filed under section 4926.39 1421
of the Revised Code, if an electric cooperative claims that the 1422
proposed rate is lower than its incremental costs, the 1423
cooperative has the burden of establishing, by a preponderance 1424
of the evidence, its incremental costs. 1425

Sec. 4926.54. In a complaint filed under section 4926.39 1426
of the Revised Code, there is a rebuttable presumption that each 1427
of the following is just and reasonable: 1428

(A) The time frame to grant or deny access, if it is 1429
within the time frame established by the federal communications 1430
commission; 1431

(B) The process for make-ready work, if it is in 1432
accordance with the process for make-ready work under 47 U.S.C. 1433
224 and the federal communications commission orders and 1434
regulations implementing that section; 1435

(C) The charged rate, if the electric cooperative can show 1436
that its charged rate does not exceed an annual recurring 1437
attachment rate calculated in accordance with the cable pole 1438
attachment rate formula in 47 U.S.C. 224(d) and federal 1439
communications commission orders and regulations implementing 1440
that formula. 1441

Sec. 4926.57. (A) If, pursuant to a complaint filed under 1442
section 4926.39 of the Revised Code, a court of common pleas 1443
determines that any rate, term, or condition described in the 1444
complaint is not just and reasonable, it may do, but is not 1445
limited to doing, any of the following: 1446

(1) Terminate the rate, term, or condition and prescribe a 1447
just and reasonable rate, term, or condition; 1448

(2) Require entry into a pole attachment agreement on just 1449
and reasonable rates, terms, and conditions; 1450

(3) Require access to poles as provided under sections 1451
4926.06 to 4926.36 of the Revised Code; 1452

(4) Substitute in the pole attachment agreement the just 1453

and reasonable rate, term, or condition established by the 1454
court; 1455

(5) Order a refund or payment, as appropriate. 1456

(B) A refund or payment ordered under this section may not 1457
exceed the difference between the actual amount paid under the 1458
unjust and unreasonable rate, term, or condition and the amount 1459
that would have been paid under the rate, term, or condition 1460
established by the court for the period described in the 1461
complaint, provided that the period during which refunds or 1462
payments are made does not exceed two years. 1463

Sec. 4926.60. A court of common pleas determination 1464
resolving a complaint under sections 4926.39 to 4926.57 of the 1465
Revised Code shall be issued in the form of a final appealable 1466
order. 1467

Section 2. That existing sections 133.13 and 727.01 of the 1468
Revised Code are hereby repealed. 1469

Section 3. All items in Section 4 of this act are hereby 1470
appropriated as designated out of any moneys in the state 1471
treasury to the credit of the designated fund. For all operating 1472
appropriations made in that section, those in the first column 1473
are for fiscal year 2020 and those in the second column are for 1474
fiscal year 2021. The operating appropriations made in Section 4 1475
of this act are in addition to any other operating 1476
appropriations made for the FY 2020-FY 2021 biennium. 1477

Section 4. 1478

1479

A	DEV DEVELOPMENT SERVICES AGENCY		
B	Facilities Establishment Fund Group		
C	5GT0 195550 Broadband Development Grants	\$0	\$20,000,000
D	TOTAL FCE Facilities Establishment Fund Group	\$0	\$20,000,000
E	TOTAL ALL BUDGET FUND GROUPS	\$0	\$20,000,000

BROADBAND DEVELOPMENT GRANTS 1480

Notwithstanding Chapter 166. of the Revised Code, the 1481
foregoing appropriation item 195550, Broadband Development 1482
Grants, shall be used for grants under the Ohio Residential 1483
Broadband Expansion Grant Program established in section 122.401 1484
of the Revised Code. 1485

On the effective date of this section, or as soon as 1486
possible thereafter, the Director of Budget and Management shall 1487
transfer \$20,000,000 cash from the Facilities Establishment Fund 1488
(Fund 7037) to the Ohio Residential Broadband Expansion Grant 1489
Program Fund (Fund 5GTO). 1490

Any unexpended and unencumbered portion of the foregoing 1491
appropriation item 195550, Broadband Development Grants, at the 1492
end of fiscal year 2021 is hereby reappropriated for the same 1493
purpose in fiscal year 2022. 1494

Section 5. Within the limits set forth in this act, the 1495
Director of Budget and Management shall establish accounts 1496
indicating the source and amount of funds for each appropriation 1497
made in Section 4 of this act, and shall determine the form and 1498

manner in which appropriation accounts shall be maintained. 1499

Expenditures from operating appropriations contained in Section 1500

4 of this act shall be accounted for as though made in H.B. 166 1501

of the 133rd General Assembly. 1502

The operating appropriations made in Section 4 of this act 1503

are subject to all provisions of H.B. 166 of the 133rd General 1504

Assembly that are generally applicable to such appropriations. 1505

Section 6. This act is hereby declared to be an emergency 1506

measure necessary for the immediate preservation of the public 1507

peace, health, and safety. The reason for such necessity is that 1508

the lack of broadband access in the state is an ongoing issue 1509

that has become more urgent during the COVID-19 pandemic and 1510

requires additional broadband infrastructure to be deployed at 1511

the earliest possible date. Therefore, this act shall go into 1512

immediate effect. 1513